

## **CONSTRUCTION AGREEMENT**

**THIS CONSTRUCTION AGREEMENT** (the "Agreement") is entered into this 25<sup>th</sup> day of July, 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 Charles F. Jergens Construction, Inc., (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 as required by all applicable federal, state, county, or local laws, codes, ordinances, regulations, and rules (the "Work").

### **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. Contractor shall only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes. 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 the insurance coverage required under this Agreement; 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 prevent 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, sue 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, Contractor will pay to the City liquidated damages in the amount of: \_\_\_\_\_ (if blank, the amount is agreed to be five hundred dollars (\$500)) 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.

## **ARTICLE V**

### **Stipulated Sum Contract Price**

5.1. The City shall pay to Contractor a total of **\$2,213,621.66** 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.

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 for which the request for payment is made.

## **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:**

Charles F. Jergens Construction, Inc.  
1280 Brandt Pike  
Dayton, Ohio 45404  
Attn: Phil Jergens

**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  
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, or in connection therewith, or appertaining thereto, 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.

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.

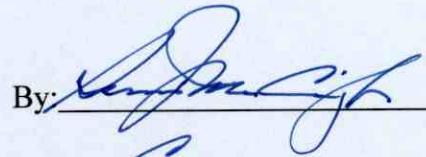
(c) If the City terminates this Agreement, Contractor shall (1) immediately discontinue all Work affected (unless the notice directs otherwise); (2) deliver and assign to the City copies of all data, drawings, specifications, reports, estimates, summaries, correspondence, logs and all other information 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.

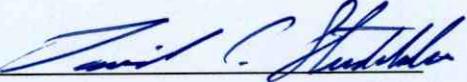
**SIGNATURE PAGE TO FOLLOW.**

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

**CHARLES F. JERGENS  
CONSTRUCTION, INC.**

By:   
Title: Contractor  
Date: 8/7/13

**CITY OF HUBER HEIGHTS, OHIO**

By:   
Title: City Mgr  
Date: 8-13-13

## **Exhibit A**

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

Scope of work includes all labor, equipment, materials, etc. necessary to complete site work, consisting of stripping, rough grading, export, finish grading, utilities, gravel base, concrete and asphalt, as defined throughout this document and on drawings and specifications prepared by Norfleet, Brown & Petkewicz Inc. as further described in Exhibit B.

## **Exhibit B**

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

Plans with specifications for MUSIC CENTER AT THE HEIGHTS EARLY SITE PACKAGE CONTRACT A as prepared by Norfleet, brown & Petkewicz Inc. NBP Jon No. 13-7074, Revision dates July 22, 2013, (REV 1) and July 26, 2013 (REV 2), noted as RELEASED FOR CONSTRUCTION and containing the following sheets:

Cover Sheet dated July 22, 2013

Grading Plan West Site dated July 22, 2013

Grading Plan Central Site dated July 22, 2013

Grading Plan East Site dated July 22, 2013

Utility Plan West Site – Pavement Geometry and Utilities dated July 22, 2013

Utility Plan Central Site – Pavement Geometry and Utilities dated July 22, 2013

Utility Plan East Site – Pavement Geometry and Utilities dated July 22, 2013

Profiles – Waterline Profiles & West Storm Profiles dated July 22, 2013

Profiles – South & East Storm Profiles dated July 22, 2013

Details – Intersection Details & Misc. Details dated July 22, 2013

Storm Water Pollution Prevention Plan – Notes & Data dated July 1, 2013

Storm Water Pollution Prevention Plan – Details dated July 1, 2013

## **Exhibit C**

### **[Schedule of Values and Construction Schedule Follow]**

Heights Music Center

| Code                | Desc                                    | Quan        | Units | Price       | Total        |
|---------------------|-----------------------------------------|-------------|-------|-------------|--------------|
| <b>Earthwork</b>    |                                         |             |       |             |              |
| 20                  | Mobilization                            | 1.000       | LS    | \$4,375.90  | \$4,375.90   |
| 30                  | Traffic Control                         | 1.000       | LS    | \$2,850.06  | \$2,850.06   |
| 40                  | Clearing                                | 1.000       | LS    | \$2,323.97  | \$2,323.97   |
| 50                  | Layout                                  | 1.000       | LS    | \$14,700.00 | \$14,700.00  |
| 60                  | Demo Concrete Curb                      | 597.000     | LF    | \$4.58      | \$2,734.26   |
| 70                  | Strip Topsoil                           | 29,239.000  | CY    | \$1.75      | \$51,168.25  |
| 80                  | Excavation                              | 54,713.000  | CY    | \$1.89      | \$103,407.57 |
| 90                  | Embankment                              | 29,671.000  | CY    | \$0.99      | \$29,374.29  |
| 100                 | Rough Grade Site                        | 122,623.000 | SY    | \$0.38      | \$46,596.74  |
| 110                 | Subgrade Prep                           | 105,986.000 | SY    | \$0.54      | \$57,232.44  |
| 120                 | Haul off Excess Excavated               | 25,042.000  | CY    | \$2.50      | \$62,605.00  |
| 130                 | Haul off Excess Topsoil                 | 23,811.000  | CY    | \$0.50      | \$11,905.50  |
| 140                 | Install 304                             | 21,246.000  | TN    | \$13.11     | \$278,535.06 |
| 150                 | Place Topsoil                           | 5,430.000   | CY    | \$5.17      | \$28,073.10  |
| 160                 | Fine Grade                              | 105,986.000 | SY    | \$1.08      | \$114,464.88 |
| 170                 | Fine grade for Barrier Curb             | 3,809.000   | LF    | \$6.28      | \$23,920.52  |
| 180                 | Fine grade for Curb & Gutter            | 220.000     | LF    | \$6.28      | \$1,381.60   |
| 190                 | Inlet Protection                        | 28.000      | EA    | \$181.41    | \$5,079.48   |
| 200                 | Silt Fence                              | 2,500.000   | LF    | \$2.77      | \$6,925.00   |
| 210                 | Construction Entrance                   | 115.000     | TN    | \$13.76     | \$1,582.40   |
| 220                 | Temporary Seeding                       | 45,000.000  | SY    | \$1.02      | \$45,900.00  |
| 230                 | Storm Basin Outlet Control Structure    | 1.000       | EA    | \$1,634.42  | \$1,634.42   |
| <b>\$896,770.44</b> |                                         |             |       |             |              |
| <b>Earthwork</b>    |                                         |             |       |             |              |
| <b>Storm Sewer</b>  |                                         |             |       |             |              |
| 260                 | 12" RCP CL-IV 0-6' W/TRBF               | 551.000     | LF    | \$26.05     | \$14,353.55  |
| 270                 | 12" RCP CL-IV 0-6' W/GRBF               | 589.000     | LF    | \$33.89     | \$19,961.21  |
| 280                 | 15" RCP CL-IV 4-6' W/GRBF               | 381.000     | LF    | \$34.60     | \$13,182.60  |
| 290                 | 18" RCP CL-IV 4-6' W/GRBF               | 475.000     | LF    | \$40.24     | \$19,114.00  |
| 300                 | 18" RCP CL-IV 6-8' W/GRBF               | 146.000     | LF    | \$47.81     | \$6,980.26   |
| 310                 | 24" RCP CL-IV 4-6 W/GRBF                | 193.000     | LF    | \$51.08     | \$9,858.44   |
| 320                 | 24" RCP CL-IV 6-8' W/GRBF               | 310.000     | LF    | \$58.06     | \$17,998.60  |
| 330                 | 30" RCP CL-IV 6-8 W/GRBF                | 131.000     | LF    | \$75.84     | \$9,935.04   |
| 340                 | 30" RCP CL-IV 8-10 W/GRBF               | 220.000     | LF    | \$90.27     | \$19,859.40  |
| 350                 | 36" RCP CL-IV 6-8' W/TRBF               | 215.000     | LF    | \$90.07     | \$19,365.05  |
| 360                 | 36" RCP CL-IV 8-10 W/TRBF               | 201.000     | LF    | \$93.76     | \$18,845.76  |
| 370                 | 36" RCP CL-IV 10-12 W/TRBF              | 88.000      | LF    | \$121.25    | \$10,670.00  |
| 380                 | Connect to Existing                     | 4.000       | EA    | \$1,186.18  | \$4,744.72   |
| 390                 | Adjust MH to Grade                      | 1.000       | EA    | \$1,366.74  | \$1,366.74   |
| 400                 | 2-2B Catch Basin                        | 13.000      | EA    | \$887.79    | \$11,541.27  |
| 410                 | 2-3 Catch Basin                         | 9.000       | EA    | \$1,308.09  | \$11,772.81  |
| 420                 | Type 3 Catch Basin                      | 1.000       | EA    | \$2,931.97  | \$2,931.97   |
| 430                 | Type 3A Catch Basin                     | 4.000       | EA    | \$2,235.02  | \$8,940.08   |
| 440                 | Type B Catch Basin                      | 1.000       | EA    | \$3,480.24  | \$3,480.24   |
| 450                 | Storm Manholes Type A                   | 4.000       | EA    | \$2,758.77  | \$11,035.08  |
| 455                 | Storm Manhole Rebuild                   | 1.000       | EA    | \$2,759.86  | \$2,759.86   |
| 460                 | Head Walls Type 4B 12" dia              | 2.000       | EA    | \$828.52    | \$1,657.04   |
| 470                 | Head Walls Type 4B 18" dia              | 3.000       | EA    | \$871.35    | \$2,614.05   |
| 480                 | Head Walls Type 4B 24" dia              | 1.000       | EA    | \$935.61    | \$935.61     |
| 490                 | Head Walls Type 4B 30" dia              | 1.000       | EA    | \$1,037.33  | \$1,037.33   |
| 500                 | Head Walls Type 4B 36" dia              | 1.000       | EA    | \$1,165.83  | \$1,165.83   |
| 510                 | 6" Perforated Underdrain for Bio drains | 430.000     | LF    | \$12.36     | \$5,314.80   |
| 520                 | Rip Rap                                 | 20.000      | TN    | \$43.36     | \$867.20     |
| <b>\$252,288.54</b> |                                         |             |       |             |              |
| <b>Storm Sewer</b>  |                                         |             |       |             |              |

**Waterline**

|     |                     |           |    |            |             |
|-----|---------------------|-----------|----|------------|-------------|
| 550 | 8" DI Water Main    | 1,775.000 | LF | \$50.82    | \$90,205.50 |
| 560 | 6" DI Fire Line     | 100.000   | LF | \$67.09    | \$6,709.00  |
| 570 | Remove Fire Hydrant | 2.000     | EA | \$570.87   | \$1,141.74  |
| 580 | Fire Hydrant        | 7.000     | EA | \$2,956.26 | \$20,693.82 |
| 590 | 8" Gate Valve & Box | 3.000     | EA | \$1,069.46 | \$3,208.38  |
| 600 | 6" Gate Valve & Box | 8.000     | EA | \$680.36   | \$5,442.88  |

**\$127,401.32****Water****Sanitary**

|     |                   |       |    |            |                   |
|-----|-------------------|-------|----|------------|-------------------|
| 630 | Sanitary Manholes | 2.000 | EA | \$4,943.64 | \$9,887.28        |
|     |                   |       |    |            | <b>\$9,887.28</b> |

**Sanitary****Asphalt and concrete**

|     |                                         |            |    |            |              |
|-----|-----------------------------------------|------------|----|------------|--------------|
| 660 | Light Duty Asphalt Paving               | 50,475.000 | SY | \$10.31    | \$520,397.25 |
| 670 | Heavy Duty Asphalt Paving               | 13,750.000 | SY | \$20.23    | \$278,162.50 |
| 680 | Turn Lane                               | 364.000    | SY | \$14.36    | \$5,227.04   |
| 690 | Parking Blocks                          | 530.000    | EA | \$55.15    | \$29,229.50  |
| 700 | Striping 1 coat                         | 1.000      | LS | \$9,015.32 | \$9,015.32   |
| 710 | 6" Reinf, Conc. Pavement                | 575.000    | SY | \$48.19    | \$27,709.25  |
| 720 | 6 x 18 Non Reinf Conc. Barrier Curb     | 3,809.000  | LF | \$11.78    | \$44,870.02  |
| 730 | 21" Curb & Gutter                       | 220.000    | LF | \$23.56    | \$5,183.20   |
| 740 | 4" Non Reinf. Conc. Walk @ Bioretention | 800.000    | SF | \$5.35     | \$4,280.00   |
| 745 | Bollards                                | 8.000      | EA | \$400.00   | \$3,200.00   |

**\$927,274.08****Asphalt and concrete****JOB TOTAL >>>>****\$2,213,621.66**

**The Heights Music Center Huber Heights**  
**Charles F. Jergens Construction, Inc.**

|     | RCP     | HDPE    | Footage | RCP         | HDPE        |
|-----|---------|---------|---------|-------------|-------------|
| 12" | \$10.35 | \$4.68  | 931     | \$9,635.85  | \$4,357.08  |
| 15" | \$13.56 | \$5.94  | 381     | \$5,166.36  | \$2,263.14  |
| 18" | \$16.80 | \$8.82  | 621     | \$10,432.80 | \$5,477.22  |
| 24" | \$26.48 | \$14.61 | 503     | \$13,319.44 | \$7,348.83  |
|     |         |         |         | \$38,554.45 | \$19,446.27 |

| <b>Light Duty</b>  | <b>Area</b> | <b>Units</b> | <b>Unit price</b> | <b>Total</b> |
|--------------------|-------------|--------------|-------------------|--------------|
| 408 Prime          |             | 50475 SY     | \$0.96            | \$48,456.00  |
| 448 Type 2 @1.5"   |             | 50475 SY     | \$4.62            | \$233,194.50 |
| 407 tack           |             | 50475 SY     | \$0.23            | \$11,609.25  |
| 448 type 1 @ 1.25" |             | 50475 SY     | \$4.50            | \$227,137.50 |
|                    |             |              | \$10.31           | \$520,397.25 |

| <b>Heavy Duty</b> | <b>Area</b> | <b>Units</b> | <b>Unit price</b> | <b>Total</b> |
|-------------------|-------------|--------------|-------------------|--------------|
| 408 Prime         |             | 13750 sy     | 0.96              | \$13,200.00  |
| 301 @3"           |             | 13750 sy     | 9.04              | \$124,300.00 |
| 448 Type 2        |             | 13750 sy     | 4.75              | \$65,312.50  |
| 407 tack          |             | 13750 sy     | 0.23              | \$3,162.50   |
| 448 type 1        |             | 13750 sy     | 5.25              | \$72,187.50  |
|                   |             |              | 20.23             | \$278,162.50 |

| <b>Turn Lane</b> | <b>Area</b> | <b>Units</b> | <b>Unit price</b> | <b>Total</b> |
|------------------|-------------|--------------|-------------------|--------------|
| 408 Prime        |             | 364 sy       | 0.96              | \$349.44     |
| 301 @3"          |             | 364 sy       | 7.58              | \$2,759.12   |
| 407 tack         |             | 364 sy       | 0.23              | \$83.72      |
| 448 type 1       |             | 364 sy       | 5.59              | \$2,034.76   |
|                  |             |              | 14.36             | \$5,227.04   |

|    | A              | B      | C      | D        | E       | F        | G        |
|----|----------------|--------|--------|----------|---------|----------|----------|
| 1  |                |        |        |          |         |          |          |
| 2  |                |        |        |          |         |          |          |
| 3  |                |        |        |          |         |          |          |
| 4  |                |        |        |          |         |          |          |
| 5  |                |        |        |          |         |          |          |
| 6  |                |        |        |          |         |          |          |
| 7  |                |        |        |          |         |          |          |
| 8  |                | July   | August | Sepember | October | November | December |
| 9  | Mobilization   | 24-Jul |        |          |         |          |          |
| 10 | Submittals     | 29-Jul |        |          |         |          |          |
| 11 | Strip Topsoil  | 30-Jul |        |          |         |          |          |
| 12 | Excavation     |        | 14-Aug | 30-Sep   |         |          |          |
| 13 | Embankment     |        | 14-Aug |          | 4-Oct   |          |          |
| 14 | rough grade    |        |        | 16-Sep   | 1-Oct   |          |          |
| 15 | Install 304    |        |        |          | 1-Oct   |          |          |
| 16 | Fine Grade     |        |        |          | 15-Oct  |          |          |
| 17 | Storm Sewer    |        | 19-Aug |          |         |          |          |
| 18 | Water          |        |        | 9-Sep    |         |          |          |
| 19 | Concrete       |        |        |          | 21-Oct  |          |          |
| 20 | Asphalt Paving |        |        |          |         | 1-Nov    |          |
| 21 |                |        |        |          |         |          |          |
| 22 |                |        |        |          |         |          |          |
| 23 |                |        |        |          |         |          |          |
| 24 |                |        |        |          |         |          |          |
| 25 |                |        |        |          |         |          |          |
| 26 |                |        |        |          |         |          |          |
| 27 |                |        |        |          |         |          |          |
| 28 |                |        |        |          |         |          |          |
| 29 |                |        |        |          |         |          |          |
| 30 |                |        |        |          |         |          |          |
| 31 |                |        |        |          |         |          |          |
| 32 |                |        |        |          |         |          |          |
| 33 |                |        |        |          |         |          |          |
| 34 |                |        |        |          |         |          |          |
| 35 |                |        |        |          |         |          |          |
| 36 |                |        |        |          |         |          |          |
| 37 |                |        |        |          |         |          |          |
| 38 |                |        |        |          |         |          |          |
| 39 |                |        |        |          |         |          |          |
| 40 |                |        |        |          |         |          |          |
| 41 |                |        |        |          |         |          |          |
| 42 |                |        |        |          |         |          |          |
| 43 |                |        |        |          |         |          |          |
| 44 |                |        |        |          |         |          |          |
| 45 |                |        |        |          |         |          |          |

**Exhibit D**

**[Bond Form Follows]**

## CONTRACT-PERFORMANCE BOND

KNOW BY ALL MEN THESE PRESENTS, that we, the undersigned  
 Charles F. Jergens Construction, Inc. \_\_\_\_\_ as principal  
 CONTRACTOR

and Merchants Bonding Company (Mutual) \_\_\_\_\_ as surety, a  
 corporation organized and existing under the laws of the State of  
 Iowa \_\_\_\_\_, are hereby held and firmly bound unto  
 City of Huber Heights \_\_\_\_\_, County of Montgomery \_\_\_\_\_, and/  
 State of Ohio, the Obligee, in the penal sum of Two Million, Two Hundred  
 Thirteen Thousand, Six Hundred Twenty-one and 66/100 \_\_\_\_\_ (\$ 2,213,621.66 )

in good and lawful money of the United States of America, for  
 payment of which, well and truly to be made, we hereby jointly and  
 severally bind ourselves, our heirs, executors, administrators,  
 successors and assigns by these presents.

THE CONDITIONS OF THESE OBLIGATIONS ARE SUCH, that whereas  
 above named Principal did, on the 25th day of July  
 20 13, enter into the Form of Contractor hereto attached with  
 City of Huber Heights \_\_\_\_\_, hereinafter called the  
 Owner, that Contract is made a part of this bond the same as is  
 fully set forth herein.

NOW THEREFORE, If the Principal shall well and faithfully do and  
 fully perform said Contract according to its terms, shall pay all  
 lawful claims of subcontractors, materialmen and laborers for labor  
 performed and materials furnished in carrying forward, performing  
 or completing said Contract, with this undertaking to be for the  
 benefit of all such subcontractors, materialmen and laborers having  
 a just claim as well as for the benefit of the Obligee herein, if  
 the Principal shall fully indemnify and save the Obligee harmless  
 from all costs and damage which the Obligee may suffer by reason of  
 the Principal's failure to perform the Contract and pay all such  
 lawful claims and shall fully reimburse and repay the Obligee all  
 outlay and expense which the Obligee may incur in making good any  
 such failure of the Principal, including all suits and actions of  
 every name and description brought against said Owner or any  
 officer of said City, for, or on account of any injury or damage to  
 person(s) or property arising from or growing out of the work in

Contract Performance Bond  
Page 2

said Contract specified to be done, or the doing of any of the work therein described; any and all suits expenses over and believe the expenses included in the Contract price, for royalties or infringements on patents that may be involved in the construction of the appliances contracted for, or any of the parts thereof, or in the use of said appliances or any of the parts thereof, or if said party of the second part shall defend, at its proper cost and expense, any and all suits, actions of every kind whatsoever that may be brought against the Owner by reason of the use of said appliances or any of the parts thereof; and all liens, charges, claims, demands, losses, costs and damages of every kind and whatsoever. Then this obligation shall be null and void; otherwise this obligation shall remain in full force and effect.

Further, said Surety, for value received, hereby stipulates and agrees that the parties to the foregoing Contract may from time to time, and as often as they see fit, make any additions to, omissions from, or modifications of the work, plans and specifications and the Surety herein stipulates and agrees that no change, extension of time, alteration, or specifications therefor shall in any wise affect the obligations of said Surety on its bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the specifications; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount for this obligation as herein stated.

WITNESS our signature on this 8th day of August  
20 13

Charles F. Jergens Construction, Inc. (Seal)

cc: JF (Seal)

Attest:

By \_\_\_\_\_  
Merchants Bonding  
Company (Mutual) (Seal)

Attest:

Glenn A. Lava

By Amanda L. Morris  
Amanda L. Morris, Attorney-in-Fact

Office of Financial  
Regulation Services  
50 West Town Street  
Third Floor- Suite 300  
Columbus, Ohio 43215  
(614) 644-2658  
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    | 03/25/13 |
| 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

#### **MERCHANTS BONDING COMPANY (MUTUAL)**

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

Section 3929.01 (A)

Fidelity

Other Liability

Surety

**MERCHANTS BONDING COMPANY (MUTUAL)** certified in its annual statement to this Department as of December 31, 2012 that it has admitted assets in the amount of \$119,784,546, liabilities in the amount of \$42,567,931, and surplus of at least \$77,216,615.

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

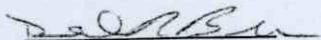


**MERCHANTS BONDING COMPANY (MUTUAL)**

**Statements of Admitted Assets, Liabilities, and Surplus - Statutory Basis**

|                                              | <u>Dec. 31, 2012</u>         |
|----------------------------------------------|------------------------------|
| <b>Admitted Assets</b>                       |                              |
| <b>Cash and Invested Assets</b>              |                              |
| Bonds                                        | \$ 73,330,780                |
| Common Stocks                                | 19,602,824                   |
| Real Estate                                  | 5,481,223                    |
| Cash and Short-Term Investments              | <u>8,971,813</u>             |
| Total Cash and Invested Assets               | <u>107,386,640</u>           |
| Investment Income Due and Accrued            | 465,573                      |
| Premiums in the Course of Collection         | 5,212,718                    |
| Reinsurance Recoverable from Reinsurers      | 379,407                      |
| Current Federal Income Taxes Recoverable     | 760,831                      |
| Net Deferred Tax Asset                       | 2,281,364                    |
| Electronic Data Processing Equipment         | 155,129                      |
| Receivable from Affiliate                    | 927,996                      |
| Non-Qualified Plan                           | <u>2,214,888</u>             |
| Total Admitted Assets                        | <u><u>\$ 119,784,546</u></u> |
| <b>Liabilities &amp; Surplus</b>             |                              |
| <b>Liabilities</b>                           |                              |
| Losses                                       | \$ 4,089,543                 |
| Reinsurance Payable on Paid Losses and LAE   | 33,427                       |
| Loss Adjustment Expenses                     | 9,124,288                    |
| Commissions Payable                          | 1,960,322                    |
| Other Expenses                               | 2,654,807                    |
| Taxes, Licenses, and Fees                    | 433,224                      |
| Unearned Premiums                            | 19,843,735                   |
| Dividends Declared to Policyholders          | 1,711,203                    |
| Reinsurance Payable to Reinsurers            | (951,660)                    |
| Amounts Withheld for Others                  | <u>3,669,042</u>             |
| Total Liabilities                            | <u>42,567,931</u>            |
| <b>Surplus</b>                               |                              |
| Total Liabilities and Policyholders' Surplus | <u><u>\$ 119,784,546</u></u> |

I, Don Blum, Chief Financial Officer and Treasurer of Merchants Bonding Company (Mutual), do hereby certify that the foregoing is a true and correct statement of the balance sheet of said Corporation as of December 31, 2012, to the best of my knowledge and belief.



Don Blum, CFO & Treasurer

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations duly organized under the laws of the State of Iowa (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint, individually,

Chris M. McAtee, Nicholas J. Bertke, David E. Griffin, Katherine J. Mahaffy,  
 Jennifer L. Salm, Amanda L. Morris, Nicole A. Laber, Constance Collins, Michelle A. Demmitt, Brenda G. Taylor,  
 Dawn A. Dunbar, Phyllis Jacobson, Lisa Dawson-Knight, Julianne E. Wahlenmaier

of Dayton and State of Ohio their true and lawful Attorney-in-Fact, with full power and authority hereby conferred in their name, place and stead, to sign, execute, acknowledge and deliver in their behalf as surely any and all bonds, undertakings, recognizances or other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

**FIVE MILLION (\$5,000,000.00) DOLLARS**

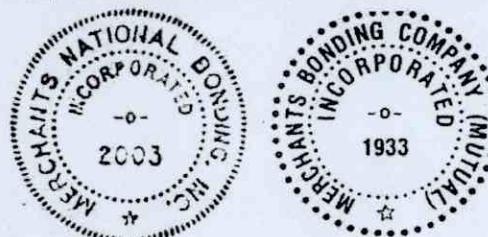
and to bind the Companies thereby as fully and to the same extent as if such bond or undertaking was signed by the duly authorized officers of the Companies, and all the acts of said Attorney-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This Power-of-Attorney is made and executed pursuant to and by authority of the following By-Laws adopted by the Board of Directors of the Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof.

The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 14th day of January, 2013.



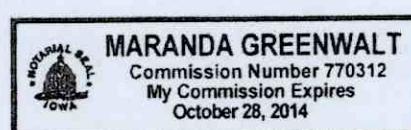
MERCHANTS BONDING COMPANY (MUTUAL)  
 MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
 President

STATE OF IOWA  
 COUNTY OF POLK ss.

On this 14th day of January, 2013, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument is the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at the City of Des Moines, Iowa, the day and year first above written.



*Miranda Greenwalt*

Notary Public, Polk County, Iowa

STATE OF IOWA  
 COUNTY OF POLK ss.

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 8th day of August, 2013.



*William Warner Jr.*  
 Secretary

### **Schedule 3.6**

#### **Necessary Permits**

| <b><u>Permit Type</u></b> | <b><u>Party Responsible for Obtaining</u></b> |
|---------------------------|-----------------------------------------------|
| Grading                   | Contractor                                    |
| Inspection Fees           | 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.