

**CONTRACT No.: B**  
**DATE: SEPTEMBER 25, 2013**

**JOB PHONE No.: 614-571-01614**  
**CONTACT: Ken Conaway**  
**E-MAIL: ken@kencconawayllc.com**

## **CONTRACT B**

**CONSTRUCTION AGREEMENT FOR: RECREATION COMPLEX / MUSIC CENTER AT  
THE HEIGHTS**

**PROJECT: C13518**

**CONTRACTOR: MESSER CONSTRUCTION CO.**

**OWNER: CITY OF HUBER HEIGHTS, OHIO**

## **CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT** (the "Agreement") is entered into this 25<sup>th</sup> day of September, 2013 (the "Effective Date"), by and between the **CITY OF HUBER HEIGHTS, OHIO**, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter (the "City"), and **MESSER CONSTRUCTION CO.**, (the "Contractor"), for the **HUBER HEIGHTS, OHIO RECREATION CENTER**, under the following circumstances:

- A. Contractor is qualified, experienced and willing to provide the Work as further defined in Article 2 of this Agreement; and
- B. The City desires to have Contractor perform the Work and Contractor desires to perform the Work as set forth in this Agreement.

**NOW, THEREFORE, the parties agree as follows:**

### **ARTICLE I** **The Contract Documents**

1.1. For purposes of this Agreement, the "Contract Documents" consist of this Agreement and any Addenda or amendments; any Advertisement for Bids/Request for Bids, Notice and Instructions to Bidders, Bid, and any Bid Bond; the drawings and specifications detailing the scope of the project specifically applicable to Contractor's performance under this Agreement attached as Exhibit A (the "Scope of Work"); the construction drawings and specifications attached as Exhibit B, but only to the extent they pertain to the Scope of Work (the "Final Construction Drawings and Specifications"); and the Schedule of Values attached as Exhibit C (the "Schedule of Values"). These items form this Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein. If anything in the preliminary documentation is inconsistent with provisions required by the City as contained in the Scope of Work or Final Construction Drawings and Specifications, the Scope of Work or Final Construction Drawings and Specifications shall govern.

### **ARTICLE II** **The Work**

2.1. Contractor shall perform and be responsible for causing all the work to be performed as required by the Contract Documents, as shown on the Scope of Work and Final Construction Drawings and Specifications, and all work performed by Contractor shall be in compliance with all applicable federal, state, county, or local laws, codes, ordinances, regulations, and rules (the "Work"). Contractor shall not be responsible for assuring that the Contract Documents meet applicable code provisions.

### ARTICLE III

#### Contractor's Duties and Status

3.1. Contractor represents, warrants and covenants with the City to furnish its best skill and judgment and the best skill and judgment of Contractor's employees in performing the Work, and Contractor has the expertise and experience in performing the Work required hereunder.

3.2. Contractor represents, warrants and covenants that the Work will be performed and completed in a good and worker-like manner, and in accordance with the Contract Documents. Contractor agrees that all materials used in connection with the Work will be new and of the best quality of the kind specified unless otherwise approved in writing by the City. Contractor will supervise all Work, whether performed by Contractor or by subcontractors, and any work stoppage, delay, or other problem that arises will be immediately reported to the City or an authorized representative of Ken Conaway LLC (the "Project Manager"), as appropriate. If, within one year after the date of substantial completion any materials or equipment furnished are found to be not in accordance with the requirements of the Contract Documents, the Contractor shall repair and/or replace non-compliant materials or equipment at the Contractor's expense promptly after receipt of written notice from the City to do so. Warranties of all individual systems installed as part of the Work shall run for a period of not less than one (1) year from the date of substantial completion, regardless of the fact that the City may have commenced operation of one or more such systems, prior to the date of final completion. The obligation hereunder shall survive acceptance of the Work and completion of the Contract. If for any reason the Contractor cannot warrant any part of the Work using material or construction methods which have been specified, it shall notify the City in writing before performing such part of the work, giving reasons, together with the name of product and data on a substitution it can and will warrant. In addition to the foregoing stipulations, the Contractor shall comply with all other warranties referred to in any portions of the Contract or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern. Neither final payment nor provision in Contract Documents nor partial or entire occupancy of premises by City shall constitute an acceptance of work not done in accordance with Contract Documents or relieve the Contractor liability in respect to any express warranties or responsibility for faulty materials or workmanship. The foregoing provisions in this section shall not in any way limit or vary any warranties City may have (including from other parties), either actual or implied, including those relating to any construction, materials or equipment which may, by industry standard, law or express warranty, extend beyond one year.

3.3. Contractor shall not purchase any personal property of any kind intended to be incorporated into the Work under any conditional sales contract, security agreement, or lease agreement, and the purchase price of such personal property shall be paid in full before payment becomes past due or, in any event, within thirty (30) days after delivery; provided, however, that the foregoing will not apply to amounts withheld and unpaid on account of bona fide disputes with suppliers.

3.4. Contractor shall be solely responsible to select, qualify, and contract with all subcontractors and suppliers for the Work and Contractor will be fully responsible for all work

performed by or materials supplied by such subcontractors. All labor shall be performed by workers skilled in their respective trades. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents. All subcontracts shall specifically provide that the City is an intended third-party beneficiary of the subcontract agreement and shall require that the Subcontractor maintain a minimum insurance coverage of \$2,000,000 general aggregate; submit waivers of liens for Work completed; and that the Subcontractor continue to perform under its subcontract agreement in the event the Contractor is terminated and the City assumes the subcontract agreement. The Contractor shall indemnify and hold harmless the City from and against claims, damages, losses and expenses arising out of or resulting from Contractor's failure to fulfill the requirements of this Subparagraph. In the event of any default by the Contractor, that is not the fault of a Subcontractor, the City may make direct payment to the Subcontractor, less any appropriate retainage. In that event, the amount so paid the Subcontractor shall be deducted from the Contractor's contract balance. Nothing contained herein shall create any obligation on the part of the City to make any payments to any Subcontractor.

3.5. Contractor shall not permit any discrimination against or segregation of any person or group of persons in connection with the performance of this Agreement on account of sex, disability, marital status, age, race, religion, color, creed, national origin, veteran status or ancestry, nor shall Contractor or any subcontractor or any other person claiming under or through Contractor establish or permit any such practice or practices of discrimination or segregation in connection with the performance of this Agreement and Contractor's other obligations under this Agreement. In addition, Contractor will, and will cause its subcontractors to, use its best efforts to ensure that applicants for employment are considered for employment and that employees are treated during employment without regard to their sex, disability, marital status, age, race, religion, color, creed, national origin, veteran status or ancestry as required by applicable federal, state, county, or local laws, codes, ordinances, regulations, and rules, and incorporate the requirements of this paragraph in all of the respective contracts and subcontracts for the Work; provided, however that the foregoing shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

3.6. Contractor shall obtain all licenses and pay all fees necessary to permit Contractor to lawfully perform and complete the Work. If requested, Contractor, at its expense, shall submit a copy of such licenses to the City. Contractor will at all times comply with the requirements of each such license. Each party agrees to obtain the permits necessary for the completion of the Work as set forth in Schedule 3.6.

3.7. Contractor shall provide and pay for all materials, tools, apparatus, construction equipment, and machinery and all utilities, transportation, and other facilities and service necessary for the proper and safe execution and completion of the Work.

3.8. Contractor agrees that all wages paid to laborers and mechanics employed in connection with the Work will be paid at not less than the required prevailing rates of wages for laborers and mechanics for each class of work called for by the Work, if any. The prevailing wages shall be determined and implemented in accordance with the requirements of Chapter

4115 of the Ohio Revised Code. Contractor further agrees that representatives of the City and Project Manager shall have access to the physical location in which Contractor is to perform the Work (the "Project Site"), Contractor's personnel and all documents pertaining to the Work, in each case to the extent necessary to monitor and review compliance with this Section 3.8. Contractor shall file copies of certified payroll records with the City on a monthly basis and prior to final payment shall file a notarized affidavit certifying that the prevailing wages have been paid. Contractor shall notify City's Prevailing Wage Coordinator of any and all Subcontractors, sub-subcontractors and others working on the project that are eligible to be paid prevailing wage.

3.9. Contractor shall pay, withhold and remit all income taxes required to be paid to the City.

3.10. Contractor shall at all times keep the Project Site free from any accumulation of rubbish, debris, and waste and shall keep existing pavement on the adjacent Meijer parcel (located to the east of the Project Site), broom clean and free of soil or aggregate that might be brought off site from the Project Site onto the Meijer parcel. Upon completion of the Work and prior to final payment by the City, Contractor shall thoroughly remedy any defects, and leave the Project Site in a clean and orderly condition. If, in the discretion of the City or Project Manager, Contractor is determined at any time to be in violation of this Section 3.10, the City may deduct the City's actual cost to remedy the violation from the amount shown due to Contractor on its next payment application (progress or final) for each day Contractor is determined to be in violation of this Section 3.10.

3.11. Contractor shall permit the City, Project Manager or authorized representatives of either access to the Project Site for the purposes of, including but not limited to, inspecting the progress of the Work, and to determine, in general, if the work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with this Agreement.

3.12. Contractor shall be responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to minimize the risk of injury to any persons, whether employees or business invitees of the City, Project Manager or Contractor (including any subcontractor) who may be present on the Project Site or loss or damage to property of the City or other persons, including all materials and equipment to be incorporated into the Work and all existing improvements that are not to be removed as part of the Work.

3.13. Contractor shall procure and maintain, at all times during the term of this Agreement, at its own cost and expense, the insurance coverage and limits set forth in Schedule 3.13. All such insurance shall be placed with insurance carriers licensed to do business in Ohio. Contractor hereby waives any rights of recovery for bodily injury or property damage it may otherwise have had against City, but only to the extent such loss or damage is covered by the insurance required to be carried by Contractor hereunder (Ohio workers' compensation excepted). Contractor shall ensure its insurers will honor this waiver and shall have such policies endorsed with a waiver of subrogation for the benefit of all such parties. Contractor shall furnish the City with certificates of insurance providing evidence of required coverage and reflecting the status of

the City, and the Project Manager as additional insureds as required in Schedule 3.13. Such certificate shall provide that if any of Contractor's insurance as required in this Agreement is cancelled or non-renewed prior to policy expiration, notice shall be provided to the City in accordance with policy provisions.

3.14. To guarantee the faithful performance of its obligations under this Agreement, Contractor will, within five (5) business days after the execution of this Agreement by both parties, post a performance security in the form of a surety bond in an amount equivalent to one hundred percent (100%) of the Contract Price, which must be callable on demand and issued in the form, substance, and by a surety/insurance company acceptable to the City, using the Bond Form attached as Exhibit D.

3.15. Contractor shall timely provide completed forms and information relating to the Declaration Regarding Material Assistance/Non-Assistance to Terrorist Organization as may be required in accordance with Ohio Revised Code Sections 2909.32 through 2909.34.

3.16. Contractor will provide and/or assign to the City all guaranties and warranties applicable to any Work performed or supplies or equipment from subcontractors or material suppliers given to Contractor with regard to the Work.

3.17. Contractor agrees to cooperate with, and keep informed, Project Manager at all times. Contractor shall attend the regularly scheduled progress meetings as scheduled by the Project Manager. Contractor agrees that Project Manager shall be the primary point of contact for the City and all inquiries shall be directed to Project Manager.

3.18. Any use or storage of hazardous materials will comply with Environmental Laws and the highest standards prevailing in the industry relating to such use and storage, and Contractor will obtain and maintain all necessary permits and licenses permitting such use and storage. Contractor and its officers, employees, agents, invitees, Subcontractors and sub-subcontractors (collectively, the "Contractor Parties") will not cause or allow any spill, disposal or other release of any Hazardous Materials (as defined in applicable Environmental Laws) at, on or under the site. If a spill, disposal or other release of Hazardous Materials occurs at, on or under the site, Contractor shall: (a) report to governmental authorities as required by Environmental Law, (b) notify City, (c) promptly and fully clean up such Hazardous Materials and (d) take any other action required by Environmental Laws. As used in these General Conditions, "Environmental Laws" means any local, state or federal law, regulation, ordinance or policy pertaining to regulation of the environment or health and safety, or contamination or clean-up of the environment, including, but not limited to, laws, regulations or ordinances relating to the storage, use or disposal of Hazardous Materials.

## ARTICLE IV

### Time of Commencement and Completion

4.1. The Work to be performed under this Agreement shall be commenced upon execution of this Agreement. Contractor shall prosecute the Work with all due diligence and at such a pace as to meet the interim progress deadlines and final completion date as per the schedule incorporated into the Final Construction Drawings and Specifications (the "Construction Schedule"), subject however, to delays beyond Contractor's control, strikes, extreme unusual weather, and City initiated changes, provided the City has approved in writing any extension of an interim progress deadline or the final completion date caused by City initiated changes. Contractor shall immediately notify Project Manager if Contractor becomes aware of an event beyond Contractor's control that might cause a delay and shall provide such other notice as may be required under section 9.7 below. Notwithstanding any other provision of this Section 4.1, even though the performance of Contractor is delayed by an event or occurrence beyond the control of Contractor, Contractor hereby agrees to use his best efforts to secure, at his sole expense, alternate sources of services, equipment, or materials, if available. To the extent that Contractor fails to secure available alternate sources of services, equipment, or materials, the City is entitled to secure such alternate sources and offset any amounts expended on such alternate sources from amounts due or owing to Contractor under this Agreement to the extent that such amounts exceed the price allocations for the goods and services agreed upon in this Agreement. Contractor shall not be paid any additional compensation by the City due to an event or occurrence of the type described in this Section 4.1.

4.2. Contractor agrees that time shall be of the essence of this Agreement, and any failure by Contractor to prosecute the Work with all due diligence and at such a pace that any applicable portion of the Work will be completed by its corresponding deadline stated in the Construction Schedule, shall be deemed a material breach by Contractor of this Agreement and notwithstanding anything in Article 12 to the contrary, the City will have the right to terminate this Agreement by written notice to Contractor without any further obligation to Contractor other than to pay for all proper Work completed prior to such termination. In addition, in the event that Contractor has not completed any applicable portion of the Work pursuant to its corresponding deadline stated in the Construction Schedule, (September 25, 2014), Contractor will pay to the City liquidated damages in the amount of \$1,000 per day for each day that the applicable portion of the Work is not completed after its corresponding deadline stated in the Construction Schedule. The City will have the right to offset any amounts otherwise owing to Contractor by the amount of such liquidated damages. The amount of Liquidated Damages is deemed reasonable given the impracticality and extreme difficulty of ascertaining the actual amount of damage the City would sustain. The Liquidated Damages applies in lieu to all damages, (including consequential, incidental or special damages) that the City incurs as a result of the failure of Contractor to meet the applicable deadline.

## **ARTICLE V** **Stipulated Sum Contract Price**

5.1. The City shall pay to Contractor a total of **\$11,795,500.00** for all Work to be performed under this Agreement (the "Contract Price"). The Contract Price includes the entire cost of the Work, including but not limited to all sales, consumer use, or similar taxes, payroll taxes, unemployment taxes and similar contributions, all other taxes and contributions required to be paid by all federal, state, county, or local laws, codes, ordinances, regulations, and rules relating to or affecting the Work, and any overhead or profit to Contractor for performance of the Work. The Contract Price will be payable in accordance with Articles VII and VIII.

## **ARTICLE VI** **Changes in the Work**

6.1. The City or Project Manager may make changes in the Work in accordance with this Agreement. Contractor shall be paid for changes in the Work on the basis of documented time and material costs agreed to by the City and Contractor.

6.2. During the course of construction, the City or Project Manager shall have the right to request changes in the Work. Any changes in the Work, or any amendments or modifications of this Agreement, the Scope of Work or the Final Construction Drawings and Specifications shall be effective only if contained in a Change Order signed by both parties, which provides for (a) the adjustment if any in the Contract Price resulting from the change in the Work, and (b) the extension, if any, of any deadlines as stated in the Construction Schedule. Any increase in the amount to be paid pursuant to a Change Order shall be deemed to include all of the costs of labor and materials, profit and overhead, any cumulative impact and any and all additional costs of the Contractor resulting from the change. The Contractor shall proportionately increase the amount of the Bond whenever the Contract Sum is increased. If notice of any change affecting the Contract is required by the provision of any Bond, the giving of the notice is the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement.

6.3. If changes in the Work are authorized in writing by the City or Project Manager, their established value shall be added to or deducted from the Contract Price. The mark up for additional work shall be 10% overhead and 5% profit on direct work and 5% overhead and profit on Subcontractor work.

6.4. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additional to the Work, and no claim that the City has been unjustly enriched by an alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Contract documents or a change in any time period provided in the Contract Documents. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall

waive any claim for additional compensation or additional time for such work and the Contractor shall not be excused from compliance with the Contract Documents.

## **ARTICLE VII** **Progress Payments**

7.1. Payments of the Contract Price shall be made by the City to Contractor according to the following procedure:

7.2. On or before the last day of each month in which the Work is completed, Contractor shall submit to Project Manager an application for payment. The application will include a detailed invoice, based upon the Schedule of Values, and the Contract Price. Within thirty (30) working days after the last day of the month in which the application is received, the City shall pay directly to Contractor the appropriate amount ("Progress Payment") for which the request for payment is made.

7.3. From the total amount determined to be payable on a Progress Payment, eight percent (8%) of such total amount will be deducted and retained by City (for the first fifty percent (50%) of the Contract Price (as may be increased due to Change in Work described in Article VI above). This amount will be retained until the final payment is made pursuant to Article VIII below. After fifty percent (50%) of the Contract Price (as may be increased due to Change in Work described in Article VI above) has been paid, the Contractor shall be paid at a rate of one hundred percent (100%) of the approved Progress Payment.

## **ARTICLE VIII** **Final Payment to Contractor**

8.1. Final payment of the Contract Price shall be due and payable after all the Work is complete in accordance with this Agreement.

8.2. Contractor shall promptly correct all Work rejected by the City or Project Manager as being defective or nonconforming. If the City elects to accept in writing any defective or non-conforming Work, it may do so instead of requiring correction thereof, in which case the amount to be paid hereunder will be appropriately reduced to reflect such defective or non-conforming Work.

8.3. Acceptance by Contractor of final payment shall constitute a general release of the City by Contractor and a waiver of all claims of Contractor for all things done and furnished in connection with the Work under this Agreement or otherwise and of any act of omission or neglect of the City and its employees, agents, and contractors affecting, relating to, or arising out of the Work or this Agreement. No payments, final or otherwise, shall operate to release Contractor from any of its obligations under this Agreement, including, but not limited to, responsibility for defects in materials and workmanship.

8.4. The City may withhold any payment requested by Contractor, in whole or in part, to such extent as may be necessary, in the City's opinion, to protect the City from any loss, liability, or expense, including but not limited to those arising from the following causes.

- (a) Defective or non-conforming Work not remedied;
- (b) Claims or liens filed or reasonable evidence indicating the probable filing of claims or liens;
- (c) Failure of Contractor to make payments properly to subcontractors or for materials or labor;
- (d) A reasonable doubt that the Work can be completed for the balance of the amount to be paid hereunder then unpaid or by its corresponding deadline as stated in the Construction Schedule;
- (e) Damage to another contractor;
- (f) Failure of Contractor or any subcontractor or materialman to deliver to the City a Contractor's or subcontractor's lien waiver applicable to the Work for which such waiver should have been issued; and
- (g) Failure of Contractor to observe or perform any of the terms, covenants, and conditions of this Agreement.

## **ARTICLE IX** **Miscellaneous Provisions**

9.1. This Agreement will be effective on the Effective Date and will continue until the Work has been completed and final payment has been made to Contractor or otherwise until this Agreement is terminated in accordance with its terms.

9.2. The Contract Documents are defined in Article I and, together with any document referenced herein or attached hereto, constitute the entire agreement between the City and Contractor, except for modifications issued and signed by the parties after the execution of this Agreement.

9.3. Any warranties associated with any items installed as part of the Work will run to the City and all documentation associated with any such warranties and all operating manuals shall be given to the City upon completion of the Work. The City may assign such warranties.

9.4. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with Contractor in the conduct of the provisions of this

Agreement. Contractor shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the City. Contractor shall be solely responsible for the compliance with all applicable federal, state, county, or local laws, codes, ordinances, regulations, and rules with respect to Contractor and its employees and contractors. Any and all payroll taxes, social security benefits, insurance requirements, or employment benefits of any kind whatsoever of Contractor or its employees shall be borne exclusively by Contractor and not the City.

9.5. This entire Agreement is subject to the approval of the City's City Council.

9.6. All covenants, obligations and agreements of the parties contained in this Agreement are effective to the extent authorized and permitted by applicable law. No covenant, obligation or agreement may be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent, director, member or employee of the City other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement nor any present or future member, officer, agent or employee of the City are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution hereof or by reason of the covenants, obligations or agreements of the City contained in this Agreement.

9.7. Except as otherwise provided herein, no party will be considered in default in or breach of its obligations to be performed hereunder if delay in the performance of those obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God, acts of terrorism or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this Section 9.7 that in the event of the occurrence of any such enforced delay, the time or times for performance of obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Section 9.7 must, within fourteen (14) days after the beginning of the enforced delay, notify the other party in writing of the delay and of the cause of the delay and of the duration of the delay or, if a continuing delay and cause, the estimated duration of the delay, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other party in writing of the duration of the delay.

9.8. Any notice, communication, request or reply ("Notice") made or accepted by either party to the other must be made in writing and shall be effectively given if addressed to the party to be notified and sent by certified or registered mail, postage prepaid with return receipt requested, or shipped by a recognized overnight delivery service, or delivered in person to such party. Any Notice shall be effective, unless otherwise stated in this Agreement, (a) from and after the expiration of three (3) business days, if sent by certified or registered mail, (b) from and after the expiration of two (2) business days after being sent by recognized overnight delivery services, or (c) when delivered if delivered in person. For purposes of Notice the addresses of the parties shall, until changed as hereinafter provided, be as follows:

**If to Contractor:**

Messer Construction Co.  
4801 Hempstead Station Drive  
Dayton, OH 45429-5156  
Attn: Allen Begley, Vice President

**If to the City:**

City of Huber Heights, Ohio  
6131 Taylorsville Road  
Huber Heights, Ohio 45424  
Attn: City Manager

*With copies to:*

Alan B. Schaeffer  
Pickrel, Schaeffer & Ebeling  
40 N. Main Street  
2700 Kettering Tower  
Dayton, Ohio 45423

Ken Conaway LLC  
5425 Fishburg Road  
PO Box 24847  
Huber Heights Ohio 45424-0847

9.9 The intent of this Contract is to include each and every provision of law and clause required by law to be inserted herein, and it shall be read and enforced as though they were included herein. If any legal provision is required by applicable law to be contained in the Contract Documents and through mistake or otherwise was omitted or not correctly stated, then the Contract Documents shall be amended to include such legal provision.

**ARTICLE X**  
**Assignment and Governing Law**

10.1. Contractor shall not assign its interest in this Agreement without the prior written consent of the City, which consent may be withheld by the City for any reason.

10.2. This Agreement shall be governed by the laws of the State of Ohio.

10.3. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and Contractor, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

10.4. Notwithstanding anything in this Agreement to the contrary, Sections 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.12, 3.13, 3.15, 8.2, 8.3, and Article IX, Article X and Article XI will survive the expiration or termination of this Agreement.

## **ARTICLE XI**

### **Indemnification**

11.1. Contractor hereby agrees to assume all risk of injuries to property or persons, including death resulting therefrom, arising from the performance of the Work under this Agreement, , sustained by Contractor, the employees of Contractor, the employees of the City and/or any other person. Contractor does hereby agree to protect, indemnify, and hold harmless the City, Project Manager and their respective officers, elected officials, trustees, directors, agents, employees, administrators, successors and assigns, against any and all actions, claims, demands or liabilities for, (including any reasonable attorney fees): (a) the performance or nonperformance of the Work; (b) breach of this Agreement by Contractor; (c) death, personal injuries or property damage arising from the performance of the Work under this Agreement and/or the Agreement by any person as aforesaid for any cause whatsoever, not including, however, any act of negligence, willful misconduct or omission by any such indemnified party; (d) any act of negligence, willful misconduct or omission by Contractor, its employees, agents or subcontractors; (e) any actions, lawsuits or proceedings brought against the City by any other contractors, subcontractors or material suppliers claiming by or through the Contractor as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or payments due the Contractor, provided the Contractor is paid all amounts due; (f) any prevailing wage violations by Contractor; and (g) any disturbance of the conservation easements located about the Project Site. In addition, Contractor shall pay all expenses which such indemnified party may incur in the investigation and/or defense of any such claim, including counsel fees and court costs provided however, Contractor shall only be responsible for cost of investigation if Contractor is found to be at fault.

11.2. In no event shall the City, or the Project Manager be liable for consequential, incidental, or special damages, including without limitation any delay damages, lost opportunity damages, or lost profits incurred by Contractor and/or its affiliates, subcontractors, agents, or employees in connection with this Agreement.

## **ARTICLE XII**

### **Termination**

12.1. The City may terminate this Agreement in whole or in part. Termination may be (i) for the City's convenience; or (ii) because of Contractor's Default. Default means:

- (a) Contractor fails to substantially perform in accordance with the terms of this Agreement provided that the City provides a notice of termination to Contractor specifying the nature, extent and effective date of termination. If the City terminates this Agreement pursuant to this Section 12.1(a), Contractor shall have seven (7) days to cure the deficiency upon which the City is basing its right to terminate, so long as Contractor sends the City a written notice of its intention to cure such deficiency (which notice must include a reasonably detailed description of how Contractor intends to effectuate such cure) within forty-eight (48) hours after Contractor receives the City's notice of termination. If the City sends a notice of termination to Contractor under this Section 12.1(a) it shall be accompanied by a request to mediate the disputed items triggering the claim of default by Contractor. The mediation shall be conducted by agreement of the parties; or
- (b) Contractor becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its voluntary liquidation, insolvency, or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the involuntary composition, extension, or readjustment of all or substantially all of its obligations.
- (c) If the City terminates this Agreement, Contractor shall (1) immediately discontinue all Work affected (unless the notice directs otherwise); (2) deliver and assign to the City copies of all data, drawings, specifications, reports, estimates, summaries, correspondence, logs and all other information and materials generated and accumulated in performing its Work, whether completed or in progress, which the City may request; (3) enter into no further agreements except as necessary to complete any continued portion of the Agreement; (4) complete performance of Work not terminated; and (5) cooperate with the City and the replacement Work provider as requested.
- (d) If this Agreement is terminated by the City for Default, Contractor shall be compensated for the amount (the "Base Amount") due under this Agreement for Work performed as of the effective date of the termination, less (a) any reasonable and necessary costs incurred by the City to complete Contractor's remaining services under the Agreement over and above the amounts that would have been paid to Contractor hereunder to complete such remaining services; (b) the reasonable and necessary costs to the City to remedy defective or deficient services by Contractor; and (c) any other damages incurred by the City due to such Default. No amount shall be paid by the City to Contractor pursuant to this

Section 12.1(d) until the amount of each of the items set forth in clauses (a)-(c) of the preceding sentence has been determined, provided that any amount which the City, in its sole discretion, determines will in all circumstances be owed to Contractor after the deductions pursuant to said clauses (a)-(b) are determined and made, shall be paid by the City to Contractor promptly after such termination. If the amount of said deductions exceeds the Base Amount, the amount of such excess shall be paid by Contractor to the City promptly after the amount of said deductions are determined.

## **ARTICLE XIII** **Architect**

13.1. The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

13.2 On the basis of the site visits, the Architect will keep the Project Manager reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

13.3 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

13.4 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

13.5 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

13.6 The Architect in consultation with the Project Manager will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

13.7 The Architect's and the Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

13.8 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld. The Project Manager may assign administration of the Contract to the Architect during construction. The Architect shall have access to the site from time to time as appropriate to the stage of the construction. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Provided, however, the Architect has authority to require inspections and to reject Work that does not conform to the Contract Documents.

This Agreement is executed by the parties as of the Effective Date.

MESSER CONSTRUCTION CO.

CITY OF HUBER HEIGHTS, OHIO

By: Thomas M. Keckeis  
Thomas M. Keckeis  
Title: President & CEO  
Date: 10/23/2013

By: David T. Stubble  
Title: City Manager  
Date: 10-19-13

CITY ATTORNEY, APPROVED AT TO FORM John O'Donnell

## **Exhibit A**

### **[Scope of Work]**

The Scope of Work includes all labor and materials, equipment and other requirements to complete Contract B, the Building Package, for the Music Center at The Heights, 6800 Executive Blvd., Huber Heights, OH 45424, a 4500 seat covered music center complete, with specific parking, service utilities and drives, stage and back-of-house, restrooms, concession stand shells, surrounding plaza area and all landscaping.

Other than conditions as established by Contract A Early Site Package, the Scope of Work will deliver the complete project as defined by plans and specifications listed under Exhibit B.

## **Exhibit B**

### **[Final Construction Drawings and Specifications]**

Exhibit B Continued includes one Plan Cover and three Cover Pages for the Building Permit / Construction Set, October 1, 2013, plans and specifications. Building plan sheets are as listed on Plan Cover; Project Specifications are in Volumes 1A, 1 and 2 under cover sheets attached.

# THE MUSIC CENTER AT THE HEIGHTS

## 6800 EXECUTIVE BOULEVARD, HUBER HEIGHTS, OHIO 45424

### BUILDING

**PERMIT/CONSTRUCTION SET**  
**OCTOBER 1, 2013**  
**CITY OF HUBER HEIGHTS, OHIO**  
**PROJECT NO. c13518**

**City of Huber Heights, Ohio**  
6131 Taylorsville Road  
Huber Heights, OH 45424  
p 937.233.1423

### OWNER:

Call Equities

North East Brown & Peterkowicz Inc.  
228 Bryan Rd  
Miamisburg, OH 45342  
p 937.847.7333

**LANDSCAPE ARCHITECT**  
MINISK  
4822 Scott Luther Ave.  
Columbus, OH 43216  
p 614.421.2794  
Architect:

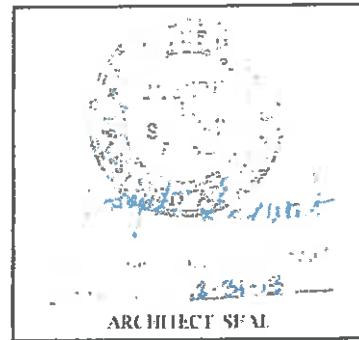
GBBN  
332 East High St.  
Cincinnati, OH 45202  
p 513.243.8700  
Project Manager:  
Ken Conway LLC  
P.O. Box 2047  
Huber Heights, OH 45424  
p 513.457.1054  
Architect:

Assocation  
HIMA  
1571 Park Road, Suite 20  
Fl. 1, Winton, NY 14021  
p 859.423.5002

GENERAL INFORMATION	CIVIL ENGINEER	LANDSCAPE ARCHITECT	ARCHITECTURE
SHEET LIST		SHEET LIST	
L-000 L-001 L-002 L-003 L-004 L-005 L-006 L-007 L-008 L-009 L-010 L-011 L-012 L-013 L-014 L-015 L-016 L-017 L-018 L-019 L-020 L-021 L-022 L-023 L-024 L-025 L-026 L-027 L-028 L-029 L-030 L-031 L-032 L-033 L-034 L-035 L-036 L-037 L-038 L-039 L-040 L-041 L-042 L-043 L-044 L-045 L-046 L-047 L-048 L-049 L-050 L-051 L-052 L-053 L-054 L-055 L-056 L-057 L-058 L-059 L-060 L-061 L-062 L-063 L-064 L-065 L-066 L-067 L-068 L-069 L-070 L-071 L-072 L-073 L-074 L-075 L-076 L-077 L-078 L-079 L-080 L-081 L-082 L-083 L-084 L-085 L-086 L-087 L-088 L-089 L-090 L-091 L-092 L-093 L-094 L-095 L-096 L-097 L-098 L-099 L-100 L-101 L-102 L-103 L-104 L-105 L-106 L-107 L-108 L-109 L-110 L-111 L-112 L-113 L-114 L-115 L-116 L-117 L-118 L-119 L-120 L-121 L-122 L-123 L-124 L-125 L-126 L-127 L-128 L-129 L-130 L-131 L-132 L-133 L-134 L-135 L-136 L-137 L-138 L-139 L-140 L-141 L-142 L-143 L-144 L-145 L-146 L-147 L-148 L-149 L-150 L-151 L-152 L-153 L-154 L-155 L-156 L-157 L-158 L-159 L-160 L-161 L-162 L-163 L-164 L-165 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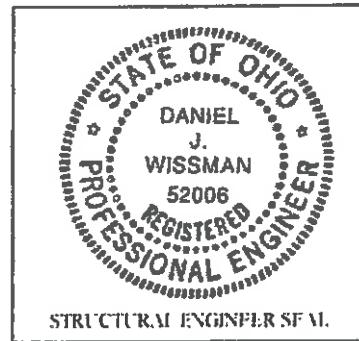


City of Huber Heights, Ohio  
6131 Taylorsville Road  
Huber Heights, Ohio 45424  
937.233.1423



## THE MUSIC CENTER at the HEIGHTS

6800 Executive Boulevard  
Huber Heights, Ohio 45424



October 1, 2013

**Issued For**  
**Building Permit & Construction Set**

**ARCHITECT**

GBBN Architects  
332 East Eighth Street  
Cincinnati, Ohio 45202  
502.583.0700

**PLANNING/LANDSCAPE**

MKSK  
462 S Ludlow Alley  
Columbus, Ohio 43215  
614.621.2796

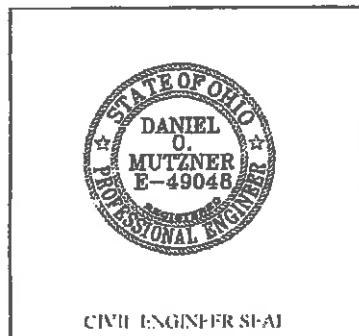


**STRUCTURAL ENGINEER**

Schaefer  
10411 Medallion Drive, Suite 121  
Cincinnati, Ohio 45241  
513.542.3300

**MEP**

KLH Engineers, P.S.C.  
1538 Alexandria Pike, Suite 11  
Ft. Thomas, Kentucky 41075  
859.442.8050



**CIVIL ENGINEER**

Norfleet, Brown & Petkewicz, Inc  
228 Byers Road  
Miamisburg, Ohio 45342  
937.847.2313

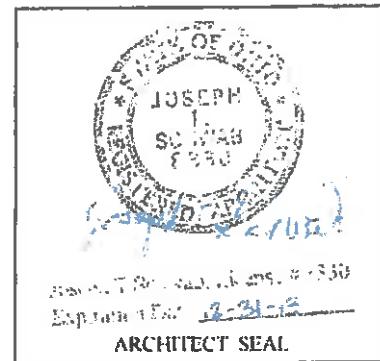
**VOLUME 1A**

Division 00

Bidding and Contracting Requirements

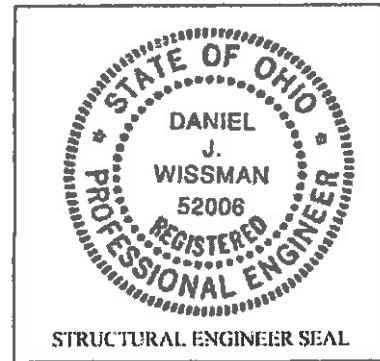


City of Huber Heights, Ohio  
6131 Taylorsville Road  
Huber Heights, Ohio 45424  
937.233.1423



## THE MUSIC CENTER at the HEIGHTS

6800 Executive Boulevard  
Huber Heights, Ohio 45424



October 1, 2013

### Issued For Building Permit & Construction Set

#### ARCHITECT

GBBN Architects  
332 East Eighth Street  
Cincinnati, Ohio 45202  
502.583.0700

#### PLANNING/LANDSCAPE

MKSK  
462 S Ludlow Alley  
Columbus, Ohio 43215  
614.621.2796

#### STRUCTURAL ENGINEER

Schaefer  
10411 Medallion Drive, Suite 121  
Cincinnati, Ohio 45241  
513.542.3300

#### MEP

KLH Engineers, P.S.C.  
1538 Alexandria Pike, Suite 11  
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859.442.8050

#### CIVIL ENGINEER

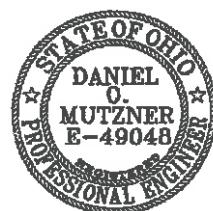
Norfleet, Brown & Petkewicz, Inc  
228 Byers Road  
Miamisburg, Ohio 45342  
937.847.2313



LANDSCAPE ARCHITECT SEAL.

#### VOLUME 1

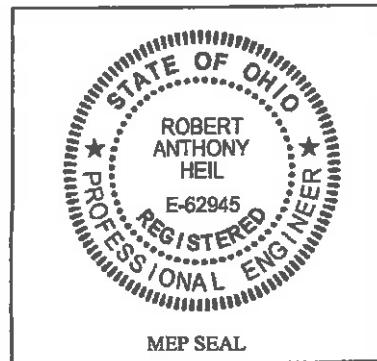
Division 00	Bidding and Contracting Requirements
Division 01	General Requirements
Division 03 – 13	Facility Construction
Division 31 – 32	Site and Infrastructure



CIVIL ENGINEER SEAL.



**City of Huber Heights, Ohio**  
6131 Taylorsville Road  
Huber Heights, Ohio 45424  
937.233.1423



## **THE MUSIC CENTER at the HEIGHTS**

6800 Executive Boulevard  
Huber Heights, Ohio 45424

**October 1, 2013**

**Issued For**  
**Building Permit & Construction Set**

**ARCHITECT**

GBBN Architects  
332 East Eighth Street  
Cincinnati, Ohio 45202  
502.583.0700

**PLANNING/LANDSCAPE**

MKSK  
462 S Ludlow Alley  
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10411 Medallion Drive, Suite 121  
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859.442.8050

**CIVIL ENGINEER**

Norfleet, Brown & Petkewicz, Inc  
228 Byers Road  
Miamisburg, Ohio 45342  
937.847.2313

**VOLUME 2**

**Division**  
**22, 23, 26, 28**  
**Plumbing, HVAC, Electrical, Fire Protection**

**Exhibit C**

**[Schedule of Values Follows]**

## Music Center at the Heights

**Exhibit D**

**[Bond Form Follows]**

# AIA® Document A312™ – 2010

## Performance Bond

Travelers Bond No. 105928559

**CONTRACTOR:**

*(Name, legal status and address)*

Messer Construction Co.  
4801 Hempstead Station Drive  
Dayton, OH 45429

Federal Bond No. 82332586

**SURETY:**

*(Name, legal status and principal place of business)*

Travelers Casualty and Surety  
Company of America  
Construction Services, Travelers Bond  
& Financial Products  
One Tower Square  
Hartford, CT 06183  
AND  
Federal Insurance Company  
15 Mountain View Road  
Warren, NJ 07059

**OWNER:**

*(Name, legal status and address)*

City of Huber Heights, Ohio  
6131 Taylorsville Road  
Huber Heights, OH 45424

**CONSTRUCTION CONTRACT**

Date: October 14, 2013

Amount: \$ 11,795,500.00 Eleven Million Seven Hundred Ninety Five Thousand Five Hundred and 00/100 Dollars

Description:

*(Name and location)*

The Music Center at the Heights  
6800 Executive Boulevard  
Huber Heights, OH 45424

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

October 14, 2013

Amount: \$ 11,795,500.00 Eleven Million Seven Hundred Ninety Five Thousand Five Hundred and 00/100 Dollars

Modifications to this Bond:

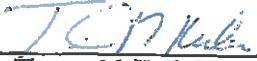
None

See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

Signature:



Name and

Thomas M. Keckes

Title:

President & CEO

**SURETY**

Company: *(Corporate Seal)*

Signature:



Name and

Robert E. Gigax, Jr.

Title:

Attorney-In-Fact

*(Any additional signatures appear on the last page of this Performance Bond.)*

**(FOR INFORMATION ONLY — Name, address and telephone)**

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

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User Notes:

(1246706036)

*(Architect, Engineer or other party:)*

Arthur J. Gallagher Risk Management  
Services, Inc.  
1 West 4<sup>th</sup> Street, Suite 1300  
Cincinnati, OH 45202  
513-977-3100

Init.

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User Notes:

(1246706036)

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

**§ 2** If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

**§ 4** Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

**§ 5** When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

**§ 5.1** Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

**§ 5.2** Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

**§ 5.3** Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

**§ 5.4** Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

**§ 6** If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

**§ 7** If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

**§ 8** If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

**§ 9** The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

**§ 10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 11** Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

**§ 13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### **§ 14 Definitions**

**§ 14.1 Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**§ 14.2 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

**§ 14.3 Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

**§ 14.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 14.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 15** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 16** Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

*(Corporate Seal)*

**SURETY**

Company:

*(Corporate Seal)*

Signature:

Name and Title:

Address:

Signature:

Name and Title:

Address:

Init.

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User Notes:

5

(1246708036)

# AIA® Document A312™ – 2010

## Payment Bond

Travelers Bond No. 105928559

**CONTRACTOR:**

*(Name, legal status and address)*

Messer Construction Co.  
4801 Hempstead Station Drive  
Dayton, OH 45429

Federal Bond No. 82332586

**SURETY:**

*(Name, legal status and principal place of business)*

Travelers Casualty and Surety  
Company of America  
Construction Services, Travelers Bond  
& Financial Products  
One Tower Square  
Hartford, CT 06183  
AND  
Federal Insurance Company  
15 Mountain View Road  
Warren, NJ 07059

**OWNER:**

*(Name, legal status and address)*

City of Huber Heights, Ohio  
6131 Taylorsville Road  
Huber Heights, OH 45424

**CONSTRUCTION CONTRACT**

Date: October 14, 2013

Amount: \$ 11,795,500.00 Eleven Million Seven Hundred Ninety Five Thousand Five Hundred and 00/100 Dollars

Description:

*(Name and location)*

The Music Center at the Heights  
6800 Executive Boulevard  
Huber Heights, OH 45424

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

October 14, 2013

Amount: \$ 11,795,500.00 Eleven Million Seven Hundred Ninety Five Thousand Five Hundred and 00/100 Dollars

Modifications to this Bond:

None

See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

Signature:

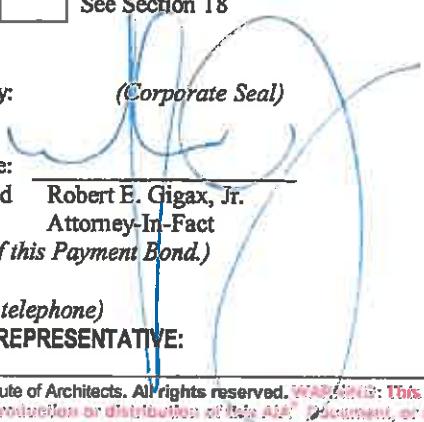


Name and Title: Thomas M. Keckeis  
President & CEO

*(Any additional signatures appear on the last page of this Payment Bond.)*

**SURETY**

Company: *(Corporate Seal)*



Signature:

Name and Title: Robert E. Gigax, Jr.  
Attorney-In-Fact

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

Init.

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User Notes:

(1718053679)

*(Architect, Engineer or other party:)*

Arthur J. Gallagher Risk Management  
Services, Inc.  
1 West 4<sup>th</sup> Street, Suite 1300  
Cincinnati, OH 45202  
513-977-3100

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User Notes:

(1718053879)

**§ 1** The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

**§ 2** If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

**§ 3** If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

**§ 4** When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

**§ 5** The Surety's obligations to a Claimant under this Bond shall arise after the following:

**§ 5.1** Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

**§ 5.2** Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

**§ 6** If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

**§ 7** When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

**§ 7.1** Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

**§ 7.2** Pay or arrange for payment of any undisputed amounts.

**§ 7.3** The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

**§ 8** The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**§ 9** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**§ 10** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

**§ 11** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**§ 12** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**§ 13** Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

**§ 14** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

**§ 15** Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## **§ 16 Definitions**

**§ 16.1 Claim.** A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

**§ 16.2 Claimant.** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

**§ 16.3 Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

**§ 16.4 Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

**§ 16.5 Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 17** If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

**§ 18** Modifications to this bond are as follows:

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company:

(Corporate Seal)

**SURETY**

Company:

(Corporate Seal)

Signature:

Name and Title:

Address:

Signature:

Name and Title:

Address:



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attn: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Christina A. Arvizu, Thomas R. Dietz, Robert E. Gigax Jr., Patricia L. Hehman, Shelly M. Martin and Phyllis T. Neal of Cincinnati, Ohio

each as their true and lawful Attorney- in- Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 15th day of August, 2013.

David J. Edwards, Assistant Secretary

STATE OF NEW JERSEY

ss.

County of Somerset

David B. Norris, Jr., Vice President

On this 15th day of August, 2013 before me, a Notary Public of New Jersey, personally came David J. Edwards, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said David J. Edwards, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By- Laws of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By- Laws and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR  
NOTARY PUBLIC OF NEW JERSEY  
No 2316685  
Commission Expires July 16, 2014

Notary Public

#### CERTIFICATION

Extract from the By- Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys- in- Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, David J. Edwards, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By- Laws of the Companies is true and correct;
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, Puerto Rico, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct, and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 14th day of October, 2013.



David J. Edwards, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656  
e-mail: [surety@chubb.com](mailto:surety@chubb.com)

TRAVELERS

## POWER OF ATTORNEY

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company

Attorney-In Fact No. 223241

Certificate No. 005371741

**KNOW ALL MEN BY THESE PRESENTS:** That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Thomas R. Dietz, Robert E. Gigax Jr., Patricia L. Hehman, Phyllis T. Neal, Shelly M. Martin, and Christina A. Arvizu

of the City of Cincinnati, State of Ohio, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 15th day of February, 2013.

Farmington Casualty Company  
 Fidelity and Guaranty Insurance Company  
 Fidelity and Guaranty Insurance Underwriters, Inc.  
 St. Paul Fire and Marine Insurance Company  
 St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company  
 Travelers Casualty and Surety Company  
 Travelers Casualty and Surety Company of America  
 United States Fidelity and Guaranty Company



State of Connecticut  
 City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the 15th day of February, 2013, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.  
 My Commission expires the 30th day of June, 2016.



Marie C. Tetreault, Notary Public

Office of Financial  
Regulation Services  
50 West Town Street  
Third Floor- Suite 300  
Columbus, Ohio 43215  
(614) 644-2658  
Fax (614) 644-3256  
[www.ohiourinsurance.gov](http://www.ohiourinsurance.gov)

## Ohio Department of Insurance

John R. Kasich - Governor  
Mary Taylor - Lt. Governor/Director



## Certificate of Compliance

Issued	03/22/13
Effective	04/02/13
Expires	04/01/14

I, Mary Taylor, hereby certify that I am the Lt. Governor/Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

### TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

#### Section 3929.01 (A)

Accident & Health	Multiple Peril - Homeowners
Aircraft	Ocean Marine
Allied Lines	Other Liability
Boiler & Machinery	Private Passenger Auto - No Fault
Burglary & Theft	Private Passenger Auto-Liability Other
Commercial Auto - Liability Other	Private Passenger-Phys Damage
Commercial Auto - No Fault	Surety
Commercial Auto - Phys. Damage	Workers Compensation
Credit	
Earthquake	
Fidelity	
Financial Guaranty	
Fire	
Glass	
Inland Marine	
Medical Malpractice	
Multiple Peril - Commercial	
Multiple Peril - Farmowners	

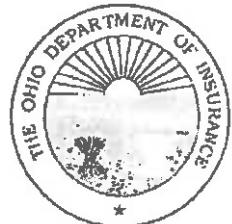
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA certified in its annual statement to this Department as of December 31, 2012 that it has admitted assets in the amount of \$4,339,558,778, liabilities in the amount of \$2,559,106,957, and surplus of at least \$1,780,451,821.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

A handwritten signature of Mary Taylor.

Mary Taylor

Lt. Governor/Director



Office of Financial  
Regulation Services  
50 West Town Street  
Third Floor- Suite 300  
Columbus, Ohio 43215  
(614) 644-2858  
Fax (614) 644-3256  
[www.ohioinsurance.gov](http://www.ohioinsurance.gov)

**Ohio Department of Insurance**

John R. Kasich - Governor  
Mary Taylor - Lt Governor/Director



**Certificate of Compliance**

Issued	03/27/13
Effective	04/02/13
Expires	04/01/14

I, Mary Taylor, hereby certify that I am the Lt. Governor/Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

**FEDERAL INSURANCE COMPANY**

is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

**Section 3929.01 (A)**

Accident & Health  
Aircraft  
Allied Lines  
Boiler & Machinery  
Burglary & Theft  
Commercial Auto - Liability Other  
Commercial Auto - No Fault  
Commercial Auto - Phys. Damage  
Credit  
Earthquake  
Fidelity  
Fire  
Glass  
Group Accident & Health  
Inland Marine  
Multiple Peril - Commercial  
Multiple Peril - Homeowners  
Ocean Marine

**Other Liability**

Private Passenger Auto - No Fault  
Private Passenger Auto-Liability Other  
Private Passenger-Phys. Damage  
Surety  
Workers Compensation

**FEDERAL INSURANCE COMPANY** certified in its annual statement to this Department as of December 31, 2012 that it has admitted assets in the amount of \$31,246,667,594, liabilities in the amount of \$17,405,651,560, and surplus of at least \$13,841,016,034.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

*Mary Taylor*

Mary Taylor

Lt. Governor/Director



## TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF DECEMBER 31, 2012

CAPITAL STOCK \$ 6,480,000

ASSETS	LiABILITIES & SURPLUS
CASH AND INVESTED CASH	
BONDS	\$ 763,402,262
INVESTMENT INCOME DUE AND ACCRUED	901,018,710
OTHER INVESTED ASSETS	
PREMIUM BALANCES	1,446,021
NET DEFERRED TAX ASSET	534,370,060
REINSURANCE RECOVERABLE	19,261,777
SECURITIES LENDING REINVESTED COLLATERAL ASSETS	66,762,164
RECEIVABLES FROM PARENT, SUBSIDIARIES AND AFFILIATES	25,388,907
UNDISTRIBUTED PAYMENTS	84,449,544
OTHER ASSETS	30,575,573
	19,270,931
	79,084,606
	3,183,164
	6,730,121
	5,314,326
	726,826
	7,789,157
	70,403,744
	526,939
	282,062
	\$ 2,559,105,957
	CAPITAL STOCK
	\$ 6,480,000
	PAID IN SURPLUS
	423,823,787
	OTHER SURPLUS
	1,340,169,401
	\$ 1,783,451,821
TOTAL ASSETS	
	\$ 4,339,558,778
	TOTAL LIABILITIES & SURPLUS
	\$ 4,339,558,778

STATE OF CONNECTICUT ;  
 COUNTY OF HARTFORD 155  
 CITY OF HARTFORD

MICHAEL J. DOODY, BEING DULY SWEORN, SAYS THAT HE IS SECOND VICE PRESIDENT, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 31ST DAY OF DECEMBER, 2012.

*Michael J. Doody*  
 SECOND VICE PRESIDENT

SUBSCRIBED AND SWEORN TO BEFORE ME THIS  
 20TH DAY OF MARCH, 2013

NOTARY PUBLIC

SUSAN M. WEISSLEDER  
*Notary Public*  
*My Commission Expires November 30, 2017*

# FEDERAL INSURANCE COMPANY

## STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2012

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS
Cash and Short Term Investments.....	\$ 402,323	Outstanding Losses and Loss Expenses .... \$ 12,627,388
United States Government, State and Municipal Bonds .....	9,901,519	Unearned Premiums..... 3,416,163
Other Bonds.....	4,595,536	Ceded Reinsurance Premiums Payable..... 364,197
Stocks.....	811,166	Provision for Reinsurance .....
Other Invested Assets.....	1,681,828	62,250 Other Liabilities..... 935,654
 TOTAL INVESTMENTS .....	 17,392,372	  TOTAL LIABILITIES .....
 Investments in Affiliates:		 17,405,652
Chubb Investment Holdings, Inc.....	3,352,969	Capital Stock..... 20,980
Pacific Indemnity Company.....	2,496,198	Paid-In Surplus..... 3,106,809
Chubb Insurance Investment Holdings Ltd.....	1,228,075	Unassigned Funds .....
Executive Risk Indemnity Inc.....	1,100,637	10,713,227
CC Canada Holdings Ltd.....	758,892	 SURPLUS TO POLICYHOLDERS .....
Chubb Insurance Company of Australia Limited	517,597	13,841,016
Great Northern Insurance Company .....	438,592	 TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS..... \$ 31,246,668
Chubb European Investment Holdings SLP ..	265,490	
Vigilant Insurance Company.....	246,766	
Other Affiliates .....	429,458	
Premiums Receivable .....	1,494,693	
Other Assets .....	1,524,929	
 TOTAL ADMITTED ASSETS .....	 \$ 31,246,668	

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.  
Investments with a carrying value of \$430,688,714 are deposited with government authorities as required by law.

State, County & City of New York, — ss:

Yvonne Baker, Assistant Secretary

of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2012 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2012.

Subscribed and sworn to before me  
this September 15, 2013.

*Jeanette Shipsey*

Notary Public

JEANETTE SHIPSEY  
Notary Public, State of New York  
No. 02SH5074142  
Qualified in Nassau County  
Commission Expires March 10, 2015

*Yvonne Baker*

Assistant Secretary

### Schedule 3.6

#### Necessary Permits

<u>Permit Type</u>	<u>Party Responsible for Obtaining</u>
Foundation Permit Music Center	City
Building Permit Music Center	City
Building Permit Concession Stand Structure East	City
Building Permit Concession Stand Structure West	City
Building Permit Concessions Stand Upfit East	City
Building Permit Concession Stand Upfit West	City
ALL OTHER PERMITS	Contractor

## Schedule 3.13

### Insurance Requirements

#### **Workers' Compensation Insurance - In accordance with Ohio law**

**\$500,000 Per Occurrence - Employers Liability Insurance (Ohio Stop Gap)**

**Commercial General Liability Insurance (excludes Professional Liability) covering liability arising out of the performance of this Agreement with limits of:**

**\$1,000,000 Per Occurrence**

**\$2,000,000 General Aggregate**

**\$2,000,000 Completed Operations Aggregate**

**\$2,000,000 Excess/Umbrella Coverage**

This policy shall name the City, and Project Manager as additional insureds with primary/noncontributory coverage for liability arising out of Contractor's operations. Contractor shall keep this policy in place for no less than five (5) years after substantial completion of the Work.

#### **Automobile Liability Insurance -**

**\$ 1,000,000 Combined Single Limit**

**\$2,000,000 Excess/Umbrella Coverage**

This policy shall name the City, and Project Manager as additional insureds with primary/noncontributory coverage for liability arising out of Contractor's operation and use of motor vehicles in/on/around Project Site.

Notwithstanding the foregoing, if the City or the City Codified Ordinances require letters of credit, surety bonds, additional insurance or greater liability limits, Contractor agrees to obtain and maintain such letters of credit, surety bonds, additional insurance or greater liability limits.

Any letter of credit, surety bond or insurance must be provided by a bank or insurance company acceptable to the City and that is authorized to do business in this State. Contractor agrees to provide to the City all such letters of credit, surety bonds, or certificates of insurance prior to Contractor's commencement of the services. Contractor shall obtain an endorsement to its liability insurance policies to cover its obligations under Section 11.1.