

ORDINANCE NO. 28-14

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 16th DAY OF June, 2014.

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO CONSTRUCTION MANAGER AT RISK AGREEMENT WITH OBERER CONSTRUCTION MANAGERS, LTD., AND CORNERSTONE DEVELOPERS, LTD. FOR CONSTRUCTION MANAGEMENT SERVICES.

WHEREAS, the City of Centerville (the "City") and Cornerstone Developers, LTD ("Cornerstone") entered into a Development Agreement ("the Development Agreement") dated November 14, 2013 and as amended; and

WHEREAS, the Development Agreement, among other things, memorialized certain understanding relating to the development and construction of the Phase I Interior Public Improvements for the Cornerstone of Centerville construction project (the "Project");

WHEREAS, pursuant to the Development Agreement, Cornerstone agreed to arrange for the design and engineering of the Project at Cornerstone's own expense, subject to the review and approval of the City; and

WHEREAS, this Council has determined that it is in the best interest of the City to allow a Construction Manager At Risk Agreement for the purpose of providing construction management services and expediting the construction of the Project in a timely manner; and

WHEREAS, Oberer Construction Managers, LTD. ("Oberer") has agreed to provide such services at no charge to the City of Centerville; and

WHEREAS, the maximum city commitment to the Project is \$1.76 Million, exclusive of capitalized interest and costs of issuance; and

WHEREAS, the City has agreed to finance part of the cost of the Project of up to \$1.76 Million; and

WHEREAS, the City has determined that it will be beneficial for the City if the Oberer acts as the construction manager to oversee and perform the design, engineering and construction of the Project on an at-risk basis; and

WHEREAS, §3.01 of the Centerville Charter provides: "Except as restricted by this Charter, the Municipality shall have all powers possible for a municipality to have under the Constitution and laws of the State of Ohio, as fully and completely as though they were specifically enumerated in this Charter."; and

WHEREAS, it has been judicially determined that the adoption of a request for proposal process for the construction of the Project is an exercise of the power of local self-government and not an exercise of the police power so that a municipal bidding process may be adopted which supersedes state law all in accordance with the municipal powers granted to charter cities in §3, Article XVIII of the Constitution of the State of Ohio; and

WHEREAS, this council, by this ordinance, in accordance with §7.07 of the Centerville Charter is hereby exercising its power of local self-government to authorize and ratify the construction management process and contract for the construction of the Project through competitive bidding as set forth in Exhibit F of the Construction Manager At Risk Agreement, attached to this Ordinance; and

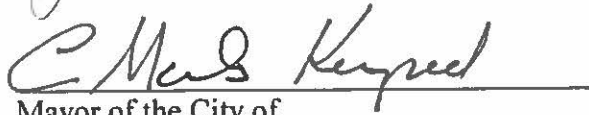
WHEREAS, pursuant to § 210.16 of the Codified Ordinances of the City of Centerville, this Council allows contracts for construction management services which are in the best interests of the City.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

- Section 1. That the City Manager is authorized and directed to enter into an agreement substantially similar to the form attached hereto as Exhibit "A" with Oberer Construction Managers, LTD, the Construction Manager and Cornerstone Developers, LTD., the Developer, to provide construction management services for the construction of Project at no cost to the City.
- Section 2. That the City's maximum commitment for the Project shall be \$1.76 Million exclusive of capitalized interest and costs of issuance.
- Section 3. That all bid packages that the Construction Manager selects are approved, subject to the concurrence of the City Manager; and the Construction Manager is authorized to use any subcontractor who submits a bid and that the Construction Manager recommends, subject to the concurrence of the City Manager.

Section 4, This ordinance shall be effective from and after the earliest date allowed by law.

PASSED THIS 16th day of June, 2014.



Mayor of the City of
Centerville, Ohio

ATTEST:

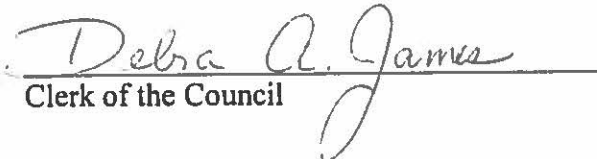


Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 08-14, passed by the Council of the City of Centerville, Ohio on the 16th day of

June, 2014.



Clerk of the Council

Approved as to form, consistency with the
Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman
Municipal Attorney

Construction Manager At Risk Agreement

This Construction Manager At Risk Agreement (this "Agreement") is made as of _____ (the "Effective Date"), by and among the CITY OF CENTERVILLE, OHIO, a municipal corporation duly organized and validly existing under the Constitution and Laws of the State of Ohio (the "City"), OBERER CONSTRUCTION MANAGERS, LTD., an Ohio limited liability company (the "Construction Manager"), and CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Developer"), under the following circumstances (words having an initial capital letter and not defined within the body of this Agreement have the meaning set forth in Section 1):

- A. The City and Developer entered into a Development Agreement dated as of November 14, 2013 (the "Development Agreement") which, among other things, memorialized certain understandings relating to the development and construction of the Phase I Interior Public Improvements (as such term is defined in the Development Agreement).
- B. Pursuant to the Development Agreement, Developer agreed to arrange for the design and engineering of the Phase I Interior Public Improvements at its own expense, subject to the review and approval of the City. The plans and specifications for the Phase I Interior Public Improvements, as reviewed and approved by the City (including any and all changes thereto reflected on properly executed change orders) are referred to herein as the "Final Interior Plans."
- C. As part of the Development Agreement, the City agreed to finance part of the cost of the Phase I Interior Public Improvements, with the balance of such cost to be borne by Developer.
- D. The City has determined that it will be cost-effective and beneficial for the City if Construction Manager, an affiliate of Developer, acts as the construction manager to oversee and perform the design, engineering and construction of the Phase I Interior Public Improvements on an at-risk basis, and Construction Manager is willing to provide such services all pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and obligations contained in this Agreement, the Parties agree as follows

1. Definitions. For purposes of this Agreement, in addition to the defined terms in the body of this Agreement, the following terms will have the following meanings:

(a) "Costs" shall mean all costs incurred by Construction Manager in the performance of the Work as reasonably approved by City, and shall include 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 Legal Requirements relating to or affecting the Work. Costs shall also include any third party engineering, testing or inspection services as required by the City and shall include any legal fees and costs associated with

enforcement of this Agreement as to contractors or subcontractors for failure of the contractor or subcontractor to comply with the terms of this Agreement.

(b) "Default" means any one or more of the following:

(i) A default by Construction Manager in the due and punctual payment, performance or observance of any obligation of Construction Manager under this Agreement, and such default is not cured within thirty days after written notice by the City, provided that if the default is of a non-monetary nature and cannot reasonably be cured within thirty days, a Default shall not be deemed to occur so long as Construction Manager commences to cure the default within the thirty day period and diligently pursues the cure for completion within a reasonable time.

(ii) Any representation or warranty made by Construction Manager in this Agreement is false or misleading in any material respect as of the time made;

(iii) The filing by Construction Manager of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(iv) The making by Construction Manager of a general assignment for the benefit of creditors;

(v) The filing of a voluntary petition in bankruptcy or the entry of an order for relief pursuant to the federal bankruptcy laws, as the same may be amended from time to time, with Construction Manager as debtor;

(vi) The filing by Construction Manager of an insolvency proceeding with respect to such party or any proceeding with respect to such party for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

(vii) The violation of the bidding procedures by Construction Manager, and such default is not cured within thirty days after written notice by the City, or within a reasonable time if the violation cannot reasonably be cured within thirty days.

(c) "Final Completion" is the stage when the entire Work and Punch List items are reasonably satisfactorily complete and fully performed. The terms "Finally Completed" and "Finally Complete" as applied to the Work refer to the Final Completion thereof.

(d) "Force Majeure" means any unforeseeable causes beyond the reasonable control of a Party and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of governmental authorities, orders of courts, fires, floods, epidemics, quarantine restrictions, freight embargoes, strikes, shortages in labor or materials, and unusually severe weather, or delays of subcontractors due to any such causes.

(e) "Initiating Party" means the Party desiring to initiate settlement negotiations pursuant to Section 23(e).

(f) "Legal Requirements" means the applicable federal, state and local laws and regulations, including any applicable standards of the City with respect to public streets, utilities, building codes, zoning codes and regulations, and other elements of public infrastructure.

(g) "Maximum City Commitment" means: \$1.76 Million exclusive of capitalized interest and costs of issuance.

(h) "Parties" means the City, Developer and Construction Manager, each of which is a Party.

(i) "Person" means a shareholder, member, other equity interest holder, trust, estate, trustee, executor, administrator, heir, partnership, company, corporation, or other organization or individual.

(j) "Property" means the real property located in the northeast corner of Feedwire Road and Wilmington Pike, as depicted on Exhibit A.

(k) "Punch List" means a detailed list of incomplete and nonconforming items of Work to be completed prior to final payment, the completion of which will not interrupt, disrupt or interfere with the occupancy or utilization of the project for its intended use.

(l) "Responding Party" means the Party receiving notice from the Initiating Party to initiate settlement negotiations pursuant to Section 23(e).

(m) "Substantial Completion" is the stage in the progress of the Work when the Work is sufficiently complete so that the City can occupy or use the Work for its intended use and have beneficial use, occupancy and enjoyment of the project site (subject only to minor Punch List items). The term "Substantially Complete" as applied to any portion or the whole of the Work, refers to the Substantial Completion thereof.

(n) "Work" means the construction of the Phase I Interior Public Improvements as more fully described in the Final Interior Plans and includes, but is not limited to labor, materials and general conditions costs.

2. Work.

(a) Construction Manager agrees to perform the Work.

(b) Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish Construction Manager's professional skill and judgment and to cooperate with the City in furthering the interests of the City and Developer. Construction Manager shall furnish construction administration and management services and will perform the Work in an

expeditious and economical manner consistent with the interests of the City and Developer.

(c) Construction Manager hereby designates Robert L. Hall III as its representative and who shall have express authority to bind Developer with respect to all matters requiring approval or authorization (the "Construction Manager Representative"). The Construction Manager Representative shall have the authority to make decisions on behalf of Construction Manager concerning, among other things, estimates and schedules, construction budgets and changes in the Work. Construction Manager may change its Construction Manager Representative at any time upon written approval from the City, such approval not to be unreasonably withheld or delayed. Any new representative shall similarly be qualified as the original representative.

(d) The City hereby designates Gregory B. Horn, the City Manager or his designee, as its representative who shall have express authority to bind the City with respect to all matters requiring approval or authorization (the "City Representative"). The City Representative shall have the authority to make decisions on behalf of the City concerning, among other things, estimates and schedules, construction budgets and changes in the Work. The City may change its City Representative at any time upon written notice to Construction Manager.

(e) Within five (5) days of execution of this Agreement, Developer and/or Construction Manager shall provide a bond meeting the requirements of Section 153.54 and 153.57 of the Ohio Revised Code and which guarantees the performance of the entire Work and the payment of subcontractors, material providers and laborers. The bond shall be supported by an Ohio Department of Insurance Certificate of Compliance for the surety company along with a power of attorney of the agent signing for the surety who shall be licensed by the Department of Insurance to transact business in Ohio.

3. Maximum City Commitment. The City's maximum financial commitment for the Work is the Maximum City Commitment. The expected Cost of the Work ("Expected Cost") is set forth on Exhibit B attached to this Agreement. The Parties anticipate that the Maximum City Commitment will be insufficient to cover the entire Cost of the Work. The balance is to be borne by Developer pursuant to the Development Agreement. Construction Manager agrees to look solely to Developer for the payment of such shortfall and Developer and Construction Manager will hold the City harmless for any shortfall. Developer joins in the execution of this Agreement to guarantee payment of such shortfall for the benefit of both the Construction Manager and the City.

4. Budget Phase.

(a) During the development of the Final Interior Plans, Construction Manager will prepare or cause to be prepared for the review and approval of the City, a detailed budget including a schedule of values with supporting data for the Work (the "Proposed Budget"). The Proposed Budget will be in the form attached hereto as Exhibit C. The City will review and approve/disapprove the Proposed Budget within ten business days after the City's receipt of the Proposed Budget, which approval shall not be unreasonably

withheld, conditioned or delayed. If the City approves the Proposed Budget, the City will notify Construction Manager in writing of such approval within such ten business day period. If the City does not approve the Proposed Budget, the City will provide to Construction Manager in writing, or at an in-person meeting with the Construction Manager Representative, the City's comments related to the Proposed Budget within such ten business day period. The Construction Manager will promptly revise the Proposed Budget to address the City's comments and resubmit the Proposed Budget to the City for the City's approval and the process above will be repeated until the City approves the Proposed Budget. The Proposed Budget, as approved by the City, will be known as the "Approved Budget" under this Agreement. The portion of the Approved Budget in excess of the Maximum City Commitment is referred to as the "Developer's Share."

(b) The Parties acknowledge that the purpose of the Approved Budget is to provide comfort to the City that Construction Manager will have the ability to complete the Work consistent with the Final Interior Plans, and to establish an estimated allocation of the portion of the Cost of the Work to be funded by the Maximum City Commitment, and the portion consisting of the Developer's Share to be funded by the Developer. Nothing contained in this Section 4 shall modify the provisions of Section 3 above.

5. Schedule.

(a) During such time as Construction Manager prepares the Final Interior Plans and the Proposed Budget, Construction Manager will prepare or cause to be prepared for the review and approval of the City a detailed schedule, consistent with the timelines set forth in this Agreement, for the performance and completion of the Work (the "Proposed Schedule"). Subject to such revisions as may be mutually approved during the development of the Final Interior Plans and the Proposed Budget, the Proposed Schedule shall be as set forth on Exhibit D attached hereto. The City will review and approve/disapprove the Proposed Schedule or any changes thereto within ten business days after the City's receipt of the Proposed Schedule, which approval shall not be unreasonably withheld, conditioned or delayed. If the City approves the Proposed Schedule, the City will notify Construction Manager in writing of such approval within such ten business day period. If the City does not approve the Proposed Schedule, the City will provide to Construction Manager in writing, or in-person to the Construction Manager Representative, the City's comments related to the Proposed Schedule within such ten business day period. Construction Manager will promptly revise the Proposed Schedule to address the City's comments and resubmit the Proposed Schedule to the City for the City's approval and the process above will be repeated until the City approves the Proposed Schedule. The Proposed Schedule, as approved by the City, will be known as the "Approved Schedule" under this Agreement.

(b) All Work shall be Substantially Complete by no later than October 1, 2014 and Finally Complete by no later than October 31, 2014. This Agreement does not include a provision for liquidated damages for Construction Manager's failure to achieve Substantial Completion on the date indicated, based, in part, upon the fact that Developer already is obligated to Costco Wholesale Corporation ("Costco") for liquidated damages at the rate of \$10,000.00 per day if the completion deadline is not met. The City

authorizes Construction Manager in awarding the primary contract for the Work to include a \$10,000.00 per day liquidated damages amount if the primary contractor fails to meet the completion deadline. If the liquidated damages become due and payable and are collected from the primary contractor, the City authorizes Construction Manager to pay the liquidated damages to Costco. Neither Construction Manager nor Developer shall have any rights to the liquidated damages, except as a pass-through to Costco.

(c) When the Construction Manager considers that the Work is Substantially Complete, the Construction Manager shall prepare and submit to the City the Punch List along with a proposed Certificate of Substantial Completion ("Certificate") establishing the date of Substantial Completion. The proposed Certificate shall list the Punch List items and establish the time for their completion and correction within the timeframe established for Final Completion. Unless otherwise agreed to by the Parties, the AIA Document G704-2000 shall be the form used for the Certificate. Upon receipt of the Construction Manager's Punch List and proposed Certificate, the City will make an inspection to determine whether the Work is Substantially Complete. If the City's inspection discloses any item, whether or not included on the Construction Manager's Punch List and Certificate, which is not sufficiently complete so as to render the work Substantially Complete, the Construction Manager shall promptly complete or correct such items following notification by the City. The Construction Manager shall thereafter submit a revised Punch List and Certificate to the City and a request for another inspection by the City to determine Substantial Completion.

(d) When the Work is Substantially Complete, the City shall execute the Certificate, provided that a failure to include an item on the Certificate and Punch List does not alter the responsibility of the Construction Manager to complete all Work.

6. Subcontractors and Subcontracts.

(a) Construction Manager agrees that the construction of the Phase I Interior Public Improvements shall be awarded through a competitive process in accordance with all Legal Requirements imposed upon the City and Construction Manager shall consult with a City Representative with respect to acceptable competitive process(es) Construction Manager will implement in awarding the Work to Subcontractors and Suppliers (each an "Accepted Competitive Process"). The Accepted Competitive Process is attached hereto as Exhibit F.

(b) To the extent Construction Manager contracts with one or more Subcontractors to perform the Work, Construction Manager shall assure that each Subcontractor shall satisfy each provision of this Agreement related to the performance of the Work as if Subcontractor were a direct party to this Agreement. In particular, each subcontract entered into by Construction Manager for the Work will contain provisions for the benefit of and/or protecting the City that are substantially similar or preferable to the provisions contained in this Agreement that are for the benefit of and/or protecting the City, including, without limitation all provisions related to compliance with Legal Requirements, providing insurance, granting warranties and providing indemnification. All subcontract forms must meet the minimal requirements of OAC 153:1-3-02.

7. Construction Phase.

(a) Upon consummation of the Borrowing described in the Development Agreement and certification of funds by the City Finance Director (to occur no later than two (2) business days after consummation of the Borrowing), the City shall issue a Notice to Proceed with the Work. Construction Manager shall commence construction of the Work upon the City's issuance of the Notice to Proceed.

(b) Construction Manager shall notify the City prior to seeking bids of the bid schedule and any revisions to the bid schedule. Construction Manager shall obtain bids from Subcontractors and Suppliers pursuant to the Accepted Competitive Processes. Bids shall be opened in the presence of a City Representative. Construction Manager shall then determine in its judgment, consistent with the requirements of the Accepted Competitive Process, which bids from Subcontractors and Suppliers will be accepted. The City acknowledges that due to the importance of timing and scheduling on this project, the Construction Manager may take into account the bidders' ability to meet the schedule and guarantee timely completion, as well as cost, in determining which bids to accept. Construction Manager may in extremely unusual circumstances, with the City's prior written approval, self perform any item of Work. Construction Manager shall enter into contracts directly with the Subcontractors and Suppliers whose bids are acceptable, and shall provide a copy of all such contracts to the City.

(c) Construction Manager shall provide semi-monthly written reports to the City on the progress of the Work. Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the Property, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City.

(d) Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Construction Manager shall identify variances between actual and estimated costs and report the variances to the City in Construction Manager's semi-monthly report to the City.

(e) Construction Manager warrants that the Phase I Interior Public Improvements will be constructed in a good and workmanlike manner, in accordance with applicable Legal Requirements, and substantially in accordance with the Final Interior Plans. All Work shall be performed using new materials unless otherwise specified and shall meet all applicable safety standards and shall meet all ODOT and/or City specifications and requirements list. Upon the commencement of the Work, Construction Manager will, subject to the terms and conditions of this Agreement, diligently pursue such Work to timely completion. Construction Manager agrees to coordinate the construction activities of the Phase I Interior Public Improvements so that Developer may meet its completion date obligations under its contracts with third party users/purchasers. Construction Manager or Developer shall provide maintenance bonds in accordance with the City's subdivision regulations. It is the City's intent, with respect to bonds, to have a bond or bonds covering the full amount of the Work, as well as

maintenance bonds required by the City's regulations, but not to require bonds that would be duplicative.

(f) The Construction Manager agrees to correct all Work which proves to be defective in design, workmanship or materials for a period of one (1) year from the date of Substantial Completion of the Work. If defective Work becomes apparent within the one-year period, the City shall notify the Construction Manager in writing. Within five (5) days of receipt of said notice, the Construction Manager shall visit the project in the company of one or more representatives of the City to determine the extent of the defective Work. The Construction Manager shall promptly repair or replace the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the City to be an emergency, the City may require the Construction Manager to visit the Project within one (1) day of receipt of said notice. The Construction Manager shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work. If the Construction Manager does not promptly repair or replace defective Work, the City may repair or replace such defective Work and charge the cost thereof to the Construction Manager or the Construction Manager's surety. Work which is repaired or replaced by the Construction Manager shall be subject to the City's inspection and acceptance and shall be guaranteed by the Construction Manager for one (1) year from date of acceptance of the corrective work by City. The guarantee provided in this Subsection does not establish a period of limitation with respect to the Construction Manager's other obligations under this Agreement, has no relationship to the time within which the City may seek to enforce the Agreement, and shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or this Agreement.

(g) Construction Manager agrees to pay, and cause the Subcontractors to pay, State of Ohio prevailing wage rates as ascertained by the Ohio Department of Commerce, Wage and Hour Bureau for the Project as provided in Ohio Revised Code ("ORC") Sections 4115.03 through 4115.14, and the Construction Manager and Developer shall comply with the prevailing wage requirements described under ORC Chapter 4115. Within ten (10) days of the date of the commencement of the Work, the Construction Manager and Developer shall provide the City's Prevailing Wage Coordinator with a schedule of dates when the Construction Manager and Developer shall pay wages to its employees for the Project. The Construction Manager and Developer shall also file such other reports and records with the Prevailing Wage Coordinator at such intervals as may be required by ORC Chapter 4115, including ORC Section 4115.071. The Construction Manager and Developer shall pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the locality as determined by the Ohio Department of Commerce, Wage and Hour Bureau. The Construction Manager and Developer shall post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under the Contract for the Project. The Construction Manager and Developer shall ensure that the rates posted are current and remain posted in legible condition during the period of the contract. The Construction Manager and Developer shall pay any revised wage rates issued during the term of the Contract. The Construction Manager and Developer shall

not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by applicable law. Construction Manager and Developer shall submit with respect to the Project an affidavit to certify that the Construction Manager and Developer has complied with all requirements of ORC Chapter 4115.

(h) The construction of the Phase I Interior Public Improvements may be sales tax exempt, and the City agrees to assist in obtaining the appropriate exemption certificates.

(i) The Parties agree to cooperate in filing necessary plats or providing necessary easements to dedicate the street and utility areas affected for the Phase I Interior Public Improvements. Developer hereby agrees that any and all dedicated land acquired for the Phase I Interior Public Improvements, and any and all dedicated rights-of-way for the Phase I Interior Public Improvements shall be free from liens or encumbrances except those matters that are approved by the City in writing as not detrimental to or interfering with the goals and intent of the Phase I Interior Public Improvements, which approval shall not be unreasonably withheld, conditioned or delayed. Construction Manager and Developer acknowledge that the Plat must be recorded before construction of the Work may begin.

(j) To the extent required by applicable Legal Requirements, Construction Manager shall be responsible for obtaining all: (i) reports, surveys, drawings and tests concerning the conditions of the Property; (ii) all surveys describing physical characteristics, legal limitations and utility locations for the site of the Work, and legal descriptions as necessary; and (iii) structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports; all of which shall be deemed Costs for purposes of this Agreement.

(k) Construction Manager shall keep the Property and surrounding area reasonably free from waste materials or rubbish. Upon completion of the Work, Construction Manager shall remove waste materials and rubbish from the Property. Developer must obtain a street cleaning cash bond in an amount of no less than \$5,000 and agrees that the balance of the bond shall not fall below \$2,500.

(l) Construction Manager shall prepare and file, in a form acceptable to the City Attorney, a Notice of Commencement in accordance with Ohio Law prior to the start of construction of the Work.

8. Changes In The Work.

(a) Any changes to the Work, Final Interior Plans, Approved Budget and/or Approved Schedule must be in a written change order signed by a Construction Manager Representative and a City Representative (a "Change Order"). Neither the Construction Manager nor the City has the unilateral right to require changes, but each agrees to

cooperate with the other and not unreasonably withhold or delay its consent to requested changes.

(b) The Change Order must provide for the adjustment if any in the Approved Budget resulting from the change in the Work, and the extension, if any, of the Approved Schedule, and shall be specific as to which portion of the Work the Change Order applies to. If a Change Order signed by the Parties changes the Final Interior Plans, Approved Budget or Approved Schedule, such changes shall be deemed incorporated into the Final Interior Plans, Approved Budget and/or Approved Schedule, as applicable, and such document with such changes shall then be deemed to be the Final Interior Plans, Approved Budget and/or Approved Schedule, as applicable. Approval of a Change Order by the City Representative shall be deemed a representation by the City that the change has been approved by the City to the extent the City's approval is required.

(c) Notwithstanding anything in this Section 8 to the contrary, the City shall not be responsible for Costs related to such Change Order if as a result of such Change Order the Cost of the Work exceeds the Maximum City Commitment unless, in its sole discretion, the City specifically agrees to increase the amount of the Maximum City Commitment. In all other cases any incurred Costs resulting from a Change Order shall be added to the Developer's Share and Developer shall be required to join in the execution of any Change Order that increases Developer's Share.

9. Progress Meetings. The Parties shall hold progress meetings at least once every thirty days (or more often at the request of either Party) to discuss the progress of each Party's obligations under this Agreement, the scheduling and timing for each Party's obligations, and potential modifications, problems and resolutions related thereto.

10. Progress Payments.

(a) Construction Manager shall submit to the City detailed invoices for the Work upon completion of each portion of the Work. The invoices shall contain sufficient detail for the City to easily be able to determine the portion of the Work and Approved Budget line item to which such invoice applies. The City may hold any invoice until receipt of such information.

(b) With each invoice, Construction Manager shall submit lien releases from all subcontractors and suppliers (and any other supplier or subcontractor that has for good reason performed Work) with whom Construction Manager has entered into contracts (collectively "Subcontractors" or "Suppliers", as applicable), certified payroll reports meeting the requirements of Ohio Revised Code Chapter 4115 for the relevant pay period, petty cash accounts receipted invoices or invoices with check vouchers attached, and any other supporting documentation reasonably required by the City to demonstrate that cash disbursements already made by Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by Construction Manager prior to the current month's invoice.

(c) Each invoice shall show the percentage completion of each portion of the Work as of the end of the period covered by the invoice.

(d) The City shall pay a proportionate amount of each invoice related to the Work (based on the percentage that the Maximum City Commitment bears to the total Expected Cost) within thirty (30) days after receipt of such invoice, subject to retention of five percent (5%) on both labor and materials. Construction Manager shall look solely to Developer to pay a proportionate amount of each invoice (based on the percentage that Developer's Share bears to the total Expected Cost). At no time shall the cumulative payments made by the City for the Work exceed 95% of Maximum City Commitment until such time as the Work and this Agreement has been fully performed by Construction Manager except for Construction Manager's responsibility to correct nonconforming Work, and to satisfy other requirements, if any, which necessarily survive final payment.

(e) The City may withhold any payment requested by Construction Manager, 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.

(i) Defective or non-conforming Work not remedied;

(ii) Claims or liens filed or reasonable evidence indicating the probable filing of claims or liens;

(iii) Failure of Construction Manager to make payments properly to Subcontractors and/or Suppliers;

(iv) Failure of Construction Manager to observe or perform any of the terms, covenants, and conditions of this Agreement beyond the expiration of any applicable period for curing the default.

11. Final Payment.

(a) The City shall make final payment to Construction Manager on the Work when: (i) the Work and this Agreement has been Finally Completed; (ii) a final invoice and a final accounting for the Cost of the Work have been submitted by Construction Manager and reviewed and approved by the City; (iii) the City receives both an electronic auto-cad and paper copy of the "as-built" or equivalent drawings for the Work; (iv) the City receives from Construction Manager, a final affidavit of compliance with Prevailing Wage; (v) the City receives inspection/reports; operation and maintenance manuals; completion of training, listing of names/contact information of subcontractors and manufacturers warranties; and (vi) Construction Manager provides lien releases from all Subcontractors and Suppliers with whom Construction Manager has entered into contracts. Final payment shall be made by the City not more than thirty (30) days after receipt of all such items. Notwithstanding the foregoing, if Construction Manager would otherwise be entitled to Final Payment but certain identifiable elements of the Work cannot be fully completed contemporaneously with the balance of the Work, the City will

not unreasonably withhold Final Payment provided that an escrow in an amount not less than 150% of the cost to complete the remaining items is established for the benefit of the City under escrow terms reasonably acceptable to the City.

(b) Acceptance by Construction Manager of final payment shall constitute a release of the City by Construction Manager and a waiver of all claims of Construction Manager for all things done and furnished in connection with this Agreement except those previously made in writing that remain unsettled at the time of the application for final payment. The making of final payment shall constitute a waiver of claims by the City except those arising from (i) liens, claims, security interests or encumbrances arising out of this Agreement that remain unsettled at the time of final payment; (ii) failure of any Work to comply with the requirements of this Agreement; (iii) terms of any warranties contained in or required by this Agreement or any subcontract; or (iv) any requirement or obligation of this Agreement which necessarily survives final payment.

12. Indemnification. To the fullest extent permitted by Legal Requirements, Construction Manager shall defend, indemnify and hold harmless the City and its officers, elected officials, trustees, directors, agents, employees, administrators, successors and assigns from and against all suits, claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, expert fees and other costs of litigation, (collectively, "Claims") arising out of or resulting from performance of the Work, provided that such Claim is attributable to bodily injury, sickness, accident, disease or death, or injury to or destruction of tangible property, but only to the extent caused by the negligent or intentional acts or omissions of Construction Manager, any of its Subcontractors, anyone directly or indirectly retained or employed by them, or anyone for whose acts they may be liable, regardless of whether or not such Claim is caused in part by a party indemnified hereunder.

13. Insurance. Construction Manager shall maintain the following insurance and shall require its Subcontractors to maintain the following insurance. Construction Manager shall furnish the following certificates of insurance and name the City and its officers, elected officials, trustees, directors, agents, employees, administrators, successors and assigns as additional insureds. Construction Manager's general liability policy shall be primary insurance as respects the additional insureds, and any other insurance policy that the additional insured may have in effect shall be deemed excess and not contributory. The General Liability policy must be maintained for no less than two years after completion of the project as evidenced by the certificate of completion. Construction Manager shall be responsible for the payment of all deductibles. Construction Manager must procure the required insurance from carriers licensed to do business in the State of Ohio and with an A.M. Best rating of A-X or better. Certificates shall provide that each additional insured is to be provided thirty days' advance written notice in the case of policy cancellation or nonrenewal. Construction Manager hereby waives any right of recovery it may have against the City and the additional insureds for property damage to tools and equipment to the extent covered by Construction Manager's property insurance. Construction Manager waives any and all rights of subrogation against all additional insureds.

Workers' Compensation:

Statutory

Builder's Risk

Total Amount of Expected Cost

Comprehensive liability (As Listed Below)

General Liability

Products-Completed Operations Aggregate	\$ 2,000,000.
Personal & Adv. Injury	\$ 2,000,000.
Each Occurrence	\$ 2,000,000.

Automobile Liability

Combined Single Limit	\$ 1,000,000.
Excess Liability	

Umbrella Each Occurrence (over Auto and Gen liab.) \$ 3,000,000.

Deductible for each of the above \$25,000 (max)

Notwithstanding the foregoing, the umbrella limit for Subcontractors whose scope of work is less than \$1,000,000 shall be \$1,000,000.

Certificate(s) of Insurance relating to policies required under this Agreement shall contain provisions that require that such insurance will not be canceled or the limits of coverage in any way reduced without at least thirty days' advance written notice (ten days for nonpayment of premium) sent by certified mail, return receipt requested to the City.

14. Non-Discrimination. Construction Manager 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 Construction Manager or any Subcontractor or any other person claiming under or through Construction Manager establish or permit any such practice or practices of discrimination or segregation in connection with the performance of this Agreement and Construction Manager's other obligations under this Agreement. In addition, Construction Manager 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 laws, and incorporate the requirements of this paragraph in all of the respective contracts and subcontracts for the Work.

15. Inspection. Construction Manager shall permit the City or its authorized representatives as Costs of the Work, access to the Property for the purposes of inspecting and approving the progress of the Work. Construction Manager shall follow ODOT standards concerning the inspections and approval of the Work. The City shall hold the contract with the third party inspection company. The Construction Manager shall be a third party beneficiary of the inspection company contract. All testing and inspection schedules must be approved by the City Engineer. The Construction Manager is required to work closely with the third party inspector concerning the scheduling of work items. The City Engineer is to be provided notice in writing of all testing and inspections. A twenty-four to forty-eight (24-48) hour notice is

required to allow the City Engineer and materials testing firm an opportunity to schedule their time onsite. If the Construction Manager proceeds with Work requiring City inspection before covering up, and the City Engineer is not notified of such work before it is covered up, the City may require the work to be uncovered at no cost to the City. The City Engineer has the authority to reject any work that is found to be substandard and/or deficient of the approved plans and specifications for the project, and such work shall be corrected at no cost to the City. All onsite City Representatives shall be subject to compliance with the safety program established by the Construction Manager as provided in Section 17.

16. Warranties. Construction Manager will provide and/or assign to the City guaranties and warranties applicable to any Work performed or supplies or equipment delivered by Subcontractors or Suppliers and given to Construction Manager with regard to the Work. Warranties do not absolve the Construction Manager from any warranties contained in this Agreement.

17. Safety. Construction Manager shall be responsible for all necessary safety precautions and programs in connection with the Work in accordance with all applicable Legal Requirements, including protection as may be necessary to prevent injury to any persons or property, and 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. The Construction Manager shall designate a Safety Manager and identify said person to the City.

18. Permits. Construction Manager shall secure and pay for all building and construction related permits and other permits, fees, licenses, and inspections by governmental agencies necessary for the proper execution and completion of the Work. Construction Manager shall comply with and give notices required by all Legal Requirements applicable to the performance of the Work.

19. Records. Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the City prior to final payment. The City and its accountants shall be provided all original Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, prevailing wage records, memoranda and other data relating to the Work, and Construction Manager shall preserve copies of these for a period of four years after final payment, or for such longer period as may be required by Legal Requirements.

20. Independent Contractor. Construction Manager is an independent contractor. Neither Construction Manager nor any of its officers, directors, employees, agents or representatives shall be deemed to be the employees of the City. Construction Manager shall be solely responsible for the compliance with all applicable federal, state and local laws with respect to Construction Manager and its employees and contractors. Any and all payroll taxes, social security benefits, insurance requirements, or employment benefits of any kind whatsoever of Construction Manager or its employees shall be borne exclusively by Construction Manager and not the City. Nothing herein is intended to, or shall be deemed to, create a partnership, joint venture, agency, or other relationship creating fiduciary or quasi-fiduciary duties or similar duties and obligations or otherwise subject the Parties to joint and several or vicarious liability or

to impose any duty, obligation, or liability that would arise therefrom with respect to either or both of the Parties. The relationship between the Parties shall be limited to the obligations in this Agreement. However, the Parties shall cooperate with each other according to the terms and spirit of this Agreement in the performance of this Agreement and shall not act so as to jeopardize this Agreement.

21. Assignment. Construction Manager may not assign, directly or indirectly, any of its rights, duties or obligations under this Agreement without the written consent of a City Representative. The foregoing notwithstanding, Construction Manager shall have the right to subcontract some or all of the Work to a Subcontractor upon obtaining the prior written consent of the City, provided that such assignment or subcontracting (a) shall not release Construction Manager from its obligations hereunder or (b) be construed to permit any further assignment of the rights or obligations of Construction Manager to a Person other than to a Subcontractor. The Construction Manager may also delegate duties to affiliated entities with the written consent of the City. The City may not assign its rights, duties or obligations under this Agreement; provided, however that the City shall be entitled to subcontract its duties under this Agreement. No Party hereunder shall have right to pledge, hypothecate, encumber or otherwise subject all or any part of its interest in this Agreement or created by this Agreement to a security interest of any kind, without the prior written consent of the other Parties.

22. Representations and Warranties

(a) Construction Manager represents and warrants to the City as follows:

(i) Construction Manager is an Ohio limited liability company duly formed and validly existing and is authorized to do business in the State of Ohio.

(ii) Construction Manager is not in violation of or in conflict with any Legal Requirements applicable to Construction Manager which would impair its ability to carry out its obligations contained in this Agreement.

(iii) Construction Manager is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of Construction Manager, the execution, delivery and performance of this Agreement do not and will not violate or conflict with any provision of law applicable to Construction Manager, and do not or will not conflict with or result in a default under any agreement or instrument to which Construction Manager is a party or by which it is bound.

(iv) This Agreement to which it is a party has, by proper action, been duly authorized, executed and delivered by Construction Manager and all steps necessary to be taken by Construction Manager have been taken to constitute this Agreement, and the covenants and agreements of Construction Manager contemplated herein, as valid and binding obligations of Construction Manager, enforceable in accordance with their terms.

(v) There is no litigation pending against or by Construction Manager or to its knowledge threatened against or by Construction Manager wherein an

unfavorable ruling or decision would materially adversely affect Construction Manager's ability to carry out its obligations under this Agreement.

(vi) Construction Manager, Developer, affiliates and Subcontractors are in compliance with all federal, state and local laws.

(b) The City represents and warrants to Construction Manager as follows:

(i) It is a municipal corporation duly created and organized and validly existing under the Constitution and laws of the State of Ohio.

(ii) It is not in violation of or conflict with any Legal Requirements applicable to the City which would impair its ability to carry out its obligations contained in this Agreement.

(iii) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the City, the execution, delivery and performance of this Agreement do not and will not violate or conflict with any provision of law applicable to the City, and do not and will not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

(iv) This Agreement to which it is a party has, by proper action, been duly authorized, executed and delivered by the City and all steps necessary to be taken by the City have been taken to constitute this Agreement, and the covenants and agreements of the City contemplated herein, as valid and binding obligations of the City, enforceable in accordance with their terms.

(v) There is no litigation pending against or by the City or to its knowledge threatened against or by the City wherein an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement, other than the pending lawsuit captioned *Sugarcreek Township v. City of Centerville* currently pending in the Second District Court of Appeals.

(vi) The City legislation approving this Agreement has been duly adopted, is in full force and effect and is not subject to appeal by referendum.

23. Remedies

(a) At any time as of which a Construction Manager Default exists, the City, at its option, may, but shall not be obligated to enforce or avail itself of, any remedies available at law or in equity, including but not limited to the hiring of another contractor to complete and/or remedy any deficiency if the contract balance exceeds the available funds to complete the work.

(b) At any time as of which a City Default exists, Construction Manager, at its option, may, but shall not be obligated to enforce or avail itself of, any remedies available at law or in equity.

(c) As the remedy at law for the breach of any of the terms of this Agreement may be inadequate, each enforcing Party shall have a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. The provisions of this subsection (c) shall not be subject to the dispute resolution provisions set forth in subsection (e) below. Obligations of the City may be enforceable by mandamus to the extent permitted by law.

(d) Except as set forth in subsection (c) above and unless any Party objects, any dispute under this Agreement shall, as a condition precedent to litigation, first be subject to the dispute resolution procedures as set forth below in subsection (e) below.

(e) The first step in the dispute resolution procedures shall be an attempt to negotiate a settlement of the dispute, as follows:

(i) An Initiating Party may initiate settlement negotiations by giving written notice to the Responding Party of the basis for the dispute, provided that the Initiating Party shall use commercially reasonable efforts to furnish the Responding Party, as expeditiously as possible, with notice of any dispute once such dispute is recognized, and shall cooperate with the Responding Party in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such dispute.

(ii) The Initiating Party shall, within thirty days after giving written notice to the Responding Party of the basis for the dispute, prepare and provide to the Responding Party a written, detailed summary of the basis for the dispute, together with all facts, documents, backup data and other information reasonably available to the Initiating Party that support the Initiating Party's position in the dispute.

(iii) The Initiating Party shall designate and make any of its employees or agents having knowledge of the dispute available to the Responding Party to respond to questions of the Responding Party.

(iv) Within twenty days after the Initiating Party gives notice of a dispute and furnishes the materials required by Section 23(e)(ii), the Responding

Party shall prepare and provide to the Initiating Party a written, detailed summary, together with all facts, documents, backup data and other information reasonably available to the Responding Party that support the Responding Party's position in the dispute, and (ii) employees or agents of the Parties who have authority to settle the dispute, along with other Parties having knowledge of or an interest in the dispute, shall meet at a mutually acceptable time and place in Dayton, Ohio, in an effort to compromise and settle the dispute.

(f) Unless delay in initiating or prosecuting a claim in litigation would irrevocably prejudice a Party or if all Parties agree, any dispute which is not resolved by direct discussions and negotiations as provided in Section 23(e)(i) shall be submitted to mediation under the Commercial Mediation Procedures of the American Arbitration Association or such other rules as the Parties may agree to use. If the Parties cannot agree on the selection of a mediator within ten days of the request for mediation, any Party may immediately request the appointment of a mediator in accordance with the governing mediation rules. Mediation shall occur at any location in Dayton, Ohio that the mediator may designate. Construction Manager and the City shall each be responsible for one-half of the mediation expenses. The Parties shall conclude mediation proceedings under this Section 23(f) within 60 days after the designation of the mediator. In the event that mediation proceedings do not resolve the dispute within such period, a Party may commence litigation with respect to the dispute.

(g) Provided the Initiating Party has complied with the requirements for giving notice of the existence of a dispute, no delay in disposing of such dispute while the Parties pursue the dispute resolution procedures shall prejudice the rights of any Party. At the request of the Initiating Party or the Responding Party, the Parties shall enter into an agreement to toll the statute of limitations with respect to the subject matter of a dispute while the Parties pursue the dispute resolution procedures

24. Notices. Any notice required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile or by electronic mail, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next day delivery or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch) or by electronic mail (provided there is confirmation of receipt), and shall be addressed to the following addresses, or to such other address as any Party may request, by notifying the other Parties in this manner:

To the City:

City of Centerville, Ohio
100 W. Spring Valley Rd.
Centerville, Ohio 45458
Attn: Gregory B. Horn, City Manager
Phone: (937) 433-7151
Fax: (937) 435-8720
Email: ghorn@centervilleohio.gov

With a copy to: Scott A. Liberman
Altick & Corwin Co., LPA
1 South Main St., Suite 1590
Dayton, Ohio 45402
Phone: (937) 223-1201
Fax: (937) 223-5100
Email: liberman@altickcorwin.com

To Construction Manager: Oberer Construction Managers, Ltd.
3475 Newmark Drive
Miamisburg, Ohio 45342
Attn: George R. Oberer, Jr.
Phone: (937) 278-0851
Fax: (937) 278-6334
Email: grojr@oberer.com

And a copy to: Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342
Phone: (937) 443-6511
Fax: (937) 443-6637
Email: Bob.Curry@ThompsonHine.com

To Developer: Cornerstone Developers, LTD
3475 Newmark Drive
Miamisburg, Ohio 45342
Attn: George R. Oberer, Jr.
Phone: (937) 278-0851
Fax: (937) 278-6334
Email: grojr@oberer.com

And a copy to: Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342
Phone: (937) 443-6511
Fax: (937) 443-6637
Email: Bob.Curry@ThompsonHine.com

25. Subject to Funding. Each City obligation under this Agreement shall be subject to the consummation of the City Debt (as defined in the Development Agreement) supporting such obligation.

26. Force Majeure. Neither Parties shall be considered in breach of its obligations under this Agreement due to Force Majeure. In the event of the occurrence of any Force Majeure, the time for a Party's performance of its obligations shall be extended for the period of

the unforeseeable delay. The Party seeking the benefit of the provisions of this Section 26 shall, within fourteen calendar days after the beginning of any such unforeseeable delay, have first notified the other Party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the unforeseeable delay. Except for the funding provisions set forth in Section 25 above (which delay, if any, shall be deemed a Force Majeure), delays or failures to perform due to lack of funds shall not be deemed unforeseeable delays.

27. Miscellaneous:

(a) Captions. All titles, captions, and headings contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

(b) Conflict of Interest; Representatives of the City Not Individually Liable. No official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No official or employee of the City shall be personally liable to Construction Manager, or any successor in interest, in the event of any default or breach by the City or for any amount or amounts which may become due to Construction Manager or any successor to Construction Manager or on any obligations under the terms and conditions of this Agreement.

(c) No Waiver. A waiver by any of the Parties of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving Party's rights with respect to any other or further breach.

(d) Time of Essence. Time is of the essence for all matters of this Agreement herein and the Parties shall diligently pursue and complete their obligations hereunder.

(e) Severability. If any provision of this Agreement is or should become wholly or partially invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the Parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.

(f) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Ohio. By execution hereof, the Parties irrevocably submit to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

(g) Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties, and their successors and permitted assigns, and not for the benefit of any other Person(s), nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other Person.

(h) Ohio Revised Code § 3517.13 Compliance. Construction Manager affirms and certifies that it, each of its members, each spouse of its members, each child of its members, and each political action committee affiliated with Construction Manager complies with Ohio Revised Code § 3517.13 limiting political contributions and that Construction Manager certifies in accordance with Legal Requirements that it has not provided material assistance to terrorists.

(i) Binding Effect. This Agreement and all of the provisions hereof shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(j) Entire Agreement. This Agreement expresses the entire understanding and agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, and all understandings, negotiations, or discussions of the Parties, whether oral or written, and there are no warranties, representations, or agreements between the Parties in connection with the subject matter hereof except those expressly set forth herein.

(k) Amendment and Acknowledgement of Additional Time. This Agreement may be amended by mutual agreement between the Parties. No amendment shall be effective unless it is reduced to writing and executed by a duly authorized representative of the Parties.

(l) Rules of Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any Party.

(m) Further Cooperation. The Parties agree that at any time, or from time to time, they will, on request of the other, execute and deliver such further documents and do such further acts and things as such other Party may reasonably request in order fully to effectuate the purposes of this Agreement.

(n) Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all Parties hereto had signed the document. All counterparts shall be construed together and constitute one agreement. Execution transmitted by facsimile or by a pdf document attached to an email shall have the same effect as an original signature.

IN WITNESS WHEREOF, the Parties have set their hands effective on the date first written above.

CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

Date: _____

By: _____

Its: _____

Approved as to Form:

Scott A. Liberman, Municipal Attorney

OBERER CONSTRUCTION MANAGERS, LTD., an Ohio limited liability company

Date: _____

By: _____

Its: _____

CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company

Date: _____

By: _____

Its: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2014 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

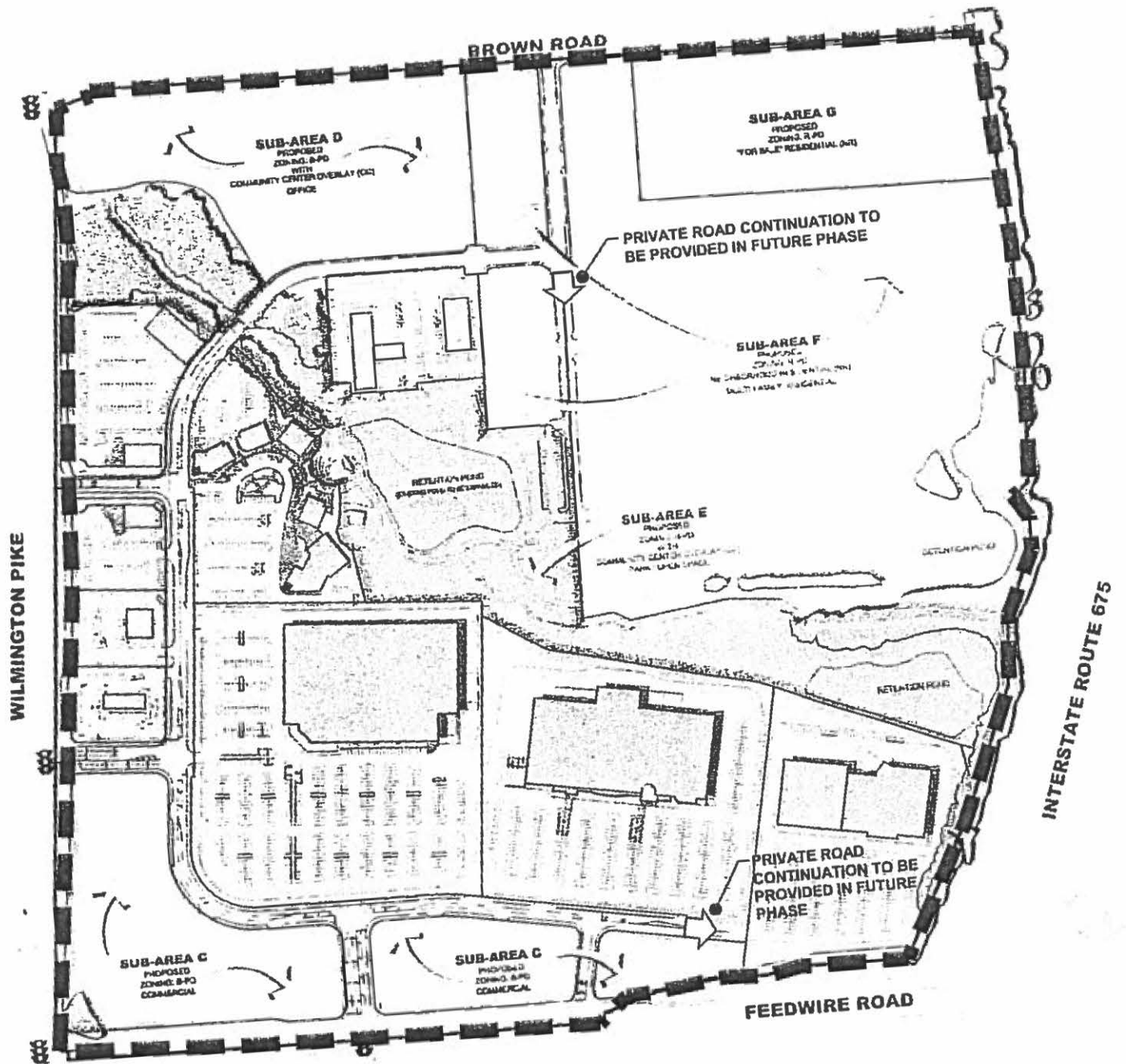
Dated: June ____, 2014

Finance Director
City of Centerville, Ohio

Exhibit A

PROPERTY

EXHIBIT A PROPERTY



Note:
This plan represents the approved Preliminary Development Plan with conditions dated August 29, 2013. Buildings, parking, lot lines and Sub-Area boundaries shown are for illustrative purposes only.

Exhibit B

EXPECTED COST

EXHIBIT B
CITY OF CENTERVILLE
CORNERSTONE NORTH OF CENTERVILLE
PRELIMINARY CONSTRUCTION ESTIMATE/ENGINEER'S ESTIMATE

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	APPROX. QTY.	UNIT COST	TOTAL COST
June 3, 2014					
ROADWAY					
204	SUBGRADE COMPACTION, AS PER PLAN	S Y	12666	\$1.80	\$22,798.80
204	EXCAVATION OF SUBGRADE AND STRUCTURAL EMBANKMENT	C Y	1200	\$40.00	\$48,000.00
608	CURB RAMPS WITH TRUNCATED DOMES, AS PER PLAN	S F	1744	\$11.00	\$19,184.00
608	4" CONCRETE SIDEWALK	S F	25235	\$6.00	\$151,410.00
SPEC	GEOGRID, AS PER PLAN (TENSAR TrAx TX5 GEOGRID)	S Y	12666	\$5.00	\$63,330.00
ROADWAY TOTAL					\$304,722.80
EROSION CONTROL					
639	SEEDING AND MULCHING, AS PER PLAN	S Y	5100	\$2.00	\$10,200.00
832	STORMWATER POLLUTION PREVENTION PLAN	LUMP	1	\$5,000.00	\$5,000.00
EROSION CONTROL TOTAL					\$15,200.00
DRAINAGE					
605	6" SHALLOW PIPE UNDERDRAIN, 707 31 (PERFORATED), AS PER PLAN	FT	4204	\$9.25	\$38,887.00
811	12" STORM SEWER, AS PER PLAN	FT	343	\$70.00	\$24,010.00
811	15" STORM SEWER, AS PER PLAN	FT	197	\$75.00	\$14,775.00
811	18" STORM SEWER, AS PER PLAN	FT	696	\$80.00	\$55,680.00
811	24" STORM SEWER, AS PER PLAN	FT	520	\$95.00	\$49,400.00
811	30" STORM SEWER, AS PER PLAN	FT	638	\$150.00	\$95,700.00
811	TYPE 3-A CATCH BASIN, AS PER PLAN	EACH	12	\$2,100.00	\$25,200.00
811	TYPE 3 CATCH BASIN, AS PER PLAN	EACH	6	\$3,500.00	\$21,000.00
811	TYPE 3 STORM SEWER MANHOLE, AS PER PLAN	EACH	10	\$2,500.00	\$25,000.00
DRAINAGE TOTAL					\$349,652.00
WATER WORKS					
638	8" WATER MAIN, AS PER PLAN	FT	520	\$65.00	\$33,800.00
638	12" WATER MAIN, AS PER PLAN	FT	1839	\$80.00	\$147,120.00
638	FIRE HYDRANT ASSEMBLY, AS PER PLAN	EACH	5	\$4,000.00	\$20,000.00
638	TEMP FIRE HYDRANT ASSEMBLY, AS PER PLAN	EACH	1	\$1,750.00	\$1,750.00
638	8" GATE VALVE	EACH	3	\$1,500.00	\$4,500.00
638	12" GATE VALVE	EACH	7	\$2,000.00	\$14,000.00
WATER WORKS TOTAL					\$221,170.00
PAVEMENT					
301	5-1/2" ASPHALT CONCRETE BASE	C Y	1316	\$130.00	\$197,080.00
304	9" AGGREGATE BASE, AS PER PLAN	C Y	3417	\$45.00	\$153,765.00
407	TACK COAT FOR INTERMEDIATE COURSE AT RATE OF 0.04 GAL./S.Y.	QAL	946	\$2.50	\$2,365.00
411	STABILIZED CRUSHED AGGREGATE	C Y	315	\$40.00	\$12,600.00
442	1-3/4" ASPHALT CONCRETE, SURFACE COURSE, 12.5mm, TYPE A, (448)	C Y	575	\$190.00	\$109,250.00
448	1-3/4" ASPHALT CONCRETE, INTERMEDIATE COURSE, TYPE 2, PG 64-22	C Y	616	\$160.00	\$98,560.00
452	10" NON-REINFORCED CONCRETE PAVEMENT	C Y	466	\$100.00	\$46,600.00
609	COMBINATION CURB AND GUTTER, TYPE 2, AS PER PLAN	FT	4204	\$16.00	\$67,264.00
SPEC	DECORATIVE PAVEMENT	S Y	1260	\$120.00	\$151,200.00
PAVEMENT TOTAL					\$838,684.00
TRAFFIC CONTROL					
630	SIGN, DOUBLE FACED, STREET NAME	EACH	4	\$130.00	\$520.00
630	SIGN, FLAT SHEET	EACH	4	\$25.00	\$100.00
630	SIGN, BLACK BACKGROUND, FLAT SHEET, AS PER PLAN	S F	45	\$25.00	\$1,125.00
630	TRAFFIC SIGN SUPPORT SYSTEM, AS PER PLAN	EACH	10	\$650.00	\$6,500.00
644	CENTERLINE	MILE	0.37	\$6,000.00	\$3,420.00
644	CROSSWALK LINE	FT	434	\$5.00	\$2,170.00
644	STOP LINE	FT	133	\$10.00	\$1,330.00
644	PARK LINE	FT	156	\$5.00	\$780.00
644	WHITE CHANNELIZING LINE	FT	1354	\$5.00	\$6,770.00
644	YELLOW TRANSVERSE LINE	FT	220	\$5.00	\$1,100.00
644	WHITE DASHED LANE LINE	FT	120	\$10.00	\$1,200.00
644	TRAFFIC ISLAND	S F	65	\$10.00	\$650.00
644	LANE ARROW	EACH	39	\$100.00	\$3,900.00
TRAFFIC CONTROL TOTAL					\$29,565.00
LIGHTING					
625	6" PVC, 725 @51 (UTILITY CROSSING)	FT	1926	\$20.00	\$38,520.00
625	CONDUIT AND WIRING	FT	2885	\$10.00	\$28,850.00
625	LIGHT POLE	EACH	44	\$2,000.00	\$88,000.00
625	LIGHT POLE BASE FOUNDATION	EACH	44	\$2,500.00	\$110,000.00
625	PULL BOX	EACH	4	\$300.00	\$1,200.00
LIGHTING TOTAL					\$266,570.00
LANDSCAPING					
SPEC	IRRIGATION SYSTEM	LUMP	1	\$150,000.00	\$150,000.00
SPEC	LANDSCAPING	LUMP	1	\$218,000.00	\$218,000.00
SPEC	TREE GRATES	EACH	21	\$1,500.00	\$31,500.00
LANDSCAPING TOTAL					\$399,500.00
INCIDENTAL					
614	MAINTAINING TRAFFIC	LUMP	1	\$22,500.00	\$22,500.00
623	CONSTRUCTION LAYOUT STAKES AND SURVEYING	LUMP	1	\$15,000.00	\$15,000.00
624	MOBILIZATION	LUMP	1	\$32,500.00	\$32,500.00
SPEC	TEMPORARY TRAFFIC SIGNAL AT WILMINGTON PIKE	LUMP	1	\$100,000.00	\$100,000.00
INCIDENTAL TOTAL					\$170,000.00
CONSTRUCTION TOTAL					\$2,595,063.80

Exhibit C

PROPOSED BUDGET

**CITY OF CENTERVILLE
CORNERSTONE NORTH OF CENTERVILLE
PRELIMINARY CONSTRUCTION ESTIMATE/ENGINEER'S ESTIMATE**

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	APPROX. QTY.	UNIT COST	May 30, 2014 TOTAL COST
ROADWAY					
204	SUBGRADE COMPACTION, AS PER PLAN	S.Y.			
204	EXCAVATION OF SUBGRADE AND STRUCTURAL EMBANKMENT	C.Y.			
608	CURB RAMPS WITH TRUNCATED DOMES, AS PER PLAN	S.F.			
608	4" CONCRETE SIDEWALK	S.F.			
SPEC	GEOGRID, AS PER PLAN (TENSAR TriA+ TX3 GEOGRID)	S.Y.			
	ROADWAY TOTAL				50.00
EROSION CONTROL					
619	SEEDING AND MULCHING, AS PER PLAN	S.Y.			
832	STORMWATER POLLUTION PREVENTION PLAN	LUMP			
	EROSION CONTROL TOTAL				50.00
DRAINAGE					
605	6" SHALLOW PIPE UNDERDRAIN, 707 31 (PERFORATED), AS PER PLAN	FT			
811	12" STORM SEWER, AS PER PLAN	FT			
811	15" STORM SEWER, AS PER PLAN	FT			
811	18" STORM SEWER, AS PER PLAN	FT			
811	24" STORM SEWER, AS PER PLAN	FT			
811	30" STORM SEWER, AS PER PLAN	FT			
811	TYPE 2-A CATCH BASIN, AS PER PLAN	EACH			
811	TYPE 3 CATCH BASIN, AS PER PLAN	EACH			
811	TYPE 3 STORM SEWER MANHOLE, AS PER PLAN	EACH			
	DRAINAGE TOTAL				50.00
WATER WORKS					
638	8" WATER MAIN, AS PER PLAN	FT			
638	12" WATER MAIN, AS PER PLAN	FT			
638	FIRE HYDRANT ASSEMBLY, AS PER PLAN	EACH			
638	TEMP FIRE HYDRANT ASSEMBLY, AS PER PLAN	EACH			
638	8" GATE VALVE	EACH			
638	12" GATE VALVE	EACH			
	WATER WORKS TOTAL				50.00
PAVEMENT					
301	5-1/2" ASPHALT CONCRETE BASE	C.Y.			
304	9" AGGREGATE BASE, AS PER PLAN	C.Y.			
407	TACK COAT FOR INTERMEDIATE COURSE AT RATE OF 0.14 GAL/S.Y.	GAL.			
411	STABILIZED CRUSHED AGGREGATE	C.Y.			
442	1-3/4" ASPHALT CONCRETE, SURFACE COURSE, 12.5mm, TYPE A, (448)	C.Y.			
448	1-3/4" ASPHALT CONCRETE, INTERMEDIATE COURSE, TYPE 2, PG 64-21	C.Y.			
452	10" NON-REINFORCED CONCRETE PAVEMENT	C.Y.			
609	COMBINATION CURB AND GUTTER, TYPE 2, AS PER PLAN	FT			
SPEC	DECORATIVE PAVEMENT	S.Y.			
	PAVEMENT TOTAL				50.00
TRAFFIC CONTROL					
630	SIGN, DOUBLE FACED, STREET NAME	EACH			
630	SIGN, FLAT SHEET	EACH			
630	SIGN, BLACK BACKGROUND, FLAT SHEET, AS PER PLAN	S.F.			
630	TRAFFIC SIGN SUPPORT SYSTEM, AS PER PLAN	EACH			
644	CENTERLINE	MILE			
644	CROSSWALK LINE	FT			
644	STOP LINE	FT			
644	PARK LINE	FT			
644	WHITE CHANNELIZING LINE	FT			
644	YELLOW TRANSVERSE LINE	FT			
644	WHITE DASHED LANE LINE	FT			
644	TRAFFIC ISLAND	S.F.			
644	LANE ARROW	EACH			
	TRAFFIC CONTROL TOTAL				50.00
LIGHTING					
625	6" PVC, 725 031 (UTILITY CROSSING)	FT			
625	CONDUIT AND WIRING	FT			
625	LIGHT POLE	EACH			
625	LIGHT POLE BASE FOUNDATION	EACH			
625	PULL BOX	EACH			
	LIGHTING TOTAL				50.00
LANDSCAPING					
SPEC	IRRIGATION SYSTEM	LUMP			
SPEC	LANDSCAPING	LUMP			
SPEC	TREE GRATES	EACH			
	LANDSCAPING TOTAL				50.00
INCIDENTIAL					
614	MAINTAINING TRAFFIC	LUMP			
623	CONSTRUCTION LAYOUT STAKES AND SURVEYING	LUMP			
624	MOBILIZATION	LUMP			
SPEC	TEMPORARY TRAFFIC SIGNAL AT WILMINGTON PIKE	LUMP			
	INCIDENTIAL TOTAL				50.00
	CONSTRUCTION TOTAL				50.00

Exhibit D

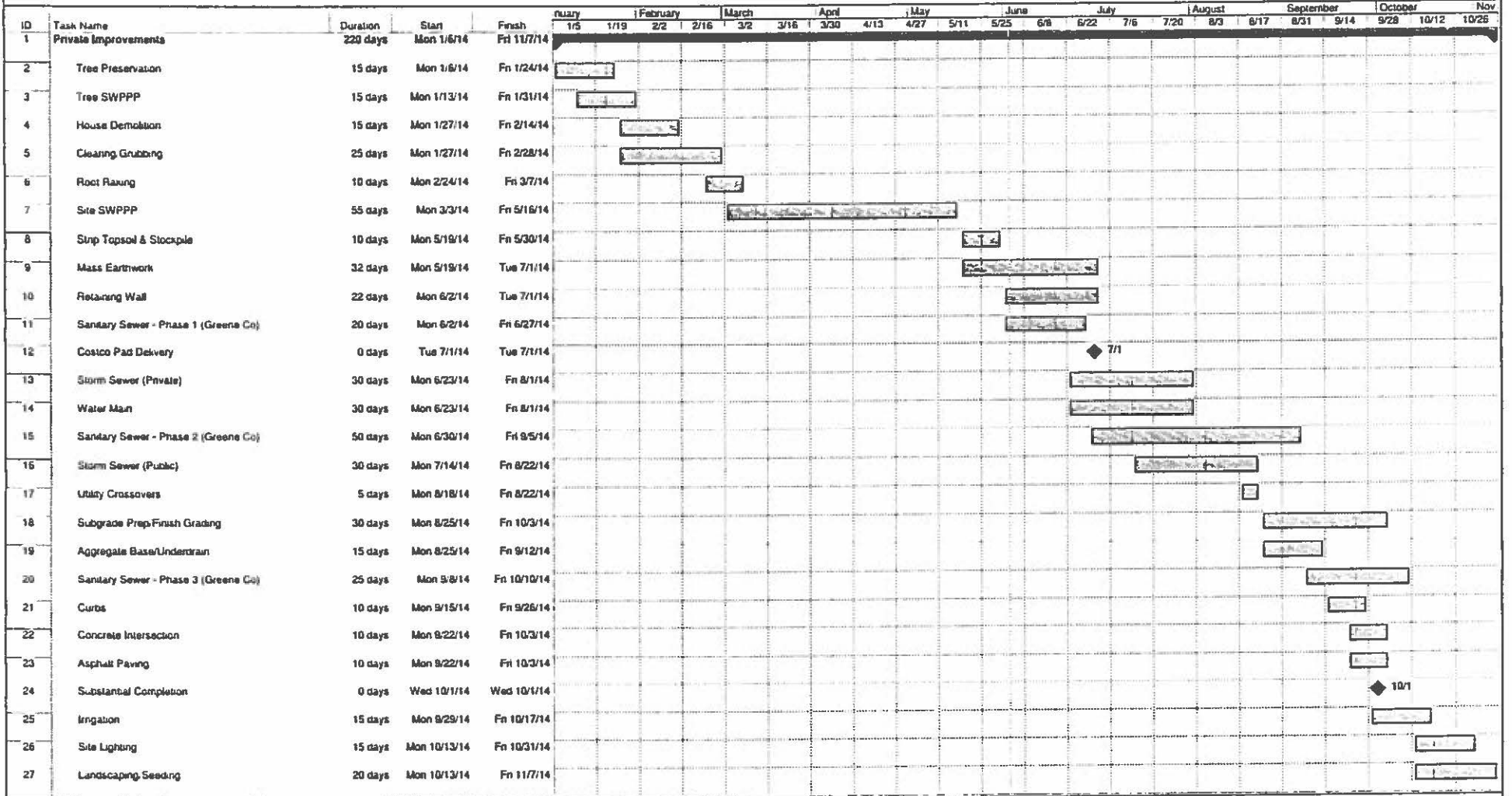
PROPOSED SCHEDULE

EXHIBIT D

Master Construction Schedule Cornerstone of Centerville

Oberer Thompson Company
4197 Research Blvd
Beavercreek, OH 45430

Job# 14-1026



Project: Cornerstone Master Schedule
Date: Tue 6/3/14

Task: [Bar with diagonal lines] Progress: [Solid bar] Summary: [Bar with arrow] External Tasks: [Bar with diagonal lines] Deadline: [Down arrow]

Split: [Dashed bar] Milestone: [Diamond] Project Summary: [Bar with arrow] External Milestone: [Diamond]

Exhibit E

INTENTIONALLY DELETED

Exhibit F

ACCEPTED COMPETITIVE PROCESS

The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work and, after analyzing such bids, shall deliver such bids to the City. The Construction Manager will then determine, with the advice of the City which bid will be accepted. The procedures shall follow Chapter 210 of the Ordinances of the City of Centerville summarized below and as followed in the bidding template attached hereto.

- Advertisement in Dayton Daily News once a week for two weeks.(210.02)
- Have a pre-bid Meeting.
- Opening of Bids at the Municipal Building at least seven (7) days after the last publication in the Dayton Daily News. (210.03)
- Since the Construction Manager is to hold the contracts and is to be bonded, the City will not require Bid Bonds of the bidders unless requested by the Construction Manager.
- Centerville City Council shall authorize through legislation giving the City Manager the right to reject any and all bids and/or waive irregularities. (210.05)
- Centerville City Council shall authorize through legislation accepting the recommendations of the Construction Manager for construction phase allowing a maximum price for the project and giving the Construction Manager the right to award bids. (210.06).
- The template attached hereto shall be prepared and incorporated into the bid process.

TEMPLATE FOR BID PROCEDURES
[COMMENT: TITLE TO BE DELETED IN FINAL FORM]

**Cornerstone of Centerville, North
On-Site Public Improvements**

CORNERSTONE DEVELOPERS, LTD.
3475 NEWMARK DRIVE
MIAMISBURG, OHIO 45342

c/o

CITY OF CENTERVILLE
100 WEST SPRING VALLEY ROAD
CENTERVILLE, OHIO 45458
PHONE: (937) 428-4782

Pre-Bid Meeting: _____ at 11:00 A.M.

Bid Due Date: _____ at 11:00 A.M.

Contact: Tony Quinter, Project Manager

DOCUMENT CONTENTS

SECTION 1 – BID DOCUMENTS

LEGAL ADVERTISEMENT

INVITATION TO BID

PRE-BID CONFERENCE

INSTRUCTIONS TO BIDDERS

CONTRACTOR'S AFFIDAVIT - CURRENT ESTIMATES - form

CONTRACTOR'S AFFIDAVIT - FINAL ESTIMATE - form

SAMPLE OF CONTRACT

SECTION 2 – PERFORMANCE AND MATERIAL SPECIFICATIONS

SECTION 3 - SUPPLEMENTAL SPECIFICATIONS

SECTION 4 - PREVAILING WAGE

SECTION 5 - FEDERAL REQUIREMENTS

ATTACHMENTS

PROPOSAL FORM OFFER

BID BOND - form

BIDDER'S PRINCIPALS' EXPERIENCE & REFERENCES

BIDDER'S PROPOSED SUBCONTRACTORS

PROPOSAL SHEETS

CERTIFICATE OF NON-COLLUSION - form

CERTIFICATE OF NON-DISCRIMINATION – form

DELINQUENT PERSONAL PROPERTY TAXES – form

AFFIDAVIT OF ELIGIBILITY - form

CITY OF CENTERVILLE
LEGAL ADVERTISEMENT

Sealed bids or proposals properly endorsed "CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS" will be received by the City of Centerville at the office of the City Manager, City Municipal Building, 100 West Spring Valley Road, Centerville, Ohio 45458, until _____ and at that time and place publicly opened and read.

The work for which proposals are invited consists of providing labor, equipment, and materials for new public streets and related public infrastructure improvements and utilities. The Project estimate is \$ _____.

Specifications and bid documents are available at the office of the City Manager at the Municipal Building, 100 West Spring Valley Road, Centerville, Ohio 45458 or at the City Public Works Center, 7970 South Suburban Road, Centerville, Ohio 45458. There is a \$25.00 non-refundable fee for the plans and specifications. A pre-bid conference is scheduled for _____ at 7970 South Suburban Road. Attendance is strongly recommended.

The City and its Construction Manager, Oberer Construction Managers, Ltd., reserve the right to accept or reject any or all proposals, to waive any formalities in the bidding, and to enter into a contract with the bidder who, in the Construction Manager's opinion in consultation with the City, offered the lowest and best proposal.

Advertise: _____

CITY OF CENTERVILLE
INVITATION TO BID

CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS

Sealed bids will be received at the office of the City Manager, Centerville Municipal Building, 100 West Spring Valley Road, Centerville, Ohio 45458, until 11:00 A.M. E.D.S.T. on _____ and at that time and place publicly opened and read.

The work for which these bids are invited consists of providing all labor, equipment, and materials for new public streets and related public infrastructure improvements and utilities. Materials and workmanship shall conform to the State of Ohio Department of Transportation (ODOT) Construction and Materials Specifications, January 1, 2013 Edition or most recent edition, except where otherwise noted. Proposals must include all items. Bid documents including bid proposal forms may be obtained at the Centerville Municipal Building, 100 West Spring Valley Road, Centerville, Ohio 45458 and at the Centerville Public Works Center, 7970 South Suburban Road, Centerville, Ohio 45458. There is a \$25.00 non-refundable fee for each set of bid documents. Checks shall be made payable to the City of Centerville. The Project estimate is \$ _____. All work will be performed through Oberer Construction Managers, Ltd., as Construction Manager.

[NOTE: BOB, WE ARE NOT SURE WHY YOU WOULDN'T WANT BID BONDS, EXCEPT YOU DO HAVE BONDS LATER IN THE PROCESS. I JUST WANTED TO MAKE SURE YOUR CLIENT ONLY WANTED THE PERFORMANCE BONDS FROM THE SUBS.]

Each Proposal must contain the full name, address and phone number of the party or parties submitting the proposal. Each bidder must submit evidence of its experiences on projects of similar size and complexity. The City and Construction Manager intend and require that this Project have a full completion date no later than **October 31, 2014**.

All contractors and subcontractors involved with the project will, to the extent practicable use Ohio products, materials, services, and labor in the implementation of their Project. Additionally, contractor compliance with the equal employment opportunity requirements of Ohio Administrative Code Chapter 123, the Governor's Executive Order of 1972, and Governor's Executive Order 84-9 shall be required.

Bidders must comply with the prevailing wage rates on Public Improvements in Greene County and the City of Centerville, Ohio as determined by the Ohio Department of Commerce Bureau of Wage and Hour Administration.

The City and the Construction Manager reserve the right to waive any irregularities and to reject any and all bids.

*****PRE-BID CONFERENCE*****

A Pre-Bid Conference will be held

_____ at 11:00 A.M.
Centerville Public Works Center
7970 South Suburban Road
Centerville, OH 45458

All potential bidders are strongly encouraged to attend.

INSTRUCTIONS TO BIDDERS

1.00 GENERAL INFORMATION

- 1.1 PREPARATION OF BID: Proposals pertaining to the "CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS (the "Project)" for the City of Centerville, Greene County, Ohio, must be made in accordance with the following directions.
- .01 Attached herewith are copies of forms identified as, BIDDER'S PRINCIPALS EXPERIENCE AND REFERENCE, BIDDER'S PROPOSED SUBCONTRACTORS, PROPOSAL OFFER AND PROPOSAL SHEETS, CERTIFICATE OF NON-COLLUSION, CERTIFICATE OF NON-DISCRIMINATION, and DELINQUENT PERSONAL PROPERTY TAXES AFFIDAVIT. These documents must be filled out completely and submitted with the bid package. The forms identified as the CERTIFICATE OF FISCAL OFFICER (sample), CONTRACTOR'S AFFIDAVIT, CERTIFICATE OF MATERIALMEN, and CONSTRUCTION CONTRACT are offered as samples and will be required to be completed by the successful bidder and submitted to the City.
 - .02 Submit all bids on the included Proposal Sheets. Be sure that each of the forms identified in the above paragraph are included in the bid package.
 - .03 All blank spaces in the proposal form must be filled in, but no change shall be made in the phraseology of the proposal nor shall any additions be made to the items.
 - .04 All unit costs and total costs shall be written in ink or typed.
 - .05 This proposal shall be a "Unit Price Bid". Measurements for payment shall conform to ODOT Construction and Material Specifications latest edition, Section 109.01. The "Unit Cost" breakdown amounts shown on the Proposal Sheets shall also be used for the purpose of determining the bidder's compensation for additions or deletions, if any, to the Project during construction.
 - .06
 - .06 When a proposal is made by a corporation, it shall be properly executed by an authorized officer. When a proposal is made by a partnership, the firm name and also the names of the individual members shall be signed in full.
 - .07 The place of business of every bidder must be given after his signature, and must be written in full.

- .08 The bid submitted must not contain any erasure, interlineation or other correction unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of those signing the bid.
 - .09 Changes in or additions to the bid form, recapitulations of the work bid upon, alternative proposals, or any other modification of the bid form which is not specifically called for in the contract documents may result in the Construction Manager rejecting the bid as not being responsive to the invitation.
 - .010 Bids must be enclosed in a sealed envelope and marked: Bid for "CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS". The name of the bidder shall be clearly marked on the envelope, which shall be addressed to the City Manager, Centerville Municipal Building, 100 West Spring Valley Road, Centerville, Ohio 45458 and received prior to the bid opening as set out herein. The City of Centerville is not obligated to open any bids delivered after the time set for bid opening regardless of the reason for late delivery.
 - .011 A bid shall be valid for 120 days following the date of the bid opening.
- 1.2 QUALIFICATION OF BIDDERS: The City and its Construction Manager require that the bidder shall furnish satisfactory evidence that he/she has the necessary resources to fulfill the conditions of the Contract Documents. The evidence shall be listed in the form "Experience Statement". Contracts will be awarded only to responsible prospective Contractors who:
- .01 Have adequate financial resources or the ability to obtain such resources as required during performance of the contract.
 - .02 Have a satisfactory record of performance. (Contractors who are delinquent in current Contract performance, when the number of Contracts and the extent of delinquencies of each are considered, shall be presumed to be unable to fulfill this requirement).
 - .03 Conform to the requirements of Anti-discrimination Clause.
 - .04 Are otherwise qualified and eligible to receive an award under applicable laws and regulations.
- 1.3 INTERPRETATION OF BID DOCUMENTS: If any Bidder needs additional information or is in doubt as to the true meaning of any part of the Drawings, Specifications, or other bid documents, he may submit to the Construction Manager a written request for such information or an interpretation thereof no later than noon, three (3) working days prior to the bid opening. Any interpretations or revisions to the bid documents will be made only by an Addendum issued by the Construction Manager. A

copy of such Addendum will be sent to each person securing a set of bid documents on the City's plan holders list, provided that sufficient time is available for the issuance of such Addendum prior to the receipt of bids. Such Addendum shall become part of the bid documents and the costs of such revisions shall be included in the bids. The City and its Construction Manager will not be responsible for any other explanations or interpretations of the bid documents made prior to the receipt of bids.

- 1.4 **FORM/AMENDMENT TO CONTRACT:** Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and this contract shall be read and enforced as though it were included herein, and if through mere mistake, or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either party hereto, the Contract shall forthwith be physically amended to make such insertion.

- 1.5 **CONSTRUCTION AND MATERIAL SPECIFICATIONS:** All work done under this contract shall conform to the State of Ohio Department of Transportation (ODOT), Construction and Material Specifications, January 1, 2013 Edition or most recent edition, the City of Centerville Specifications, Greene County Sanitary Engineering Department Specifications dated May 9, 2006 or most recent edition, and all constructions plans and documents contained herein. Supplemental specifications are included in these bid documents.
 - .01 The ODOT Construction and Material Specifications shall be interpreted as follows: Where the word "STATE" occurs, it is to mean City of Centerville. Where the word "DEPARTMENT" occurs, it is to mean the Office of the City Engineer, and where the word "DIRECTOR" or "DEPUTY DIRECTOR" occurs, it is to mean the Centerville City Manager. Where the word "ENGINEER" occurs, it is to mean the City Engineer or his authorized representative. Nothing contained in this paragraph shall be deemed to modify the responsibilities of the City and/or the Construction Manager under this Agreement.

- 1.6 **EXAMINATION OF SITE:** Each bidder shall visit the site of the proposed work and fully acquaint himself/herself with the conditions relating to the construction and labor so that he may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the agreement. Bidders shall thoroughly examine and be familiar with the contract terms, plans and specifications. The failure or omission of any bidder to receive or examine any form, instrument, addendum, or other document or to visit the site and acquaint himself/herself with the existing conditions shall in no way relieve any bidder from obligations with respect to his bid or to the Agreement. Bidding shall be taken as evidence of compliance with this section.

- 1.7 **SUB-SURFACE CONDITIONS:** The Contractor shall notify the Construction Manager in writing of any unusual circumstances as soon as they become apparent. The Construction Manager will then indicate what additional work must be done (if any), and may authorize such work.

- 1.8 ALTERNATE METHODS OF CONSTRUCTION: Proposals for alternate methods of construction will be accepted by the City and its Construction Manager until the time of the bid opening. Should it be found advantageous to accept such alternate methods of construction, then the City and its Construction Manager reserve the right to inform the bidders of this possible change. The bidders will be given an opportunity to submit a price revision incorporating the alternate method of construction into their bid.

2.00 CONSTRUCTION PHASE

- 2.1 COMMENCEMENT AND PROGRESS OF WORK: Work on this contract shall begin within twenty one (21) days after the signing of the contract, unless otherwise directed by the Construction Manager. The successful bidder should not begin work under any circumstances before entrance into the written Contract with the Construction Manager and furnishing surety bond in accordance with the laws of Ohio applicable to executing and entering into such contracts. Once commenced, construction shall progress at a steady rate through completion and shall be expedited if required by Construction Manager to remain on schedule.
- 2.2 TIME OF COMPLETION: All work shall be fully completed by no later than October 31, 2014, except as noted below. Only in the case whereby unforeseen circumstances, such as unusually inclement weather or natural disaster, and by no fault of the contractor, may the date of completion be extended. The Contractor must request a time extension in writing to the Construction Manager. The Construction Manager may accept or reject such request. The decision of the Construction Manager shall be final.
- 2.3 WORK HOURS: The permitted work hours are unrestricted. The maximum permitted sound levels (dBA) shall not exceed those established under the City of Centerville Unified Development Ordinance. (Applicable from 10:00pm to 7:00am daily.) Reference 3.3 for overtime Inspection.
- 2.4 LOCAL HEADQUARTERS: The bidder, if awarded the contract, must maintain a local headquarter where he can be reached readily. The Construction Manager must also be given a telephone number where the contractor (or his representative) can be reached readily and without delay during regular City working hours, and during non-working hours.
- 2.5 ENGINEERING/SURVEYING WORK: The contractor is responsible for construction staking, which must be performed prior to starting construction.
- 2.6 CHANGE ORDERS: The Construction Manager reserves the right to execute change orders to the contract based upon the unit prices quoted. All change order requests initiated by the Contractor must be submitted in writing and must be approved by the Construction Manager and the City before proceeding with the work.
- 2.7 SUBCONTRACTORS: None of the work to be done under this contract shall be sublet or assigned without the written consent of the Construction Manager and of the

contractor's surety. Any assignment of this contract will not release the contractor or his surety from the faithful performance of the contract. All contracts made by the contractors with subcontractors are to be covered by the terms and conditions of the General Contract. The contractor shall fully inform his subcontractors in regard to these terms and conditions. The contractor is, and remains, fully responsible to the City of Centerville and its Construction Manager for the full and complete performance of the contract.

- 2.8 **MATERIAL TICKETS:** It is the contractor's responsibility to assure that the inspector receives a copy of all tickets showing the quantity and type of materials delivered to the site. Such material tickets to be given to the inspector at the end of each working day.
- 2.9 **SAFETY CONSIDERATIONS:** It shall be the duty of the contractor to erect and maintain adequate lights, signs and barricades to insure the safety of the traveling public during the progress of the work, and same are to be maintained until final acceptance by the City Engineer and Construction Manager. All construction warning devices shall be new or like new condition and their application shall comply with the Ohio Manual of Uniform Traffic Control Devices.
- 2.10 **REMOVAL AND DISPOSAL OF MATERIALS:** Removal and the proper disposal of materials, as needed, is the sole responsibility of the contractor. The Construction Manager shall be informed of locations and any associated agreements for disposal.
- 2.11 **USE OF RECLAIMED MATERIALS:** The City is specifying the use of virgin materials for all asphalt courses. All bids received must reflect those materials. A bidder may submit an alternate bid proposing the use of reclaimed materials as per ODOT Specifications 401 and will be given serious consideration if the use of such material is clearly described and found to be advantageous. The use of reclaimed materials will be restricted to intermediate asphalt courses only.
- 2.12 **NOTIFICATION OF UTILITY COMPANIES:** It is the sole responsibility of the contractor to coordinate with all utility companies and notify them prior to work disturbing any valves, sanitary manholes, lines, etc. Raising or lowering gas or water valves which are affected by the work must be initiated by the contractor; the actual work of raising or lowering will be done either by the utility company or by this contractor. The plans indicate locations of sanitary sewer and water main crossings, based off the original plats, which contractors will be responsible for coordinating. It is the contractor's responsibility to have all utilities marked and proceed with construction operations accordingly. It is the contractor's responsibility to avoid damage to private facilities, including irrigation systems, etc.
- 2.13 **TRAFFIC MAINTENANCE:** Traffic shall be maintained at all times on roads adjoining the work site.
- .01 Roadways/corridors shall remain open to traffic (automobile, bicycle, pedestrian) at all times. The contractor shall not close a lane or sidewalk such that another

reasonable option is not possible for automobile and pedestrian traffic. On a thoroughfare, a lane may only be closed if another lane is available for the same movement. On a thoroughfare, if a departing lane is closed, the approach lane shall be as well.

.02 The contractor shall be responsible for coordinating the closing of lanes, driveways, and/or sidewalks with the City and the affected property owners so as to minimize inconvenience and provide for property access needs.

.03 For work on arterial roadways, the available hours for construction maintenance of traffic are Monday-Friday (excluding holidays) from 8:30 a.m. to 3:30 p.m. and Saturday from 7:30 a.m. to 4:30 p.m. For work on local streets or other construction activities that do not impact traffic on arterial roadways, the available hours for construction are Monday-Saturday (excluding holidays) from 7:00 a.m. to 7:00 p.m.

No construction shall occur on:

- Independence Day; Friday, July 4, 2014
- Labor Day; Monday, September 1, 2014,

Reference 3.3 for overtime Inspection.

.04 All traffic control, including barricades, signs and warning lights, shall be in accordance with the Ohio Manual of Uniform Traffic Control Devices. The Contractor is responsible for all traffic control.

.05 All existing traffic control devices that are removed as part of the construction process shall be relocated or replaced immediately so as to adequately maintain traffic.

.06 Maintenance of Traffic Control Devices: the Contractor shall provide the capability to maintain the traffic controls 24 hours, 7 days a week and shall provide the City and its Construction Manager with an emergency telephone number for such maintenance. The response time to correct a signing problem is to be a maximum of two (2) hours. If, in the opinion of the City and its Construction Manager proper maintenance of traffic and proper provisions for traffic control are not being provided by the Contractor, the City and Construction Manager may take the necessary steps to place them in proper condition. The cost of such services will be deducted from any money which may be due or become due the Contractor.

2.14 RESTORATION WORK: The contractor shall work with adjacent property owners and the Construction Manager on all restoration efforts.

2.15 NOTIFICATION LETTERS: The Construction Manager will mail notification letters for the start of construction, as well as construction updates if necessary. The Contractor shall provide sufficient notice to the Construction Manager (typically seven days in advance) prior to work.

- 2.16 **SURVEYING MONUMENTS AND PINS:** The contractor shall protect all monuments, pins, and/or markers of any type. If a monument, pin, or marker is disturbed, it shall be immediately restored to its original integrity and condition by an Ohio-licensed Professional Surveyor at the expense of the contractor. The contractor shall submit three copies of the surveyor's field notes documenting re-establishment of the monuments, pins, and/or markers.

3.00 COMPENSATION AND RETENTION

- 3.1 **PARTIAL PAYMENTS:** Not more than one (1) payment per month will be made on this Contract by the Construction Manager. A 6% retainer shall be withheld by the Construction Manager from each payment until the job is complete. Close coordination of requests for payment will be required to minimize any delay in payments for work completed. Certified payroll reports must be submitted for the period of work in the partial payment request before payment is made. Payment will be made upon attainment of item specification. At the discretion of the Construction Manager, lump sum items partially completed may be paid pro-rata. The contractor will not be reimbursed for stored materials unless otherwise stated.
- 3.2 **FINAL PAYMENT:** One final payment shall be made to the Contractor within 31 days after all work is completed and accepted by the City and its Construction Manager and after all provisions are complied with as outlined in the contract. An invoice shall be submitted to and certified as correct by the Construction Manager. The Contractor will be required to sign the Contractor's Affidavit of Compliance with Prevailing Wages on the form attached herein, and have the same properly notarized. Refer to 4.2 and 4.3 below for Work Guarantee and Maintenance Bond requirements.
- 3.3 **OVERTIME:** If contractor chooses to work on weekends, holidays, before or after hours, he shall so notify the City and the Construction Manager 48 hours in advance. Unless compelling reasons exist, permission for such work will be given; however, the Contractor may be required to pay the City for the Inspector's overtime at the **actual current rate**. Work requiring Greene County inspection requires direct coordination with Greene County including all overtime arrangements.
- 3.4 **PREVAILING WAGE:** The contract between the Construction Manager and the successful bidder shall contain a statement requiring that mechanics, laborers and operators be paid prevailing rate of wage as required in Section 4115.06 of the Ohio Revised Code. The Contractor shall be responsible for submitting to the Construction Manager its required payroll reports. Payroll reports must be submitted to the Construction Manager for the work period in which the partial payment is requested or payment will be withheld. The contractor or subcontractor is required to file with the Construction Manager upon completion of the Project and prior to the final payment therefor, an affidavit stating he has complied with Chapter 4115 of the Ohio Revised Code. Current Prevailing Wage Rate Information is included herein.

- 3.5 TAX EXEMPTION: The Contractor will furnish a sales tax exemption certificate for completion by the City of Centerville, Ohio.

4.00 BONDING AND INSURANCE

- 4.1 PERFORMANCE BOND: The successful bidder shall be required to post a performance bond in an amount equal to 100% of the total contract price. The performance bond shall be executed by the Contractor and approved surety company authorized to do business in Ohio. If, at any time after execution and approval of this Contract and the Performance Bond required by the Contract Documents, the Construction Manager should deem any of the sureties upon such bond to be unsatisfactory or if, for any reason, such bond shall cease to be adequate surety for the Construction Manager, the Contractor shall within five days after notice of the Construction Manager to do so, furnish a new or additional bond, in form, sum and signed by such sureties as shall be satisfactory to the Construction Manager. No further payment shall be deemed due nor made to the Contractor unless and until such new or additional bond shall be furnished and approved.
- 4.2 WORK GUARANTEE: The Contractor shall guarantee all work for a period of one year from the date set forth in the certificate of completion against defects resulting from the use of inferior materials, equipment or workmanship. A six percent (6%) retainer held by the City shall be used as a Maintenance Bond. The Contractor will be required during the life of this guarantee to make all repairs or changes in the guaranteed work, which in the opinion of the City Engineer and Construction Manager, are necessary as the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract. The contractor shall promptly, upon receipt of notice from the City and its Construction Manager, remove and replace all unsatisfactory work with suitable material and equipment. A new one year warranty period shall apply to any work repaired or changed pursuant to the requirements of this paragraph. An inspection of the entire job will be made eleven (11) months after the last and final payment and if no corrections are needed, then the 6% retainer becomes payable at the end of the twelve (12) months time period.
- 4.3 MAINTENANCE BOND: If the Contractor prefers to give a Maintenance Bond, in lieu of the retained percentage, same may be given, provided it is executed in form as prescribed herein, designated "Improvement Maintenance Bond". Same shall be executed by the Contractor and approved surety company authorized to do business in Ohio.
- 4.4 LIABILITY INSURANCE: The Contractor shall procure and furnish a certificate of insurance showing that he is keeping in full force and effect during the term of this contract a Liability Insurance policy containing a Contractual Liability Coverage Endorsement covering his operations and his assumed liability with the City of Centerville, Ohio and Oberer Construction Managers, Ltd., being named as an additional Insured, providing protection against claims arising out of the performance of this Contract, or in any way connected therewith, in an amount of One Million Dollars (\$1,000,000) for any one person injured in any accident and with a total liability of Five

Million Dollars (\$5,000,000) for all persons injured in any one accident, and the amount of One Million Dollars (\$1,000,000) for each accident as compensation for damage caused to property of others. In addition to furnishing the insurance coverage described above, the Contractor shall produce satisfactory evidence to the City and Construction Manager before starting any work under this contract that all of his employees are protected by Workman's Compensation under and in accordance with the laws of the State of Ohio, and shall make all premium payments promptly so as to maintain such protection in full force and effect during the term of the Contract.

5.00 LIQUIDATED DAMAGES

- 5.1 **FAILURE TO PERFORM WORK PER CONTRACT:** Work performed deficient of the contract and its intent will be required to be corrected (if possible) or payment may be fully or partially withheld, at the discretion of the City Engineer and Construction Manager. The contractor shall perform the required work within the timeframes specified such that final completion is achieved on or before October 31, 2014. Work performed outside of the timeframes specified will cause the contractor to be charged at the rate of \$10,000 per day as liquidated damages. The amount shall be deducted from any money due the Contractor, (but not as a limitation on the amount due from the Contractor).
- 5.2 **INSPECTION AND MATERIALS TESTING:** The contractor is required to work closely with the inspector concerning the scheduling of work items. A 24-48 hour notice is required to allow the inspector and materials testing firm an opportunity to schedule their time onsite. If the inspector is not notified of a significant work item, the City or Construction Manger may require the work to be redone at the contractor's expense. If the work to be inspected and/or tested is delayed and the contractor does not properly notify the inspector, the Construction Manager will subtract the value of wasted time of the inspector and/or material testing firm from the total contract fee.
- 5.3 **TRAFFIC CONTROL:** If traffic control, or signage, is not maintained, each instance of non-compliance will result in a \$100 deduction from the total contract fee.
5. **PROFESSIONAL WORK ETHIC:** Contractor is to maintain a professional work ethic on the Project as they are seen by the public as an extension of the City of Centerville. This includes communications, attitude, as well as maintaining a clean work site free of trash and debris. Each instance of non-compliance may result in a \$100 deduction from the total contract fee, or other appropriate action.
- 5.5 **DISPOSAL OF MATERIALS:** If the contractor fails to properly dispose of materials as cited above, the Construction Manager will deduct three (3) times the cost to the Construction Manager to dispose of the materials from the total contract price.

CONTRACTOR'S AFFIDAVIT
Current Estimates

STATE OF _____)

CITY OF CENTERVILLE) ss.

The undersigned, _____, hereinafter called the Contractor, hereby represents that on _____ he (it) was awarded a Contract by Oberer Construction Managers, Ltd., hereinafter called the Construction Manager, to do the work contained in "CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS", in accordance with the terms and conditions as specified; and the undersigned further represents that all progress payments heretofore received from the Construction Manager on account of The Work have been applied by the Contractor to discharge in full all of the Contractor's obligations incurred in connection with The Work covered by all prior Estimates.

This affidavit is freely and voluntarily given with full knowledge of the facts, on this _____ day of _____, A.D. 20__.

Contractor

By: _____
Signature

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, in the year of our Lord, 20__.

Notary Public

Printed Name

My Commission Expires

CONTRACTOR'S AFFIDAVIT

(To be signed upon completion of project when final payment is requested by contractor)

Final Estimate

AFFIDAVIT OF ORIGINAL OR SUBCONTRACTOR

_____ Ohio, _____ 20__.

State of Ohio,

County, ss:

_____, being first duly sworn, says that he is (1) _____ of (2)
(the Original or Subcontractor) having a contract with (2) (Subcontractor) and the (3) Oberer
Construction Managers, Ltd. for "CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE
PUBLIC IMPROVEMENTS" whereof (2) the City of Centerville was the owner, part owner, or
lessee.

Affiant further says that the following shows the names and addresses of every
subcontractor in the employ of said (2) _____ giving the amount, if any, which is
due, or to become due to them, or any of them, for work done or machinery, material, or fuel
furnished to date hereof, under said contracts. Note: This statement must be accompanied by a
similar sworn statement signed by each of the subcontractors listed below:

Name	Address	Trade	Amount due or to become due for material furnished to date hereof.

CONTRACTOR'S AFFIDAVIT

MATERIALMEN

The undersigned certify that to the date hereof they have furnished machinery, material, or fuel as set out herein to (2) _____ for (4) _____ situated on or around or in front of the property described in the foregoing affidavit; that the nature of said machinery, material, or fuel furnished, the date when they commenced furnishing the same and the amount now due or owing to each of them, is correctly stated and set opposite their respective names and addresses or they have been paid in full, if so acknowledged hereon.

Name	Address	Machinery, Materials, or Fuel and Nature of the Same.	Amount due or to become due to date hereof.

In lieu of the certificate, there may be furnished a written waiver of lien, release, or receipt.

LABOR

Said affiant further says that the following shows the names and addresses of every unpaid laborer in the employ of (2) _____ furnishing labor under said contract, giving the amount, if any, which is due, or to become due for labor done to date hereof:

NOTE: - If the fact is that every laborer has been paid in full, then recite: "Every laborer has been paid in full". If not, then give each unpaid laborer's name and address and the amount due or to become due.

Name	Address	Hours	Amount due or to become due for labor furnished to date hereof.

CONTRACTOR'S AFFIDAVIT

That the amounts due or to become due to said subcontractors, materialmen, and laborers, for work done, or machinery, material, or fuel furnished to the date hereof, to (2) is fully and correctly set forth opposite their names, respectively, in the aforesaid statements, and further evidenced by certificates of every person furnishing machinery, material, or fuel, hereto attached, and made a part hereof.

Affiant further says that (2) _____ has not employed or purchased or procured machinery, material, or fuel from, or subcontracted with any person, firm, or corporation, other than those above mentioned, and owes for no labor performed, or machinery, material, or fuel furnished, under said contracts, other than above set forth.

This affidavit is freely and voluntarily given with full knowledge of the facts, on this _____ day of _____, A.D. 20__.

Contractor

By: _____
Signature

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, in the year of our Lord, 20__.

Notary Public

Printed Name

My Commission Expires

NOTE: (1) Secretary, Treasurer, one of firm, or agent, as case may be.
(2) Name and address.

- (3) "Owner", "part owner", "lessee", or "authorized agent of the owner, part owner, or lessee", or "original" or "principal contractor under a contract with _____ the owner, part owner, or lessee", as the case may be.

(SAMPLE)

CONSTRUCTION CONTRACT

This Agreement made this _____ day of _____, 20____, by and between the **OBERER CONSTRUCTION MANAGERS, LTD.**, an Ohio limited liability company, 3475 Newmark Drive, Miamisburg, Ohio 45342 ("Construction Manager") and COMPANY NAME: COMPANY ADDRESS ("Contractor").

WITNESSETH:

WHEREAS, pursuant to the requirements of Centerville Municipal Code, bids for the construction of the City of Centerville, **CORNERSTONE OF CENTERVILLE, NORTH – ON-SITE PUBLIC IMPROVEMENTS** ("Project") were solicited through the duly advertised bidding process; and

WHEREAS, Contractor was found to be the lowest and best bidder by the Construction Manager in consultation with the City of Centerville; and

WHEREAS, the parties now wish to enter into a contract for the construction of said Project.

NOW, THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties agree as follows:

SECTION 1. EFFECTIVE DATE.

This Agreement shall be effective on the date the Notice to Proceed is issued by the Construction Manager.

SECTION 2. CONTRACT DOCUMENTS.

The following documents pertaining to the above mentioned project shall be considered to be part of this Agreement and are hereby incorporated herein: the Legal Notice, Instructions to Bidders, Conditions of the Contract (General, Supplementary and Other Conditions), Drawings, Specifications, addenda issued prior to execution of this Construction Contract, any other documents listed in this Agreement and any modifications issued after execution. The Contract Documents represent the entire agreement between the parties hereto and supersede any prior negotiations, representations or agreements, either written or oral.

SECTION 3. CONSTRUCTION WORK.

The Contractor shall undertake and execute all necessary work described in the Contract Documents and to complete same within the time stipulated therein.

SECTION 4. CONTRACT AMOUNT.

At the times hereinafter called for, the Construction Manager shall pay the Contractor for the Contractor's performance under this Agreement the total contract amount of

\$ _____ subject to any change orders, additions and deductions as provided in the Contract Documents.

SECTION 5. SCHEDULE OF PAYMENT.

If satisfactory progress is being made, the Contractor will receive monthly payments of the amount of value of work and materials in place. The monthly payments shall be based upon certification by the Construction Manager and said payment may be approximate only in which event all partial estimates and payments shall be subject to correction in the final estimate and payment. Ninety-four percent (94%) of the value so determined, less any previous payments made, will be paid to the Contractor through the completion of the work at which time there shall be no further retainage. All payments and all retainage shall be made in accordance with the provisions of Chapter 153, Ohio Revised Code.

No estimate will be paid until the Contractor has presented to the Construction Manager certificates from the Industrial Commission of Ohio that the Contractor has complied with every condition of Sections 4123.01 and 4123.94 of the Ohio Revised Code and, further, that Contractor has fully complied with the provisions of Chapter 1311, Ohio Revised Code with respect to liens on public funds.

The Contractor shall submit requests for partial payments to the Construction Manager on a monthly basis on a schedule to be agreed upon at the preconstruction conference.

Should any defective work or material or acceptable work that has been damaged by the Contractor's operations be discovered previous to the final acceptance as to the integrity of any part of the completed work, the estimate and payment for such defective or questioned work shall not be allowed until the defect has been remedied and cause for doubt removed.

It is mutually agreed by and between the parties hereto that because of the short-term duration of the contract, no escrow account will be established as is required pursuant to Sections 153.13, 153.14 and 153.63 of the Ohio Revised Code nor shall any interest be paid on any retainage.

SECTION 6. FINAL PAYMENT.

Final payment, constituting the entire unpaid balance of the contract amount, shall be made by the Construction Manager to the Contractor (including any disbursements from the escrow account provided pursuant to Chapter 153, Ohio Revised Code) when (1) the contract has been fully performed by the Contractor except for Contractor's responsibility to correct nonconforming work as provided in the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final certificate for payment has been issued by the Construction Manager; such final payment shall be made by the Construction Manager not more than thirty (30) days after the issuance of the Construction Manager's final certificate for payment.

SECTION 7. CHANGE ORDERS.

In addition to any other provisions relating to Change Orders, any change of the scope of work to be performed will be requested in the form of a written Change Order. Included in the Change Order will be item description, unit price and total.

SECTION 8. INDEMNIFICATION.

The Contractor agrees to indemnify and hold the City of Centerville and Construction Manager harmless and free from damages of any kind or nature due to or arising out of the work to be performed pursuant to this Contract of any kind or nature except damages, if any, due to the fault or negligence of the Construction Manager, its Project Manager, or its agents or employees and the Contractor agrees to reimburse the Construction Manager for any and every reasonable expense incurred as a result of any such claim for damages.

SECTION 9. PERFORMANCE BOND.

A Performance Bond in the amount of one hundred percent (100%) of this contract price shall be posted at the time of signing this Contract. Said Performance Bond shall be with a surety authorized to do surety business in the State of Ohio.

SECTION 10. NONDISCRIMINATION.

The Contractor agrees that in the hiring of employees for the performance of work under this Contract or for any subcontract related thereto, the Contractor or subcontractors shall not, by reason of race, color, religion, sex, age, handicap, national origin or ancestry, discriminate against any citizen in the employment of any person qualified and available to perform work to which this Agreement relates; and the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, handicap, national origin or ancestry.

SECTION 11. TERMINATION OR SUSPENSION.

The Contract may be terminated by the Construction Manager or the Contractor as provided in the General Conditions. The work may be suspended by the Construction Manager as provided in the General Conditions. Attached hereto and incorporated herein is a listing of all contract documents. [COMMENT: NO GENERAL CONDITIONS ATTACHED.]

SECTION 12. GOVERNING LAW.

The provisions of this Contract shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Witness:

CONSTRUCTION MANAGER
Oberer Construction Managers, Ltd.

By: _____

CONTRACTOR

Witness:

By: _____

Signature

Printed Name and Title

CERTIFICATION OF FISCAL OFFICER

The undersigned, as Director of Finance of the City of Centerville, hereby certifies that funds sufficient to meet the requirements of this Contract have been lawfully appropriated for such purpose and are in the treasury, or in the process of collection.

By: _____

Director of Finance

759851.3

PAGE INTENTIONALLY LEFT BLANK