

RESOLUTION NO. 30 , 2023

**A RESOLUTION APPROVING A CONSTRUCTION AGREEMENT
WITH BRANDICORP, LLC FOR THE STAGE 2
MONTGOMERY QUARTER PUBLIC IMPROVEMENTS**

WHEREAS, as a part of the Montgomery Quarter development project to initiate design and construction of Stage 2, the City does desire to contract for construction of certain Public Improvements which may include site preparation, utility relocation, utility infrastructure, sidewalks, curbs, roadway, streetscape and landscaping to be more specifically defined by Criteria Drawings to be developed and any amendments to the Development Agreement governing the development of the Montgomery Quarter Project to be broken out and designed and constructed in one or more Sequences; and

WHEREAS, the Criteria Drawings as prepared by the City's design professionals recommend a budget not to exceed \$2,500,000 for such Public Improvements in Sequence 1, Stage 2 of the Montgomery Quarter project, which Public Improvements are to be funded in part from the sale of land, monies received in grants, and a portion of the proceeds from Tax Increment Financing Bonds to be issued in the future in support of Public Improvements for Stage 2 of the Montgomery Quarter Project; and

WHEREAS, to obtain market competitive pricing for such construction work and to maximize the timely efficient construction of such Public Improvements, the City Administration elected to proceed under R.C. § 9.33 *et. seq.* to pursue a Construction Manager-At-Risk model to choose a contractor; and

WHEREAS, after advertising for Request For Qualifications, then soliciting

Request For Proposals from the Best Value candidates, the City Administration through its Evaluation Committee chose to negotiate a contract with Brandicorp, LLC; and

WHEREAS, the City Administration is now asking Council to approve a Construction Agreement with Brandicorp, LLC for Stage 2 Public Improvements in the substantial form of the Construction Agreement attached hereto.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is hereby authorized to finalize and execute the attached Construction Agreement, substantially in the form and under the terms and conditions of the Construction Agreement attached hereto, as negotiated with Brandicorp, LLC to construct certain Public Improvements in Stage 2 of the Montgomery Quarter Project. The specific terms and conditions of such contract shall allow a construction management fee as a percentage of the Cost of Work as defined within the Construction Agreement, and which management fee may be varied in each separate Sequence of the Stage 2 Montgomery Quarter Project to reflect the risks and complexities in such Sequence.

SECTION 2. Such Construction Agreement shall include Guaranteed Maximum Pricing for each Sequence of the project with the total costs within the initial Sequence defined as Sequence 1, Public Improvements in CMAR II Exhibit 1 of the Construction Agreement, not to exceed \$2,500,000. The City Manager is authorized to execute such Guaranteed Maximum Pricing amendments with the Contractor when design and engineering plans have been reviewed and finally approved for each Sequence of Stage 2 of the Montgomery Quarter Project, and appropriate funding has been identified.

SECTION 3. The City Manager is authorized to execute such additional documentation as may be necessary to complete the Construction Agreement to assure efficient and quality construction of the public improvements within Stage 2 of the Montgomery Quarter Project.

SECTION 4. This Resolution shall be in full force and effect from and after its passage.

PASSED: September 6, 2023

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement" or "Contract") is a Construction Manager-at-Risk Agreement as defined by R.C. § 9.33 *et. seq.* This Agreement is entered into by and among the CITY OF MONTGOMERY, Hamilton County, Ohio, an Ohio municipal corporation ("City"), and BRANDICORP, LLC, a Kentucky limited liability company ("Contractor"), effective upon the last date signed and accepted by all Parties, to govern the terms and conditions for the construction of certain Public Improvements defined herein for Stage 2 of the Montgomery Quarter Project.

WHEREAS, the City previously acquired certain real property which has been transferred to The Montgomery Community Improvement Corporation to develop a mixed-use development, which property herein is referred to as the "Montgomery Quarter"; and

WHEREAS, The Montgomery Community Improvement Corporation has dedicated a portion of such Montgomery Quarter property for the construction of various Public Improvements to support the development of the Montgomery Quarter Project to benefit residents of the City of Montgomery, Ohio and such other persons traveling to or within the Montgomery Quarter Project; and

WHEREAS, City under a separate Agreement with an affiliate of the Contractor, Gateway Partners Montgomery, LLC, an Ohio limited liability company ("Developer"), has entered into a Development Agreement dated February 19, 2020 (the "Development Agreement"), which was amended August 12, 2020, and further amended November 19, 2020, to define the development of the Montgomery Quarter Project in Stage 1; and

WHEREAS, a Third Amendment has been negotiated and approved between the City, the Developer and The Montgomery Community Improvement Corporation for the development of Stage 2 of the Montgomery Quarter Project (the "Third Amended Development Agreement"), under which the City has agreed to construct certain of the Public Improvements referred to therein as Project Site Public Improvements as depicted on **CMAR II Exhibit 1** attached hereto, which Exhibit is identified as Third Amendment Exhibit 3 within such separate Third Amended Development Agreement; and

WHEREAS, the City has elected to proceed under R.C. § 9.33 *et. seq.* to seek qualifications and later proposals for the construction of the Project Site Public Improvements on the site under a Construction Manager-at-Risk Agreement ("CMAR") with a Guaranteed Maximum Price; and

WHEREAS, after designating Contractor as the Preferred Contractor under the State of Ohio process for public projects, the City entered into negotiations with the Contractor, the result of which is the City does now desire to enter into this Agreement with Contractor modeled after the accepted contract format by the State of Ohio to outline the specific terms and conditions under which Contractor as the CMAR will construct certain Project Site Public Improvements for the City within Stage 2 of the Montgomery Quarter development.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **GENERAL PROVISIONS**

A. **Parties.** The parties to this Agreement are the CITY OF MONTGOMERY, OHIO, an Ohio municipal corporation, whose address is 10101 Montgomery Road, Montgomery, Ohio 45242, and BRANDICORP, LLC, a Kentucky limited liability company, whose address is 45 Fairfield Avenue, Bellevue, Kentucky 41073.

B. **Public Improvement Criteria.** The Project is based upon the *Montgomery Quarter Stage 2* Preliminary Plans contained in **CMAR II Exhibit 2** and incorporated herein by reference ("Montgomery Quarter Site/Public Improvements /Final Development Plan"). This Exhibit provides a general outline of the Public Improvements to be constructed by Contractor. The "Project" and "Public Improvements" as defined herein include all of the "Project Site Public Improvements" required for "Stage 2" (as such terms are defined in the Third Amended Development Agreement or may be modified by the parties with further design and budgeting of the Private Development Improvements in Stage 2). Stage 2 of the Project will be constructed in two or more "Sequences of Work". In support of the Project, attached hereto are available Criteria Drawings and Specifications (collectively, the "**Project Criteria**"), **CMAR Exhibit 3**, for Sequence 1 of Stage 2. From the Project Criteria, **Third Amendment Exhibit 3**, the final design drawings, engineering drawings, and specifications ("**Final Drawings**") for each Sequence will be prepared by the City's consultant for acceptance and approval by the City and Contractor. Combined, the Project Criteria, Final Drawings, Guaranteed Maximum Price ("GMP") Amendments (hereinafter defined), agreed-upon Project schedules, agreed-upon Change Orders and this Agreement shall be considered the "**Contract Documents**". If there is any change in the Project Criteria after execution of this Agreement, it is agreed that the City and the Contractor shall negotiate a modification of this Agreement identifying new Project Criteria for each subsequent Sequence, and as agreed such modified Project Criteria shall be a part of the Contract Document.

C. **Work.** The term "**Work**" means the construction and related services required to fulfill Contractor's obligations under this Agreement, and includes all labor, materials, equipment and services provided or to be provided by the Contractor or its contractors or subcontractors as specified in the Contract Documents. "**Project Work**" includes the Work in Stage 2 of the Project, being the Project Site Public Improvements for Stage 2 under the Development Agreement.

D. **City's Obligations.** The City is obligated to retain appropriate Design and Engineering Consultants to refine the Project Criteria and to develop Final Drawings from which to authorize the specific Work of the Project.

E. **Contractor's Obligations.** Based upon the Project Criteria and Final Drawings, but subject to the City and Contractor reaching agreement on the Contract Documents for each subsequent Sequence, Contractor is obligated to perform the Work under the general terms of this Agreement and the Contract Documents, and as appropriate solicit bids and contract with

subcontractors to complete the Work in a good and workmanlike manner with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of the Project. Contractor shall provide to the City, at the City's request, all books, records, documents and other data in its possession pertaining to the bidding, pricing or performance of Project Work. Contractor shall require its Subcontractors to provide the same information to Contractor and/or the City upon request.

F. Change Orders. After execution of this Agreement, Changes to the Work, "Contract Sum" (as hereinafter defined), "Contract Time" (as hereinafter defined), Criteria Drawings, Final Drawings, or any other Contract Document shall be made only by written agreement of City and Contractor stating the change to be made ("Change Order"), and Contractor shall be under no obligation to execute any change without a fully executed Change Order.

G. Contract Documents Condition. The parties hereto acknowledge and agree that Contractor is not obligated to conduct or complete any Work for any Sequence until such time as City and Contractor reach agreement on all of the Contract Documents for each such Sequence, including, without limitation, updated Project Criteria and a GMP Amendment for each such Sequence.

2. CONTRACT SUM

A. Cost of Work / Contractor's Fee for Stage 2. The City shall pay the Contractor the "Contract Sum" (as hereinafter defined) in current funds for the Contractor's performance of this Agreement. The "Contract Sum" shall be the actual "Cost of Work" (as hereinafter defined) incurred by Contractor plus the Contractor's Fee equal to a percentage of the Cost of Work. The Cost of Work in Stage 2 will be detailed in each Sequence once Final Drawings for each Sequence are received and approved by the City and the Contractor. The Cost of Work also shall include such General Conditions applicable to the Project as outlined in CMAR II Exhibit 4 attached hereto, which may be amended as plans for future Sequences of the Project Site Public Improvements are developed. The Contractor's Fee may be modified from Sequence to Sequence reflecting the risk and complexity of the Sequence Public Improvements. Such Contractor's Fee shall be incorporated in the negotiated GMP Amendment for such Sequence. It is agreed that the Contractor's Fee for the Stage 2 Sequence 1 work shall be Three and one-half percent (3.5%) of the Cost of Work.

B. Guaranteed Maximum Price. The sum of the Cost of the Work and Contractor's fee shall be guaranteed by the Contractor and shall not exceed the Total Sum as detailed on the Guaranteed Maximum Price Amendment ("GMP Amendment") for each Sequence. The "Cost of the Work" shall include costs of all services, labor, materials, supplies and equipment (rental or purchase) included in the design, engineering and construction of the Project Site Public Improvements. The GMP Amendment (in the format attached hereto as CMAR II Exhibit 5) will be negotiated as the Final Drawings are approved for each Sequence and the GMP Amendment for each Sequence, once approved and executed by City and Contractor shall be deemed to be included as one of the Contract Documents for the Sequence in question. This combined sum of the GMP for each Sequence shall be the "Guaranteed Maximum Price" for this Agreement as it may be adjusted as specified in this Agreement and by Change Order. Costs which would cause

the Guaranteed Maximum Price for Stage 2 to be exceeded shall be paid by the Contractor without reimbursement by the City, subject to the "Force Majeure" (as hereinafter defined) and other provisions of this Agreement.

C. Contingency and Buy-Out Savings. The Guaranteed Maximum Price shall include a "Contingency" for each Sequence. This amount is the "Initial Contingency". The Initial Contingency shall be increased by any agreed Change Order and "buy-out" savings, if any, realized as a result of the Contractor's estimate of the cost of a particular Contract item detailed in the Sequence GMP Amendment that is higher than the actual Cost of that Work for that Sequence as completed. The Initial Contingency as adjusted by any buy-out savings or authorized use of the Contingency funds shall be rolled over to each Sequence and shall be added to the Contingency agreed to by City and Contractor for the subsequent Sequence(s).

The Contingency (including the buy-out savings) shall be available for the Contractor's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order. The Contingency is not available to the City, unless otherwise agreed, during the course of constructing the Public Improvements for any reason, including changes in the scope of the Project, Project Criteria, or any other item which would entitle the Contractor to an increase in the Guaranteed Maximum Price. The Contractor shall provide the City with advance notice of the use of the Contingency for any single item in excess of \$10,000 and shall otherwise identify the Contractor's use of the Contingency in the Contractor's monthly job cost reports to the City. The use of the Contingency for any single item below \$10,000 shall be the Contractor's decision without requiring prior approval of the City. If Contractor notifies City, as provided herein, of the intended use of the Contingency for any single item in excess of \$10,000, the City shall promptly notify the Contractor of any objections City may have to the Contractor's use of such Contingency. The Contingency shall be carried forward from Sequence 1 to each subsequent Sequence. This amount carried forward through substantial completion of all Stage 2 Public Improvements shall be the "Final Contingency".

If at final completion of the Project there exists any unused Final Contingency funds or any other savings, including buy-out savings, the City and Contractor shall share the unused Final Contingency funds as follows: 25% to the Contractor and 75% to the City.

D. Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or in the environmental reports, geo-tech reports, preliminary plans or any other items provided to or obtained by the "Developer" (as defined in the Development Agreement) or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the City before conditions are disturbed and in no event later than fifteen (15) days after first observance of the conditions. The City shall promptly investigate such conditions and, if the City determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract deadlines, or both. If the City determines that the conditions at the site are not materially different from those indicated in the Contract

Documents and that no change in the terms of the Contract is justified, the City shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the City's determination or recommendation, the Contractor may proceed as provided in Section 24 of this Contract.

E. Special Conditions. If, in the course of the Work, the Contractor encounters human remains, or recognizes the existence of environmental conditions, burial markers, archaeological sites, or wetlands, not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the City. Upon receipt of such notice, the City shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the City but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract deadlines arising from the existence of such remains or features may be made as agreed to by City and Contractor or resolved as provided in Section 24.

F. Estimated Costs. A Projected Budget and estimated costs of the Work has been set forth in Third Amendment Exhibit 4 in the separate Third Amendment to the Development Agreement and for Sequence 1 of Stage 2 is attached hereto as CMAR II Exhibit 6. The parties recognize that this is a preliminary estimate of the costs and no party to this contract is bound to nor agreeing to the costs which have been outlined in the prior Development Agreement. The parties agree that the final costs of the Work will be determined through the appropriate GMP Amendments as acknowledged in Paragraph 2(B) above.

3. PROGRESS PAYMENTS

A. Based upon "Applications for Payment" (as hereinafter defined) submitted to the City by the Contractor, the City shall make "Progress Payments" on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Each Application for Payment shall be based upon the Cost of Work completed, general conditions, and other appropriate costs incurred by Contractor in furtherance of the Project for the portions of Work included in the Application for Payment. The "Application for Payment" shall be a request by Contractor for payment which shall be notarized and supported by such data substantiating the Contractor's right to payment as the City may reasonably require, such as copies of requisitions from the consultants, contractors and sub-contractors, and material suppliers with written contracts over \$10,000.00, and shall reflect retainage as required. Each Application for Payment shall be accompanied by an AIA Form G702 and G703 and lien waivers from first tier contractors, sub-contractors, and material suppliers, and such other documentation as is required by this Agreement or the other Contract Documents.

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

C. Provided that an Application for Payment is received not later than the 10th day of the month, the City shall make Progress Payment to the Contractor not later than the last day of the same month. If an Application for payment is received by the City after the application

date fixed above, payment shall be made by the City not later than thirty (30) days after the City receives the Application for Payment. If the City does not make a Progress Payment, through no fault of the Contractor, within the time required as described above, then the Contractor may, upon thirty (30) additional days' written notice to the City, stop the Work until payment of the amount owing has been received. The Contract deadlines shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

D. Five percent (5%) of each Progress Payment applicable to site construction costs for the Work completed shall be withheld and retained by the City or the City's agent until Fifty percent (50%) of the Work of the Project is completed.

E. The retainage for the Project and the payment of Contractor's share of the Contingency and other cost savings shall be released and paid to Contractor within ten (10) days after "Substantial Completion" (as hereinafter defined) for the Project has been achieved.

4. TIME

A. Progress, Phasing and Completion. It is anticipated that the Project Work will be completed in three Sequences as outlined in the *Sequencing Plan/Project Schedule* attached hereto as **CMAR II Exhibit 7** provided, however, Contractor is not committing to any deadlines, except on a Sequence by Sequence basis as Contract Documents and the GMP Amendment for each such Sequence is finalized. It is anticipated that Sequence 1 will commence during the month of September, 2023. The Commencement Date and Substantial Completion Date for each Sequence shall be set forth in the GMP Amendment for each Sequence. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of each Sequence by the agreed to Substantial Completion Dates, subject to adjustments to completion time by Change Orders and as otherwise contemplated by this Contract.

"Substantial Completion" of the Project Work, or Project Work being "substantially completed," shall mean the Work is completed, except for identified punch-list items, in substantial conformance with the Contract Documents.

B. Final Completion and Final Payment.

(1) At the conclusion of the Project Work, upon receipt of the Contractor's written notice that the Work is ready for Final Inspection, and upon receipt of a final Application for Payment, the City will make such inspection within five (5) days. Provided the City finds the Project Work in conformance with the Contract Documents and the requirements of the Contract Documents are fully performed, the City will, subject to Paragraph (B)(2) below, make such payment within ten (10) days after such inspection, which shall include payment of all remaining amounts due for the Work.

(2) Final payment shall not become due until the Contractor submits to the City (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the City or the City's property might be responsible or

encumbered, (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Contract Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the City. If Contractor's consultants, any sub-contractor, or other person or entity providing services or work for the Contractor, refuses to furnish a release or waiver reasonably required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

(4) The making of final payment for the Project Work shall constitute a waiver of claims by the City against Contractor except those arising from:

- (a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- (b) failure of the Work to comply with the requirements of the Contract Documents; or
- (c) terms of special warranties required by the Contract Documents.

(5) Acceptance of final payment by the Contractor for Project Work shall constitute a waiver of claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of final Application for Payment.

5. FAILURE TO COMPLETE ON TIME

If the Contractor, subject to the last paragraph of this Section 5, fails to complete the Work within the time or times allowed by the Contract and the agreed to GMP Amendments, as adjusted by any Change Order, and if the City is satisfied that the Contractor is carrying the Work forward with reasonable progress, and the City deems it to be in the best interest of the public, the City may allow the Contractor to continue in control of the Work. It shall be necessary for the Contractor to make written application to the City in order to warrant such continuance. City will continue to make payments to the Contractor for Work performed and inspected and for materials furnished as provided herein.

When the Work is not completed within the time or times allowed by the Contract and GMP Amendments, and the Contractor is permitted to remain in control, the Work shall be prosecuted at as many different places, at such times, and with such forces as the City may reasonably request.

Notwithstanding the foregoing or any other provision of this Contract to the contrary, if Contractor is delayed in the performance of the Work by "City Delay" (as hereinafter defined) the Project deadlines shall be appropriately extended. For purposes of this Agreement, "City Delay" means delay to Contractor's completion of the Work caused by: (i) changes in the Work; (ii) unexpected site conditions; (iii) City's failure to provide in a timely manner any data or information requested by Contractor, or to otherwise comply with the terms of this Agreement; (iv) interference by City with Contractor's performance of the Work; or (v) other reasons specified in this Agreement. Contractor shall not be responsible for any delay in or failure to complete the Work if such delay or failure is due to any cause or circumstance beyond its reasonable control ("Force Majeure"). Such causes include, by way of example but not limitation, governmental action, strikes or other labor disputes, fire or other casualty, accidents, unexpected site conditions, failure or delays in delivery by third parties, acts of God, war, civil commotion, flood, earthquake, weather, or shutdowns as a result of declared pandemics. If any one or more of the foregoing occur, then the Project deadlines shall be appropriately extended.

6. **UNSATISFACTORY PROGRESS AND TERMINATION OF THE CONTRACT**

A. Contractor Default. Subject to City Delay, Force Majeure provisions and other specific provisions of this Contract permitting delay, if the Contractor fails to furnish materials or to execute the Work in accordance with the Contract Documents, or if the provisions of this Agreement are otherwise violated, then in any such case, the City shall have the right to notify the Contractor and Surety of a Claim and submit the Claim for dispute resolution as provided in Section 24; provided, however, prior to taking such actions, City shall provide to Contractor written notice of such failure and ten (10) days to initiate a cure to such failure and to diligently pursue such cure to completion. If the outcome of the dispute resolution determines the Contractor in default on this Agreement, the City may declare the Contractor in default on this Agreement and, unless within ten (10) days after service of said notice the violation shall cease or satisfactory arrangements shall have been made for its correction, the Contractor, upon the expiration of said ten (10) days, shall be in default on this Agreement and its right to proceed under this Agreement shall be terminated.

In the event this Agreement is thus declared to be defaulted, the City will immediately notify the Contractor and its Surety of such action, and will at once cause the Work already done to be measured and computed. If Contractor is determined to be in default, the Contractor shall not be entitled to claim or receive any damages for not being allowed to continue. After the default of this Agreement, the Surety shall have the right to take over and complete the Work, provided, however, that the Surety shall notify the City in writing of its intent to do so within twenty (20) days after the notice of default of this Agreement. Such completion of the Work by the Surety shall be done in strict accordance with all the provisions of this original Agreement. However, if the Surety does not take over performance of this Agreement as stated above, then the City shall cause the Work to be completed under a second Agreement. If the cost of the Work done under the second Agreement exceeds what it would have cost under this original Agreement, the increased cost and any additional costs the City may incur to re-let the Project Work shall be paid from any money due the Contractor under this Agreement, and if that is not sufficient, then the increased costs shall be paid by the Contractor and/or its Surety. If, when the Work is completed, it is found that there is any money due the Contractor for Work completed, such amount will be paid to Contractor in accordance with the terms of this Contract, but no money shall be paid to the Contractor under this Agreement after it has been determined to be in default, consistent with the Dispute Resolution process set forth in Section 24 herein, until the Work has been completed and accepted and all claims and suits resulting there from shall have been settled.

B. City Default. If the Project is suspended by City for more than ten (10) consecutive days for a reason other than a Contractor default, Contractor shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Contractor's compensation shall be equitably adjusted and the Project schedule shall also be adjusted in an appropriate manner. Any adjustment in the Contract Sum and Contractor's Fee shall be based upon Contractor's usual and customary rates for time productively devoted to the Project.

Contractor may upon ten (10) days' prior written notice suspend performance of the Work at any time when City has failed to make a payment by its due date.

So long as it has given ten (10) days' prior written notice, Contractor may terminate this Agreement, if through no fault of Contractor, any payment is more than ten (10) days past due, if the Work is suspended for more than fifteen (15) days, or if City otherwise breaches this Agreement following ten (10) days' written notice and opportunity to cure.

The above remedies shall be in addition to Contractor's right to pursue other available legal and equitable remedies, and Contractor shall be entitled to submit disputes to the dispute resolution process contained in Section 24.

In case of any such termination for reasons other than the default of Contractor, Contractor shall be entitled to receive payment for: (i) all Work executed to the date of termination; (ii) all obligations incurred in respect of the Work prior to termination; and (iii) and actual, direct costs incurred by reason of such termination.

7. INSPECTION OF WORK

All materials and each part or detail of the Work shall be subject to inspection by the City, subject to advance reasonable notice and safety and Work non-interference requirements as Contractor may reasonably require. The City or its representatives shall be allowed reasonable access to all parts of the Work and shall be furnished with such information and assistance by the Contractor, as it reasonably requires to make a complete and detailed inspection.

If the City requests it, the Contractor, at any time before acceptance of the Work, shall remove and uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the applicable specification in the Contract Documents. Should the Work thus exposed or examined prove to be in conformance with the Contract Documents and otherwise not be defective, the uncovering, removing, testing and the replacing of the covered Work or making good of the parts removed will be paid for at the City's expense; but, should the Work so exposed or examined prove defective or not in conformance with the Contract Documents, the uncovering or removing, testing and the replacing of the covering or making good of the parts will be at the Contractor's expense.

Failure to reject any defective Work or material shall not in any way prevent later rejection when such defects are discovered, nor obligate the City to final acceptance.

The Contractor shall notify the City's Director of Public Works at least twenty-four (24) hours in advance of operations requiring field inspection as outlined in the Contract Documents or which the City otherwise indicates City desires to inspect. Contractor shall not be required to give advance notice of any other Work to be performed except as specified in the Contract Documents or as specifically requested in writing by City reasonably in advance of the performance of such Work. The City will provide all inspections unless specifically stated otherwise.

At the discretion of the City, the Contractor will be charged with inspection costs when it incurs additional expenses for such because of:

1. Re-inspection due to failure of Work to conform to the Contract Documents or due to defective Work; or
2. When inspection is requested as described herein or required and cannot be performed due to Contractor's actions.

The costs for the inspections described immediately above in subsections 1 and 2 will be deducted from amounts due the Contractor at the completion of Work.

8. **REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK**

Work which does not conform to the requirements of the Contract Documents because of poor workmanship, use of defective materials, or damage through carelessness of Contractor or anyone acting in Contractor's behalf, will be considered unacceptable unless otherwise determined acceptable.

Unacceptable Work shall be removed by Contractor as soon as reasonably possible and replaced in a manner that shall cause the same not to be defective.

Upon failure on the part of the Contractor to comply with any reasonable order of the City under the provisions of this Section within ten (10) days, or longer if such compliance cannot be accomplished by commercially reasonable efforts so long as Contractor commences such cure promptly and thereafter diligently pursues such cure to completion, the City will have authority to cause unacceptable Work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any moneys due or to become due the Contractor.

9. **CORRECTION OF WORK**

A. Before Final Payment. The Contractor shall promptly correct Work rejected by the City or failing to conform to the requirements of the Contract Documents, discovered before final payment for the Sequence in which such Work is included or during the applicable warranty period. Costs of correcting such defective Work, including additional testing and inspections, the cost of uncovering and replacement, and reasonable compensation for any construction consultants employed by the City whose expenses and compensation were made necessary thereby, shall be at the Contractor's expense.

B. After Substantial Completion.

(1) In addition to the Contractor's obligations under Section 9(A), if, within one year, or two years only for asphalt work, after the date of Substantial Completion of the Sequence of the Project Work in question or after the date for commencement of warranties established under Section 11, specified in the Contract Documents, any of the Project Work is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the City fails to notify the Contractor and give the Contractor an opportunity to make the correction, the City waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City, the City may correct such defective Work at Contractor's expense.

(2) The one-year period, or two-year period for asphalt work, for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

(3) The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the City.

(4) Nothing contained in this Section 9 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 9(B) relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

C. Acceptance of Nonconforming Work

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

10. SUBCONTRACTORS

As soon as reasonably practicable upon execution of this Agreement, and before awarding any subcontracts, Contractor shall establish criteria by which it will qualify prospective bidders for the Work to be performed under the Agreement. Contractor, at its option, may limit the prequalification of bidders to each Sequence or combined Sequences as necessary for the efficient planning and implementation of the Work.

To be authorized as a qualified Subcontractor, Subcontractor shall:

A. Demonstrate experience for the work to be performed, the financial ability to execute the subcontract Work in a timely manner consistent with the terms of the Contract Documents, and a history of performance on previous contracts.

B. Evidence Compliance with R.C. § 9.47 to verify that the Subcontractor has not been found in violation of any affirmative action program during the previous Five (5) years.

C. As appropriate, demonstrate proof of current licenses to perform the Project Work.

Contractor shall submit its qualification criteria to the City prior to awarding any subcontracts.

To maximize competitive pricing to secure a Guaranteed Maximum Price, satisfactory to the City for each Sequence, Contractor shall advertise for construction services to qualified Subcontractors and/or directly invite qualified Subcontractors to submit bids for performing Project Work. Bidder qualifications shall be included in any advertisement for construction services or any direct invitation to qualified Subcontractors to submit bids.

Upon receipt of the bid proposals, the City and the Contractor shall review the list of submissions to determine that each bidder is in compliance with the above qualification. The City and the Contractor shall then review bids from qualified Subcontractors. The City may reject any bids which the City does not believe are in compliance with the contract Work, nor from a qualified contractor. Contractor shall then be responsible to select the appropriate Subcontractor who is in the best position to perform the Work. The qualified Subcontractor need not be the lowest bidder.

The Subcontractors selected by the Contractor shall execute a Subcontract Form, substantially in the form of **CMAR II Exhibit 8** attached hereto, to be bound to Contractor and the City according to the terms of the Contract Documents. Each Subcontract Agreement is assigned to the City provided that the assignment is only effective upon termination of the Agreement and only for those Subcontract Agreements which the City accepts by notifying the Contractor and Subcontractor. Such assignment is subject to the prior rights of any surety obligated under any Performance Bond. When the City accepts such assignment, the City accepts all obligations and rights of the Contractor under such Subcontract Agreement. Prior to commencing the Project Work, Contractor shall submit to the City the appropriately executed Subcontract Forms. The Subcontract Forms shall not be executed until an appropriate Guaranteed Maximum Pricing Amendment has been signed and accepted by the City for the Sequence of Work.

11. **WARRANTY**

In addition to any specific warranties detailed herein, the Contractor warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Contract Documents. If at any time within one (1) year after Substantial Completion any defect should appear, which is due to inferior materials or workmanship, the Contractor guarantees that it will promptly after notice from City, without cost to the City, remedy such defect. Provided, however, that this warranty shall be extended to two (2) years from Substantial Completion for all asphalt work. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes damage or defects caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage or casualty events. If required by City, the Contractor shall furnish reasonable evidence as to the kind and quality of materials and equipment.

12. **RESPONSIBILITY FOR WORK**

Until final completion of the Project by the Contractor, the Contractor shall have responsibility for the Project site and Work in progress and shall take every reasonable precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before final completion and shall bear the expense thereof except damage to Work due to Force Majeure Events or actions of the City or its respective employees, agents, contractors or invitees.

In case of suspension of Work due to any reason other than Contractor's fault, the Contractor shall be responsible for the Project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage and shall erect any necessary temporary structures, signs, or other facilities at his expense. During such period of suspension of Work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, or soddings furnished under this Agreement, and shall take adequate precaution to protect new tree growth and other important vegetative growth against injury. If the Work is suspended at City's request or otherwise through no fault of Contractor, the City shall pay any additional cost incurred by Contractor resulting from the suspension, and such amount shall be an addition to the Guaranteed Maximum Price.

13. **CONTRACTOR'S RESPONSIBILITY FOR UTILITY PROPERTY AND SERVICES**

At points where the Contractor's operations are adjacent to properties of telephone, power and other utility companies, or are adjacent to other property, damage to which might result in considerable expense, loss, or inconvenience, Work shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the City and the owner of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption to underground or overhead utility services as a result of accidental breakage or as a result of being exposed or unsupported, due to the activities involved in the conduct of the Work, the Contractor shall immediately alert the occupants of nearby premises as to any emergency that the Contractor may create or discover at or near such premises. The Contractor shall then notify the Director of Public Works and the owners or operator of the utility facility of the disruption and shall cooperate with the said utility owners or operator in the restoration of service. If water service is interrupted; repair work shall be continuous until the service is restored. No work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

14. **PROTECTION AND RESTORATION OF PROPERTY**

The Contractor shall be responsible for all damage or injury to property within the boundaries of the Montgomery Quarter Project Site of any character, during the prosecution of the Work, resulting from any act, omission, neglect or misconduct in its manner or method of executing the Work, or at any time due to defective work or materials, and said responsibility will not be released until the Project shall have been completed and accepted. The Contractor at the sole expense of the Contractor shall control dust nuisance originating from the Work.

When and where any direct or indirect damage or injury is done to public or private property within and around the Montgomery Quarter Project Site by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof by the Contractor, it shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or it shall make good such damage or injury in a manner acceptable to the owner of such damaged or injured property.

The Contractor shall cooperate with the City's Director of Public Works in protecting and preserving cornerstones and monuments that are within the Work area. Monuments, cornerstones and land markers unexpectedly encountered shall be protected, referenced and preserved in the same manner.

When cornerstones, monuments and land markers are damaged, destroyed, or made inaccessible during the progress of Work, the Contractor will furnish all the labor, tools and other materials required to remove, store, reset, or replace such cornerstones, monuments, and land markers under the supervision of the City's Director of Public Works.

15. **RESPONSIBILITY FOR DAMAGE CLAIMS, ACCIDENTS, INJURIES, OR LOSSES**

The Contractor shall save harmless the City and all of its representatives from and against all suits, actions, or claims of any character brought on account of actual or alleged damages, accident, injuries, or losses sustained by any person or property resulting from any negligent act, error or omission of the Contractor, its subcontractors, agents or employees, in the execution of the Work.

16. **REQUIREMENT OF PERFORMANCE BOND**

Before commencing the Work, Contractor shall furnish or cause to be furnished a Performance Bond, letter of credit or other surety acceptable to the City, in favor of the City, or any combination thereof, combining to give the City a total surety amount as required hereunder. The initial amount of such surety shall be equal to the cost of the Stage 2, Sequence 1 Work. Such Performance Bond or other surety shall be adjusted (up or down) as appropriate to cover the Cost of Work in each Sequence before such Sequence Work is commenced. Such Performance Bond and/or other surety shall cover the entire term of such Sequence. Upon Substantial Completion of each Sequence of the Work, the Performance Bond or other surety may be reduced by the Cost of

Work completed in that Sequence, and a maintenance bond or other surety shall be furnished to the City to insure performance of any required warranty work.

The Bond shall be executed on the form provided herewith or in a similar form acceptable to the City. Agents of bonding companies shall furnish evidence of their power of attorney, bearing seal of the company authorizing them to execute the particular type to be furnished. The form of any non-bond surety shall also be subject to the City's approval. The total Bond or other surety may be provided solely by Contractor, or by one or more subcontractors, or any combination thereof.

If at any time after the approval of the Bond or other surety and the execution of the Agreement the City shall reasonably deem the surety or sureties upon the Bond or other surety to be unsatisfactory or if for any other reason the Bond or other surety shall cease to be adequate security for the City, the Contractor shall, within five (5) days after notice from the City to do so, furnish or cause to be furnished a new additional bond or other surety which shall be reasonably adequate and satisfactory to the City. The Contractor shall pay for all costs of such bonds or other surety. The City shall determine the sufficiency of all sureties.

17. CONTRACTOR'S INSURANCE

Insurance Requirements. Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance. Contractor's insurance coverages shall include the following:

1. Workers Compensation Insurance. The Contractor and all Subcontractors shall furnish the City one (1) unaltered copy of the official certificate of the Ohio Industrial Commission indicating that it has paid the premiums required under the Ohio Workers' Compensation Act evidencing that these workers are covered by Workers' Compensation during the Contract Term. If the Contractor is legally permitted and qualified to be a self-insurer, such self-insurer shall furnish proof of such status to the City.

2. Commercial General Liability Insurance. Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, with limits no less than \$2,000,000 per occurrence for bodily injury, property damage, personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO form CG 25 03 or CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.

3. Comprehensive Automobile Liability Insurance. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if Contractor has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Insurance coverage in the minimum amounts set forth above neither relieves the Contractor from liability in excess of such coverage, nor precludes the City from taking such other actions as are available to it under any other provisions of this contract or otherwise in law. If the Contractor maintains higher limits than the minimum shown above which the City requires, the City shall be entitled to coverage for the higher limits maintained by the Contractor. The minimum coverages provided herein may be obtained through primary insurance or any combination of primary and excess/umbrella insurance.

B. Other Insurance Provisions. The policies of insurance required herein shall contain, or be endorsed to contain, the following provision:

1. Additional Insured. The City and its respective officials, agents and employees, shall be named as Additional Insureds under the commercial general liability and automobile liability policies as respects liability arising out of work or operations performed by or on behalf of the Contractor within this project. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other available coverage be primary, contributing or excess.

(a) To provide appropriate Additional Insured coverage for general liability, including liability arising out of the products-completed operations hazard, Contractor agrees to use the following endorsement(s), or similar endorsements providing equal or broader Additional Insured coverage:

- (i) ISO Form CG 20 10 11 85, OR if later revisions are used;
- (ii) ISO Form CG 20 10, CG 20 26, CG 20 33, or CG 20 38; AND ISO Form CG 20 37 10 01.

2. Primary Coverage. For claims related to this project, the Contractor's insurance coverage shall be primary as respects the City, its officials, agents and employees. Any insurance or self-insurance maintained by the City, its officials, agents and employees shall be excess of Contractor's insurance and shall not contribute with it.

C. Umbrella or Excess Liability. Contractor may satisfy the minimum liability limits required above for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. Contractor agrees to endorse the City as an Additional Insured on the Umbrella or Excess policy, unless the Umbrella or Excess policy provides coverage on a "Follow Form" basis and such fact is disclosed on the Certificate of Insurance.

D. Waiver of Subrogation. Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to secure endorsements necessary to effect this waiver of subrogation.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

F. Proof of Coverage. The Contractor shall furnish the City with Certificates of Insurance and amendatory endorsements (or copies of the applicable insurance language effecting coverage required herein) and a copy of the Declarations and Endorsements Page of the CGL policy listing all policy endorsements. All certificates and endorsements shall be received by the City before work commences. However, failure to obtain the required documents prior to the beginning of the Work shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

G. Non-renewal, Cancellation, or Material Change of Coverage. Each insurance policy required above shall state that coverage shall not be cancelled, except with notice to the City. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier providing coverage required herein, or receives notice that coverage no longer complies with the requirements herein, Contractor agrees to notify the City by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written explanation of how coverage is no longer in compliance. The Contractor shall cease operations on the occurrence of any such non-renewal, cancellation, or material change and shall not resume operations until insurance is in force that complies with these requirements.

H. Subcontractor's Insurance. The Contractor shall require and verify that all Subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall ensure that the City is an Additional Insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13. Subcontractors performing work must also name the City as an Additional Insured in the same language as provided in Paragraph (C) herein.

I. Special Risks or Circumstances. City reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

18. **GENERAL REQUIREMENTS OF THE WORK OF THE CONSTRUCTION
MANAGER-AT-RISK AGREEMENT**

A. General

(1) When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals. The City understands and agrees that the services of the Contractor's consultants are performed in the sole interest of, and for the exclusive benefit of, the Contractor and that the Contractor is permitted to rely upon the advice, direction and expertise of such consultants.

(2) The Contractor shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

(3) The Contractor and City shall each designate in writing a representative who is authorized to act on the Contractor's and City's behalf with respect to the Project. The City shall select one (1) representative who is authorized to act on behalf of the City with respect to the Project and this Contract.

(4) The Contractor shall perform the Work in accordance with the Contract Documents as finally approved by the City and the Contractor, with an appropriate adjustment to the Guaranteed Maximum Price for any change from the Project Criteria or Criteria Drawings attached hereto. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections or approvals of the City.

(5) The Contractor shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to correction. The Contractor shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project. The City shall assist Contractor as reasonably necessary to promptly obtain easements, zoning variances, planning commission approval, legal authorizations, and other necessary approvals in furtherance of the Work.

(6) The Contractor shall not be obligated to perform any act which it believes will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor determines that implementation of any instruction received from the City, including those in the Project Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the City in writing. Upon verification by the City that a change to the City's Criteria is required to remedy the violation, the City and the Contractor shall execute a modification in accordance with this Agreement; provided, however, Contractor shall not be required to proceed with Work if determined to be in violation of legal requirements as described above until the City concurs or the issue is otherwise resolved.

(7) Pursuant and subject to the terms and conditions of this Agreement, the Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Contractor's Consultants, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work.

(8) The Contractor shall obtain all permits necessary in connection with the work. All permits shall be subject to the inspection of the City. If the Contractor intends to use water from fire hydrants for any purpose, it shall obtain the required permits from the City and Greater Cincinnati Water Works for the use of the hydrants.

(9) The Contractor shall schedule and conduct periodic meetings with the City to review matters such as procedures, progress, coordination, and scheduling of the Work.

B. Progress Reports. The Contractor shall keep the City informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the City and Contractor, the Contractor shall submit written progress reports to the City, showing estimated percentages of completion and other information identified below:

1. Work completed for the period;
2. Project schedule status;
3. Submittal schedule and status report, including a summary of outstanding Submittals;
4. Responses to requests for information to be provided by the City;
5. Approved Change Orders;
6. Pending Change Orders;
7. Tests and inspection reports;
8. Status report of Work rejected by the City;
9. Cumulative total of the Cost of the Work to date including the Contractor's compensation, if any;
10. Current Project cash-flow and forecast reports; and
11. Additional information as agreed to by the City and Contractor.

19. **PREVAILING WAGES**

Under 4115.071(C) of the Ohio Revised Code, any Contractor contracting with a Public Authority, and any Subcontractor participating in this Project, must submit certain personnel and payroll information to the City's Prevailing Wage Coordinator during the life of the Agreement. The City is considered by definition a Public Authority by statute.

Any Contractor or Subcontractor participating in this Project must:

A. Supply to the Prevailing Wage Coordinator designated by the City a schedule of the dates during the life of the contract with the authority on which it is required to pay wages to employees.

B. Deliver to the Prevailing Wage Coordinator a certified copy of its payroll, within two (2) weeks after the initial pay date, and supplement report for each month thereafter. If the construction period is to be less than one (1) month, the payroll reports must be made on a weekly basis. Payroll reports must contain the following information:

1. Wages
2. Names
3. Current Addresses
4. Social Security Numbers
5. Number of hours worked during each day of the pay period covered and total for each week

6. Hourly rate of pay
7. Job classifications
8. Fringe benefits
9. Deductions from wages

C. Comply with the prevailing wage rates required on public improvement projects within the City of Montgomery and Hamilton County, Ohio as provided within R.C. §§ 4115.03 through 4115.19.

D. An "Affidavit of Contractor or Subcontractor, Prevailing Wage" must be executed and returned to the City upon completion of the Project. Final payment will be retained until the document is received. Please note that the Affidavit encompasses the Work done by all subcontractors hired by Contractor as well as the Contractor's workforce.

20. TESTING

In addition to material testing by the supplier, on-site material and soil testing will be required to insure the Work meets the specifications established as part of this Project. The Contractor shall bear the cost of and provide all required materials, labor, apparatus, services and facilities in connection therewith to the extent such testing is included in the approved Contract Documents and the GMP Amendments. The scheduled testing and the cost thereof will be included in the General Conditions. The Director of Public Works shall be notified reasonably in advance of any work that requires on-site material and soil testing pursuant to the approved Contract Documents. Unless the Director of Public Work notifies Contractor otherwise, all testing shall be done in the presence of the Director of Public Works, or his designee, by an approved testing laboratory and one (1) copy of the test shall be sent directly to the Director of Public Works. Any testing not included in the Contract Documents shall be paid for by City.

When questions arise as to whether the requirements of the Agreement have been fulfilled, the City may engage, at its own expense, an independent testing laboratory to perform any tests necessary to establish the acceptability of the Work.

Should additional tests show the work or materials to be defective or otherwise not meeting the requirements of the Contract Documents, the Contractor shall, immediately upon notification by the City, remove, replace, or reconstruct same, as the case may require and shall, if directed by the City, make such further tests as may be necessary to determine fulfillment of the Contract Documents' requirements. The cost of all re-tests shall be deducted from the Contractor's fee for said Work. All tests shall be made under the supervision and direction of the City except that those required by a public authority shall be under the supervision and direction of such authority.

Minimum testing requirements shall be as required by the Project Geotechnical Engineer. All Asphalt Materials will be supplied from an ODOT approved facility.

21. **SUBLETTING OR ASSIGNMENT OF AGREEMENT**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or its rights, title or interest in or to the same or any part thereof, without the written consent of the City, which prohibition shall not be deemed to prohibit subcontracting the Work under this Agreement. Such assignment and consent shall not release nor relieve the Contractor or its Surety from any obligation or liability under this Agreement.

The Contractor shall furnish the City the names of subcontractors proposed and shall not employ any subcontractor that the City object to as incompetent or unfit. The Contractor shall be responsible to the City for its subcontractors.

22. **SANITARY PROVISIONS**

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees.

23. **FINAL CLEAN-UP**

The Contractor shall at all times maintain the Project site and working areas in an orderly condition, reasonably clean and free of accumulations of dirt and debris. If the Contractor fails to maintain the job site and working area in a satisfactory condition, the City shall have the right to employ others to do so at the Contractor's expense.

As soon as portions of the Project are ready for use, they shall be thoroughly cleaned by the Contractor of all dirt and rubbish, and cleared of all materials, forms, falsework, temporary structures and equipment.

Until Substantial Completion of the entire Project, the Contractor shall also clean out all sewer drains, inlets, manholes, and other underground lines and structures built by Contractor or affected by Contractor's work. The Contractor shall be responsible to restore all disturbed areas to their original condition or as intended to be modified pursuant to the Contract Documents.

24. **CLAIMS AND DISPUTE RESOLUTION**

A. **Claims**

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

(2) **Time Limits on Claims.** The City and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against

the other, arising out of or related to the Agreement in accordance with the requirements of the binding dispute resolution method selected herein, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the respective Sequence of the Work to which the claim relates, if later. The City and Contractor waive all claims and causes of action not commenced in accordance with this Section (A)(2). The provisions of this Section 24 shall survive the completion of the Work under this Agreement and be enforceable by the parties.

(3) Notice of Claims

(a) Prior To Final Payment. Prior to Final Payment, Claims by either the City or Contractor must be initiated by written notice to the other party within 21 days after the claimant first recognizes the condition giving rise to the Claim.

(b) Claims Arising After Final Payment. After Final Payment, Claims by either the City or Contractor must be initiated by prompt written notice to the other party. The notice requirement in Section (A)(3)(a) and the Initial Decision requirement as a condition precedent to mediation in Section (B)(1) shall not apply.

(4) Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.

(5) Claims for Additional Time

(a) If the Contractor intends to make a Claim for an extension to any deadline for completion of the Work, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

(b) 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 had an adverse effect on the scheduled construction.

(6) Claims for Consequential Damages

The Contractor and City waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

(a) damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

(b) 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 mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of the Work.

B. Initial Decision

(1) An initial decision on the dispute or Claim in question (the "Initial Decision") shall be required as a condition precedent to mediation of all Claims between the City and Contractor initiated prior to the date Final Payment is due, unless thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the City shall render the Initial Decision on Claims.

(2) Procedure

(a) Claims Initiated by the City. If the City initiates a Claim, the Contractor shall provide a written response to City within ten days after receipt of the notice required under Section (A)(3)(a). Thereafter, the City shall render an Initial Decision within ten (10) days of receiving the Contractor's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

(b) Claims Initiated by the Contractor. If the Contractor initiates a Claim, the City will take one or more of the following actions within ten (10) days after receipt of the notice required under Section (A)(3)(a): (1) request additional supporting data, (2) render an Initial Decision rejecting the Claim in whole or in part, (3) render an Initial Decision approving the Claim, (4) suggest a compromise, or (5) indicate that it is unable to render an Initial Decision because the City lacks sufficient information to evaluate the merits of the Claim.

(3) In evaluating Claims, the City may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the City in rendering a decision. The retention of such persons shall be at the City's expense.

(4) If the City requests the Contractor to provide a response to a Claim or to furnish additional supporting data, the Contractor shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the City when the response or supporting data will be furnished or (3) advise the City that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the City will either reject or approve the Claim in whole or in part.

(5) The City's Initial Decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Cost of Work or Contract Time, or both. The Initial Decision shall be final and binding on the parties, but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

(6) Either party may request mediation of an Initial Decision within thirty (30) days from the date of an Initial Decision as provided in Section ©(2).

(7) In the event of a Claim against the Contractor, the City may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the City may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

C. Mediation

(1) Claims, disputes, or other matters in controversy arising out of or related to the Project shall be subject to mediation as a condition precedent to binding dispute resolution.

(2) The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

(3) The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cincinnati, Ohio. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

D. Arbitration

(1) If the parties are unable to settle their claim by mediation, then any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

(a) A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

(2) The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

(3) The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

25. MISCELLANEOUS PROVISIONS

A. Authorization for Release of Tax Department Information. The Contractor must comply with all requirements of the Montgomery City Income Tax Code regarding the reporting, filing, withholding and/or payment of Montgomery City Income Tax, and shall require such compliance in its contracts with its subcontractors for the Property. The Contractor shall sign an Authorization and Release to allow the Income Tax Department to verify to the Office of the City Manager, Public Works Department and legal counsel for the City that all such reports, filings, withholdings and/or payments have been completed or secured, and Contractor shall require each Subcontractor to sign an Authorization and Release.

B. Noise Restrictions. The City of Montgomery does not permit noise generation during restricted noise ordinance times of 10 pm until 7 am. Special exception may be granted for concrete placement. Notice must be provided to the City forty-eight (48) hours prior to such activity.

C. Maintenance of Traffic. When construction interferes with the normal use of Montgomery Road, the Ronald Reagan Cross-County Highway or Main Street, temporary traffic facilities shall be provided.

The Contractor shall provide and maintain safeguards, safety devices and protective equipment and take any other needed actions as may be necessary to protect the public and property in connection with the work.

The presence of barricades, lights or other traffic control devices provided and maintained by any party other than the Contractor, shall not relieve the Contractor of this responsibility.

D. Taxes. Contractor shall pay sales, consumer, use and similar taxes for the Work performed by Contractor to the extent required by law. The parties agree, however, it is anticipated that as a public works project it is mostly tax exempt and City shall cooperate with

Contractor to provide appropriate tax exemption certificates. Such taxes determined to be exempt will not be included in the Guaranteed Maximum Price, and those that are not exempt will be included in the Guaranteed Minimum Price or shall be reimbursed as a Cost of the Work and shall be an increase to the Guaranteed Maximum Price for any part of the Work for which City fails to provide appropriate tax exemption certificates, and for any part of the Work which is not eligible to be tax-exempt.

E. Equal Employment Obligation. Contractor will not discriminate against any employee nor applicant for employment because of race, color, religion, national origin, ancestry, sex, or any other Protected Class recognized by the City. The Contractor will take affirmative action to ensure the applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, sex, or any other Protected Class recognized by the City. Such action shall include, but is not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, Notices setting forth the provisions of this non-discrimination clause. Further, Contractor shall comply with the requirements of R.C. § 9.47 concerning Certificate of Compliance with affirmative action programs. Contractor further agrees to set forth these same non-discrimination requirements in any solicitation for bids from Subcontractors.

F. Drug and Alcohol-Free Workplace Policy. Contractor, and any qualified Subcontractors, shall provide evidence that they have a drug and alcohol-free workplace policy consistent with the requirements of R.C. § 153.03.

G. Governing Law. This Agreement shall be governed by the law of the State of Ohio. Any cause of action brought as a result of any dispute in this Agreement shall be resolved through mediation, arbitration or litigation solely in any court, state or federal, having jurisdiction and sited within Hamilton County, Ohio.

H. Written Notice. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient has previously notified the sender of in writing. All notices will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications must be sent. The present addresses of the parties follow:

As to the City:

City of Montgomery, Ohio
10101 Montgomery Road
Montgomery, Ohio 45242
Attn: City Manager
Currently: Brian K. Riblet

With a copy to the Director of Law

Currently: Terrence M. Donnellon
Donnellon, Donnellon & Miller
9079 Montgomery Road
Cincinnati, Ohio 45242

As to Contractor:

Brandicorp, LLC
45 Fairfield Avenue
Bellevue, Kentucky 41073
Attn: Michael T. Brandy

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the City and the Contractor have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date hereinbefore written.

THE CITY:

**City of Montgomery, Hamilton County,
Ohio**
an Ohio municipal corporation

By: _____
Brian K. Riblet

Its: City Manager

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, CITY OF MONTGOMERY, HAMILTON COUNTY, OHIO, by Brian K. Riblet, known to be the City Manager of said City and duly authorized in the premises, who acknowledged the signing and sealing of the said Construction Agreement for himself and on behalf of said City, to be his voluntary act and deed, and the voluntary act and deed of said City. No oath or affirmation was administered to the signer in regard to this acknowledgement.

Notary Public

My commission expires: _____

APPROVED AS TO FORM:

Terrence M. Donnellon,
Director of Law

CONTRACTOR:

Brandicorp, LLC

a Kentucky limited liability company

By: _____
Michael T. Brandy

Its: Managing Member

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, BRANDICORP, LLC, a Kentucky limited liability company, by Michael T. Brandy, known to be the Managing Member of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Construction Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company. No oath or affirmation was administered to the signer in regard to this acknowledgement.

Notary Public

My commission expires: _____

CMAR II Exhibit 1
Defined Public Improvements

Sequence 1 – Residential Site Public Improvements Related

- 1) Clearing & Demolition
- 2) Erosion Control
- 3) Mass Excavation – Cut/Fill – No Export, pad ready for private construction to commence
- 4) Site Utilities
 - a) Storm Piping & Structures – Roadway & Connection to Existing Detention
 - b) Sanitary Laterals & Piping
 - c) Gas Conduit and Main Line – Coordination with Duke Energy
 - d) Electrical Duct Bank Conduits & transformer pads – Coordination with Duke Energy & Data/Tele Providers
 - e) GCWW Water Main Line
 - f) Water Branch services, connections, fees
- 5) Aggregate base & base asphalt for Cameron Lane and Quarter Blvd
- 6) Concrete Sidewalks, excluding block 3 sides, option for temporary sidewalks to be reviewed with Montgomery Public Works

Sequence 2 – Future Phase to be Reviewed and Agreed Upon (outline below)

- 1) Block 3 Demolition
- 2) Block 3 Mass Excavation – Export
- 3) Block 3 Lag Wall
- 4) Block 3 Site Utilities
 - a) Storm Piping & Structures – Completion of Block 3 and any other items
 - b) Sanitary Laterals & Piping
 - c) Gas Conduit Crossovers & Extensions
 - d) Electrical Duct Bank Conduit Extensions and transformer pads
 - e) Water Branch services, water meter pits, tap fees
- 5) Asphalt Surface Coarse
- 6) Concrete Curbs
- 7) Block 3 Concrete Sidewalks, option to upgrade Quarter Blvd.
- 8) ROW lights, landscaping, irrigation, site furnishings
- 9) Other Items to be determined

Sequence 3 – Future Phase to be Reviewed and Agreed Upon (outline below)

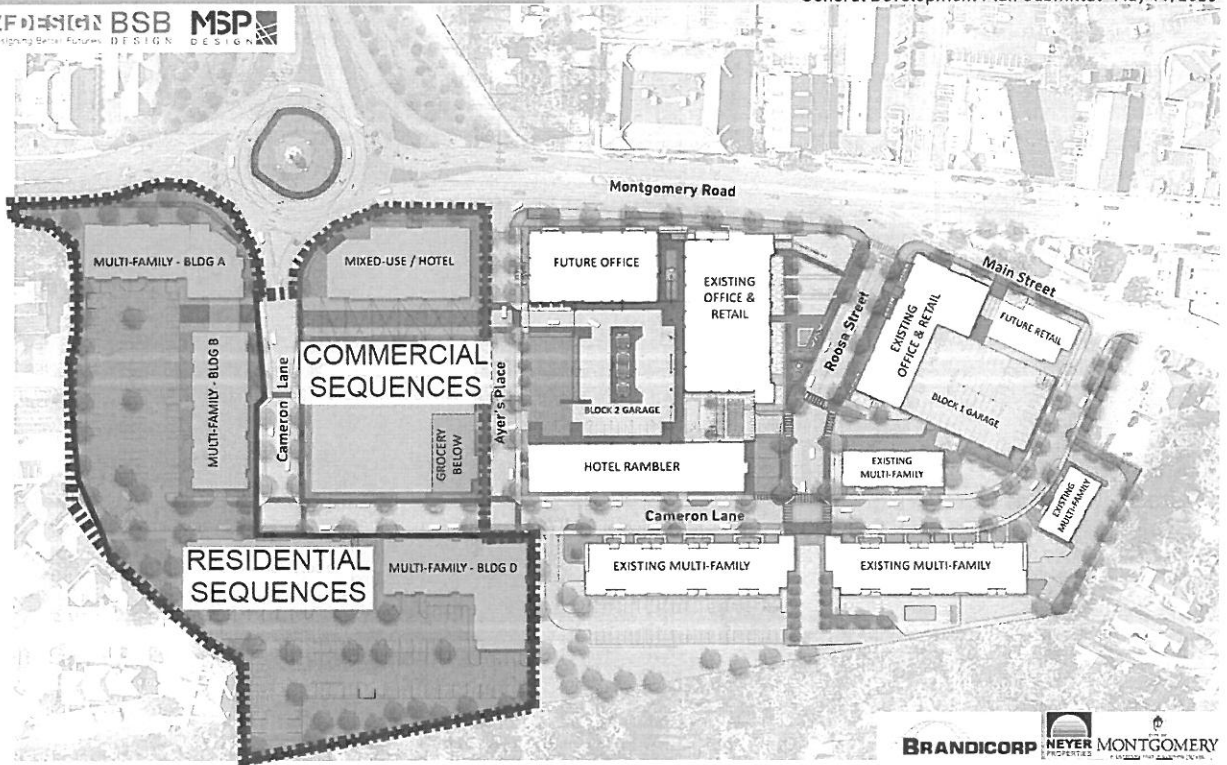
- 1) “Activity Alley” – hardscape, landscape and irrigation
- 2) “Activity Alley” – lighting, poles, site furnishings
- 3) “Activity Alley” – waterproofing, brick pavers
- 4) “Activity Alley” – granite stonework & finishes, decorative metals, fencings
- 5) “Activity Alley” – bollards, seat walls, water feature(s)
- 6) “Activity Alley” – concrete, paving, sidewalks, patios
- 7) “Activity Alley” – decorative finishes, speakers, wifi, electric, cameras
- 8) Other items to be determined

CMAR II Exhibit 2
General Development Plan

2023 GENERAL DEVELOPMENT PLAN

Montgomery Quarter Phase 2
General Development Plan Submittal- May 11, 2023

KZF BSB MSP
Designing Better Futures DESIGN



CMAR II Exhibit 3
Criteria Drawings

Montgomery Quarter – Site Public Improvements, Stage II, Phase 1 – Final Development Plans

Item	DWG	Description	Drawing Issue	Issue Date
1)	1	Cover Sheet	Issued for Permit	8-22-2023
2)	2	Overall Site Plan	Issued for Permit	8-22-2023
3)	3	Existing Conditions	Issued for Permit	8-22-2023
4)	4	Demolition Plan	Issued for Permit	8-22-2023
5)	5	Layout Plans	Issued for Permit	8-22-2023
6)	6	Layout Plans	Issued for Permit	8-22-2023
7)	7	Utility Plans	Issued for Permit	8-22-2023
8)	8	Utility Plans	Issued for Permit	8-22-2023
9)	9	Grading Plan North & SWP3	Issued for Permit	8-22-2023
10)	10	Intersection Detl & Grading Plan & SWP3 South	Issued for Permit	8-22-2023
11)	11	Profiles	Issued for Permit	8-22-2023
12)	12	Notes & Details	Issued for Permit	8-22-2023
13)	13	Notes & Details	Issued for Permit	8-22-2023
14)	14	Notes & Details	Issued for Permit	8-22-2023

WSL 3635 Phase 3 Montgomery Quarter Stage II, Phase 1

(These drawings are under review by GCWW and are subject to change, if changes occur, costing will be updated accordingly.)

Item	DWG	Description	Drawing Issue	Issue Date
1)	1 of 3	General Provisions & Details	Issued for Review	8-4-2023
2)	2 of 3	Overall Plan	Issued for Review	8-4-2023
3)	3 of 3	GCWW Plan	Issued for Review	8-4-2023

CMAR II Exhibit 4
General Conditions

Montgomery Quarter City of Montgomery, Ohio					28-Aug-23
CMAR Costs - Stage 2 Public Improvements					Notes
	Project Duration	6	Mths	****	2 Months Precon; 4 Months Construction; Sequences 2 and 3 Duration TBD
				**** Phased Construction for multiple	areas shown below.
Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate
01	Property Acquisition				
01	Land	1.000	AC	\$0	\$0
	Subtotal Land				\$0
02	Soft Costs				Sequence 1 Prime Contractor soft costs as shown under subcontracts
01	Lot Split - Meets & Bounds	1	LS	\$0	\$0 By City
02	Easement Establishment	1	LS	\$0	\$0 By City
03	Legal - City	1	AL	\$0	\$0 By City
03	Legal - CMAR	1	AL	\$5,000	\$5,000 Contracts, Etc.; By City as well
04	Civil Engineering	1	LS	\$0	\$0 By City
05	Project Management	87	HR	\$10,000	\$10,000
06	Geotechnical Engineering	1	LS	\$0	\$0 Alt & Witzig Reliance; add borings at east and south - by City
06	Environmental	1	LS	\$0	\$0 Phase 1 and Reliance Letter - by City
07	Landscape Design	1	LS	\$0	\$0 By City
08	Structural Engineering (Vault)	1	LS	\$0	\$0 By City
09	Signage Design (Wayfinding)	1	LS	\$0	\$0 By City
10	Surveying	1	LS	\$10,000	\$10,000 General Control
11	Inspections	1	LS	\$0	\$0 By City as well as CT
12	Zoning Administration	1	LS	\$2,500	\$2,500 KZF/Clete
13	Building Permits	1	AL	\$0	\$0 By City
14	Jobsite Safety	4	Mth	\$0	\$0 3rd Party Safety Inspections
15	General Liability Insurance	1	LS	\$14,850	\$14,850 Brandicorp
16	Consulting - Zoning	1	LS	\$0	\$0
17	Design Contingency	1	LS	\$0	\$0 By City
18	Performance & Paymet Bond - CMAR	1	LS	\$32,500	\$32,500
19	Miscellaneous Expenses	1	LS	\$15,000	\$15,000 advertising, printing, bid
	Subtotal Soft Costs				\$89,850
03	General Conditions				share with private - 50%
	Management				Prime Contractor management as shown under subcontracts
01	Preconstruction	173	HR	\$115	\$19,895 Brandicorp (2 months at 50%)
02	Project Superintendent	0	HR	\$0	\$0 Prime Contractor
03	Superintendent Reimbursables	0	LS	\$0	\$0 Prime Contractor
04	Project Manager	346	HR	\$115	\$39,790 Brandicorp (4 months at 50%)
05	Project Manager Reimbursables	1	LS	\$3,200	\$3,200
06	3rd Party Safety Inspections	0	HR	\$0	\$0
07	Assistant Project Manager	0	HR	\$0	\$0
08	Construction Accounting	130	HR	\$65	\$8,450 (5 months at 15%)
09	Administrative Assistant	217	HR	\$35	\$7,595 (5 months at 25%)
10	Travel Reimbursables	1	LS	\$1,000	\$1,000
11	Blue Print/Document Control	1	LS	\$750	\$750
	Subtotal Management				\$80,680

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Temporary Facilities					Prime Contractor GC's as shown under subcontracts
01	Jobsite Trailer/Steps	4	Mth	\$1,000	\$4,000	share with private - 50%
02	Jobsite Office Supplies	4	Mth	\$100	\$400	
03	Jobsite Phone/Internet	4	Mth	\$100	\$400	
04	Jobsite Office Cleaning	26	Wk	\$40	\$1,040	
05	Jobsite Office Water	4	Mth	\$40	\$160	
06	Jobsite Office Electric	4	Mth	\$250	\$1,000	
07	Jobsite Office Furniture	1	LS	\$400	\$400	
08	Jobsite Toilet/Port-a-let	4	Mth	\$300	\$1,200	
09	Fire Extinguishers	1	LS	\$250	\$250	
10	Postage & Deliveries	1	LS	\$250	\$250	
11	Temporary Signs	1	LS	\$1,500	\$1,500	
12	Photographs/Aerial Photography	4	Mth	\$600	\$2,400	
13	Security	4	Mth	\$200	\$800	
14	Temporary Electric	4	Mth	\$225	\$900	
15	Fencing/Gates	1	LS	\$2,250	\$2,250	
16	Construction Clean-Up	1	LS	\$4,000	\$4,000	
17	Dumpsters	4	Mth	\$700	\$2,800	
18	Street Cleaning	4	Mth	\$1,000	\$4,000	
19	Equipment Rental	4	Mth	\$750	\$3,000	
						Assumes starting in September '23, if delayed costing will be adjusted accordingly.
	Subtotal Temporary Facilities				\$30,750	

CMAR II Exhibit 5
GMP Amendment

**GUARANTEED MAXIMUM PRICE AMENDMENT NO. ____ (Sequence ____)
TO CONSTRUCTION AGREEMENT**

Dated: _____

Pursuant to Section 2 of the Agreement dated _____, 2023 between the CITY OF MONTGOMERY and BRANDICORP, LLC as Construction Manager of the Montgomery Quarter Project (the "Project"), the City and the Construction Manager desire to establish a Guaranteed Maximum Price ("GMP") for the Sequence 1 of the Project Work. Therefore, the City and the Construction Manager agree as follows:

Article 1
Guaranteed Maximum Price

The Construction Manager's GMP sum for the Work in this Sequence, including the Cost of the Work as defined in Section 2 and the Construction Manager's Fee as set forth in Section 2, is _____ Dollars (\$_____).

The GMP is for the performance of the Work in accordance with the Exhibits listed below, which are part of this Agreement.

- EXHIBIT A. Drawings and Specifications, including Addenda, if any, and information furnished by the City.
- EXHIBIT B. Allowance Items, dated _____, _____ pages.
- EXHIBIT C. Assumptions and Clarifications on which the GMP is based, dated _____, _____ pages.
- EXHIBIT D. Schedule of Work, dated _____, _____ pages.
- EXHIBIT E. Alternate Prices, dated _____, _____ pages.
- EXHIBIT F. Unit Prices, dated _____, _____ pages.
- EXHIBIT G. A statement of any Work to be self-performed by the Construction Manager, dated _____, _____ pages.
- EXHIBIT H. Contingency of _____.

Article 2
Date of Substantial Completion

The Date of Substantial Completion of the Work is _____.

Article 3
Date of Final Completion

The Date of Final Completion of the Work is _____ or within _____ (____) days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

This Amendment No. 1 is entered into as of the _____ day of _____, 20_____.

CITY OF MONTGOMERY, OHIO
an Ohio municipal corporation

Witness

By: _____
Brian K. Riblet
Its: City Manager

Construction Manager:

BRANDICORP, LLC
a Kentucky limited liability company

Witness

By: _____
Michael T. Brandy
Its: Managing Member

APPROVED AS TO FORM:

Terrence M. Donnellon
Director of Law

CMAR II Exhibit 6
Estimated Budget

Montgomery Quarter City of Montgomery, Ohio					28-Aug-23
CMAR Costs - Stage 2 Public Improvements					Notes
	Project Duration	6	Mths	****	2 Months Precon; 4 Months Construction; Sequences 2 and 3 Duration TBD
				**** Phased	Construction for multiple areas shown below.
Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate
01	Property Acquisition				
01	Land	1,000	AC	\$0	\$0
	Subtotal Land				\$0
02	Soft Costs				Sequence 1
01	Lot Split - Meets & Bounds	1	LS	\$0	\$0 By City
02	Easement Establishment	1	LS	\$0	\$0 By City
03	Legal - City	1	AL	\$0	\$0 By City
03	Legal - CMAR	1	AL	\$5,000	\$5,000 Contracts, Etc.; By City as well
04	Civil Engineering	1	LS	\$0	\$0 By City
05	Project Management	87	HR	\$10,000	\$10,000
06	Geotechnical Engineering	1	LS	\$0	\$0
06	Environmental	1	LS	\$0	\$0 Alt & Witzig Reliance; add borings at east and south - by City
07	Landscape Design	1	LS	\$0	\$0 Phase 1 and Reliance Letter - by City
08	Structural Engineering (Vault)	1	LS	\$0	\$0 By City
09	Signage Design (Wayfinding)	1	LS	\$0	\$0 By City
10	Surveying	1	LS	\$10,000	\$10,000 General Control
11	Inspections	1	LS	\$0	\$0 By City as well as CT
12	Zoning Administration	1	LS	\$2,500	\$2,500 KZF/Clete
13	Building Permits	1	AL	\$0	\$0 By City
14	Jobsite Safety	4	Mth	\$0	\$0 3rd Party Safety Inspections
15	General Liability Insurance	1	LS	\$14,850	\$14,850 Brandicorp
16	Consulting - Zoning	1	LS	\$0	\$0
17	Design Contingency	1	LS	\$0	\$0 By City
18	Performance & Paymnet Bond - CMAR	1	LS	\$32,500	\$32,500
19	Miscellaneous Expenses	1	LS	\$15,000	\$15,000 advertising, printing, bid
	Subtotal Soft Costs				\$89,850
03	General Conditions				share with private - 50%
	Management				Prime Contractor management as shown under subcontracts
01	Preconstruction	173	HR	\$115	\$19,895 Brandicorp (2 months at 50%)
02	Project Superintendent	0	HR	\$0	\$0 Prime Contractor
03	Superintendent Reimbursables	0	LS	\$0	\$0 Prime Contractor
04	Project Manager	346	HR	\$115	\$39,790 Brandicorp (4 months at 50%)
05	Project Manager Reimbursables	1	LS	\$3,200	\$3,200
06	3rd Party Safety Inspections	0	HR	\$0	\$0
07	Assistant Project Manager	0	HR	\$0	\$0
08	Construction Accounting	130	HR	\$65	\$8,450 (5 months at 15%)
09	Administrative Assistant	217	HR	\$35	\$7,595 (5 months at 25%)
10	Travel Reimbursables	1	LS	\$1,000	\$1,000
11	Blue Print/Document Control	1	LS	\$750	\$750
	Subtotal Management				\$80,680

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Temporary Facilities					Prime Contractor GC's as shown under subcontracts
01	Jobsite Trailer/Steps	4	Mth	\$1,000	\$4,000	share with private - 50%
02	Jobsite Office Supplies	4	Mth	\$100	\$400	
03	Jobsite Phone/Internet	4	Mth	\$100	\$400	
04	Jobsite Office Cleaning	26	Wk	\$40	\$1,040	
05	Jobsite Office Water	4	Mth	\$40	\$160	
06	Jobsite Office Electric	4	Mth	\$250	\$1,000	
07	Jobsite Office Furniture	1	LS	\$400	\$400	
08	Jobsite Toilet/Port-a-let	4	Mth	\$300	\$1,200	
09	Fire Extinguishers	1	LS	\$250	\$250	
10	Postage & Deliveries	1	LS	\$250	\$250	
11	Temporary Signs	1	LS	\$1,500	\$1,500	
12	Photographs/Aerial Photography	4	Mth	\$600	\$2,400	
13	Security	4	Mth	\$200	\$800	
14	Temporary Electric	4	Mth	\$225	\$900	
15	Fencing/Gates	1	LS	\$2,250	\$2,250	
16	Construction Clean-Up	1	LS	\$4,000	\$4,000	
17	Dumpsters	4	Mth	\$700	\$2,800	
18	Street Cleaning	4	Mth	\$1,000	\$4,000	
19	Equipment Rental	4	Mth	\$750	\$3,000	
						Assumes starting in September '23, if delayed costing will be adjusted accordingly.
	Subtotal Temporary Facilities				\$30,750	
04	Subcontracts					Assumes starting in September '23, if delayed costing will be adjusted accordingly.
01	Demolition & Clearing				\$114,144	
	Mobilization					Temp Facilities, GC's from Prime
	Layout/Surveying/Control					
	Clearing & Grubbing					
	Remove Existing Pavement			Allowance	\$75,000	Concrete found under pavement per Geotec
	Remove Existing Pavement (Temp. Staging)					
	Remove Existing Catch Basins					
	Remove Existing 18" Storm					
	Remove Existing Concrete Sidewalk					
	Remove Existing Concrete Curb					
	Sawcut Pavement					
	Remove Existing Storm Sewer					
	Stockpile Salvaged Asphalt/Gravel					
02	Erosion Control				\$12,160	
	Silt Fence/Mulch Berm					
	Inlet Filter					
	Stone Construction Entrances					
	Rock Check Dam					
	Concrete Washout					
	Seed/Mulch/Fertilizer					
	SWPPP Inspection				\$2,000	
	SWPPP Maintenance				\$7,500	
	SWPPP Removal				\$3,200	
03	Sanitary Sewer				\$109,558	
	Extend 6" Sanitary Laterals					
	Reset Sanitary Manhole					
04	Storm Sewer				\$246,276	Street and Site Storm Water
	6" Storm Sewer					Detention Vault modifications - see below.
	12" Storm Pipe					
	18" Storm Pipe					
	24" Storm Pipe					
	CB 3					
	CB 3A					
	CB 3AM					
	CB 2-2B					
	CB 2-3					
	Storm Manhole					

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Reset Storm Manhole					
	4" Perf. Underdrain					
	304 GBF					
	Bedding					
	RIP RAP					
05	Ductbank				\$251,475	
	Joint Ductbank Type 2D					
	4" Conduit					
	Gas Main Line (Duke)					
	Conduits & Laterals					
	Concrete Encasement					
06	Water				\$290,073	
	8" Waterline					
	8" Valve & Box					
	6" Fire Hydrant, Complete					
	Water Meter Vaults					
	Branch Services				\$140,000	Also need to obtain final GCWW notes
	Permits & Inspections					
	Existing Main Tie-In					
07	Earthwork - Block 3					Delay till Stage 2, Sequence 2
	Excavation					
	Soldier Piles & Lagging					
	Export					
	Fine Grade Building Pads					
	Temp Fill to Provide Laydown					
07A	Earthwork - ROW & Pads				\$194,526	Currently export, City RAB needs 6K Cys
	Excavation					
	Embankment					
	Export					
	Fine Grade Pavement					
	Topsoil Respread				\$20,000	
	Seed & Straw Disturbed Areas				\$12,000	
08	Retaining Wall				\$0	block 3
	Mobilization					
	Layout/Survey					
	Lag Wall - Design-Build					
	Excavator time					
	Backfill					
	Engineering, Permitting & Inspections					
09	Asphalt & Curbs & Sidewalks				\$177,865	
	Asphalt Paving - Temporary				\$30,322	1' overpave
	304 Aggregate Base					
	301 Bituminous Aggregate Base (7")					
	448 Asphalt Surface Course Type 1 (2")					
	Concrete Apron					
	ODOT Type 6 Curb					
	Curb Ramp					
	Concrete Walk				\$100,000	hold out for block 3 side from sub bid
	Striping/Pavement Markings					
	Thermoplastic Striping				\$15,000	Changes from plans forthcoming
	Signage					
	Block 3 Temp Gravel Lot				\$10,000	Create temp laydown on block 3
	Upgraded Walks on Quarter Blvd.				\$0	Move to Next Sequence(s)
10	Storm Water Detention Vault			Allowance	\$55,000	Existing detention modifications
	Mobilization					Concept from MSP
	Layout/Survey					
	Detention Vault					
	Detention Vault - Excavation					
	Detention Vault - Backfill					
	4" Perimeter Drain					
	8" Overflow Pipe					
	Access Risers & Extensions					
	Waterstop & Waterproofing					

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Temporary Roads & Access					
	Inspections & Testing					
	Total Subcontracted Work				\$1,866,129	
11	Allowances					Potential - Need Geotech Report
	Additional Undercutting			Allowance	\$40,000	some preliminary results from A&W
	Export of Unsuitable Materials			Allowance	\$18,000	May need for debris not able to salvage
	Lime Mixing			Allowance	\$30,000	May need for fall work
	Rock Cut - Mass Excavation				\$0	
	Rock Cut - Trenches				\$0	
	Building Spoils				\$0	
	Topsoil Import				\$0	
	Special Inspections			Allowance	\$50,000	A&W
	Dewatering				\$0	
	Third Party Costs				\$0	
	Additional Seed/Straw				\$0	
	Miscellaneous				\$0	
	Duke Energy Gas Main			Allowance	\$20,000	Dig only - Duke may perform
	Duke Energy - Aid to construction				\$0	
	Subtotal				\$158,000	\$ -
05	Subtotals					
	Land				\$0	
	Soft Costs				\$89,850	
	Management				\$80,680	
	Temporary Facilities				\$30,750	
	Subcontracted Work				\$1,866,129	
	Allowances				\$158,000	
	Total				\$2,225,409	
06	Project Costs					
1	Project Contingency	8%			\$178,033	
2	Project Overhead & Fee	3.5	PCT		\$84,120	
3	Builders Risk Insurance	0.50%	PCT		\$12,438	
4	Warranty	0.00%	PCT		\$0	By Subcontractors/GC
	CONTRACT SUM				\$2,500,000	
07	Stage II, Sequence II					
1	Soft Costs, GC's, Temp Facilities				\$349,785	
2	Subcontracted Work (excluding below)				\$1,450,000	
3	Block 3 Lag wall, Export				\$3,400,000	
4	Contingency				\$415,983	
5	Fee & Insurance				\$196,992	
	Subtotal				\$5,812,760	
08	Stage II, Sequence III					
1	Gingerbread + Wayfinding Signage				\$2,500,000	Activity Alley - Quarter Blvd
2	Other				\$125,000	
3	GC's, Temp Facilities, Management				\$175,000	
4	Contingency				\$224,000	
5	Fee + Insurance				\$140,840	
	Subtotal				\$3,164,840	
	GRAND TOTAL				\$11,477,600	Stage 2 Complete

*Need to review overall timing of subsequent phases and what the pricing market may impact conceptual estimates above.

CMAR II Exhibit 7
Schedule for Completion

Sequence 1

- 1) Commence Construction – September 2023
- 2) Complete Construction – April 2024

Sequence 2

- 1) Commence Construction – TBD
- 2) Complete Construction – TBD

Sequence 3

- 1) Commence Construction – TBD
- 2) Complete Construction – TBD

CMAR II Exhibit 8
Subcontractor Form

**Subcontract Form For Montgomery Quarter
Construction Manager At Risk Project**

This Subcontract Agreement is made as of the date set forth below between **Brandicorp, LLC** ("Contractor") and _____ ("Subcontractor") in connection with the Montgomery Quarter Project. As noted herein, the "City" is the City of Montgomery, Ohio. The Contract Documents are defined in a separate Construction Agreement by and between the City and the Contractor dated _____, 2023.

ARTICLE 1 – NATURE OF SUBCONTRACT

1.1 The Subcontractor shall perform the entire Subcontract Work as specified in **Exhibit ____** and described in the Contract Documents for the Montgomery Quarter Project for Public Improvements ("Project").

ARTICLE 2 – COMPENSATION

2.1 The Contractor agrees to pay for the performance of this Subcontract, subject to additions and deductions as provided in the Contract Documents, the Subcontract Sum of _____, comprised of the following:

ARTICLE 3 – TIME OF PERFORMANCE

3.1 Time is of the essence. The Subcontractor shall diligently prosecute and complete all Subcontract Work in accordance with the construction progress schedule agreed between the parties.

ARTICLE 4 – CONTRACT DOCUMENTS

4.1 To the extent that the contract between the City and the Contractor applies to the Subcontract Work:

4.1.1 The Contractor and the Subcontractor agree to be mutually bound by the terms of the Contract Documents;

4.1.2 The Contractor assumes toward the Subcontractor the rights, remedies, obligations, and responsibilities that the City has and assumes toward the Contractor;

4.1.3 The Subcontractor assumes toward the Contractor the rights, remedies, obligations, and responsibilities that the Contractor assumes toward the City; and

4.1.4 The Subcontractor agrees to perform its portion of the Work in accordance with the Contract Documents.

4.2 The Subcontract and any modifications, amendments, or alterations thereto shall be governed, construed, and enforced by and under the laws of the State of Ohio.

4.3 If any term or provision of the Subcontract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Subcontract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Subcontract shall be valid and enforced to the fullest extent permitted by law.

4.4 The Subcontract shall be binding on the Contractor and Subcontractor, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but the Subcontractor may not assign the Subcontract without the prior written consent of the Contractor and the City.

ARTICLE 5 – EFFECTIVENESS

5.1 The Subcontract shall become binding and effective upon execution by the Contractor.

5.2 This subcontract has been executed in several counterparts, each of which shall constitute a complete original Subcontract, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.3 Any signatory may deliver a copy of its counterpart signature page to this Subcontract via fax or e-mail. Each signatory shall be entitled to rely upon a signature of any other signatory delivered in such a manner as if such signature were an original.

ARTICLE 6 – REPRESENTATIONS

6.1 Contingent Assignment. The Contractor's contingent assignment of this Subcontract to the City, as provided in the Contract, is effective after termination of the Contractor by the City and the City's acceptance of the assignment in writing to the Subcontractor. The Subcontractor consents to the assignment and shall be bound at the same price and terms as in the Subcontract to the City. Unless the City takes assignment of the Subcontract, the Subcontractor will not have any contractual rights against the City.

6.2 Intended Third-Party Beneficiary. The City is an intended third party beneficiary of the Subcontract, entitled to enforce any rights thereunder for its benefit.

6.3 Insurance. The Subcontractor shall maintain insurance in accordance with the Contract Documents. Section 17 of the Construction Agreement sets forth the minimum limits of liability for the insurance required in the Contract Documents.

6.4 Right to Audit. The Subcontractor agrees that the City or any agent designated by the City have access to and the right to audit and the right to copy at the City's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work for a period of not less than Three (3) years following completion of the Work consistent with Ohio Revised Code ("ORC") Section 149.43 with regard to the City's obligation to maintain confidentiality of trade secrets.

6.5 Indemnity. To the fullest extent permitted by law, the Subcontractor shall indemnify, defend, and hold harmless the City, the Contractor, their consultants and employees from all claims and expenses for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorney's fees, costs and expenses, but only to the extent caused by the negligent acts or omissions of the Subcontractor or a person or entity for whom the Subcontractor may be liable. This Subcontract does not require a Subcontractor to waive its immunity under the Workers Compensation laws of Ohio from claims brought against the Subcontractor by the Subcontractor's employees.

6.6 Prompt Pay. The Contractor shall at a minimum make payments to the Subcontractor in accordance with applicable law, including ORC Section 4113.61. Progress payments to the Subcontractor for satisfactory performance of Subcontract Work shall be made no later than Ten (10) days after receipt by the Contractor of payment from the City for Subcontract Work.

6.7 Retainage. Subcontractor retainage shall be at a rate equal to the percentage retained from the Contractor's payment by the City for the Subcontract Work, unless a lesser percentage is otherwise specified.

6.7.1 Labor Payments.

6.7.1.1 Partial payments to the Subcontractor for labor performed shall be made at the rate of Ninety Five percent (95%) of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is Fifty percent (50%) complete.

6.7.1.2 After the Work of the Subcontractor is Fifty percent (50%) complete, as evidenced by payment of at least Fifty percent (50%) of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

6.7.2 Material Payments.

6.7.2.1 The Contractor shall pay the Subcontractor at the rate of One Hundred percent (100%) of the scheduled value for materials incorporated into the Project.

6.7.2.2 The Contractor shall pay the Subcontractor at the rate of Ninety Five percent (95%) of the invoice cost, not to exceed the scheduled value, for materials delivered to the Site, or other off-site storage location approved by the Architect/Engineer (“A/E”), provided the Subcontractor provides the following information with its request for payment:

1. a list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and
2. a certification of materials stored off-site, prepared by the Subcontractor and signed by the A/E to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. The Subcontractor shall reimburse the A/E, through the Contractor, for all costs incurred to visit a storage site, other than the area adjacent to the Project.
3. The Contractor shall pay the balance of the scheduled value when the materials are incorporated into and become a part of the Project.

6.8 Warranty. The Subcontractor fully warrants, for the benefit of the City, that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents and free from defective workmanship or materials.

6.9 Non-Waiver of Lien Rights or Payment Bond Rights. This Subcontract shall not prohibit a Subcontractor from exercising its rights under R.C. Chapter 1311 or under any Contractor-provided payment bond.

6.10 Non-Discrimination. The Subcontractor agrees to fully comply with applicable law regarding equal opportunity, including R.C. Section 153.59 and, to the extent applicable, all Executive Orders issued by the Governor of the State of Ohio.

6.11 Dispute Resolution. The supplemental conditions to this Subcontract shall provide for a dispute resolution process comparable to the Contract’s dispute resolution process set forth in Section 24 of the Construction Agreement in terms of timing, notice, substantiation, and informal dispute resolution efforts.

6.12 In the event that any supplemental conditions or other Subcontract terms conflict with this Subcontract Agreement, the Subcontract Agreement takes precedence and this Subcontract shall be read and enforced to include the provisions of the Subcontract Agreement.

6.13 The following Exhibits are attached to and are a part of this Subcontract:

6.13.1 Exhibit A

6.13.2 Exhibit B

6.13.3 Exhibit C

6.13.4 Exhibit D

IN WITNESS WHEREOF, the parties have executed this Subcontract Form.

CONTRACTOR:

Brandicorp, LLC

By: _____
Michael T. Brandy

Its: Manager

Date: _____

SUBCONTRACTOR:

By: _____

Name: _____

Its: _____

Date: _____