



MODIFIED STANDARD FORM OF PRELIMINARY AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

The author of this document has revised the text of the original DBIA standard form.

Document No. 520

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Washington, DC

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Modified Standard Form of Preliminary Agreement Between Owner and Design-Builder

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2018, by and between the following parties, for services in connection with the Project identified below.

OWNER:

(Name and address)

City of Lebanon
50 S. Broadway Ave.
Lebanon, Ohio 45036

OWNER'S REPRESENTATIVE:

(Name and address)

Scott Brunka, P.E.
Deputy City Manager
City of Lebanon
50 S. Broadway Ave.
Lebanon, Ohio 45036

The Owner's Representative shall be the point of contact for the Design-Builder on the Project. In addition to the other requirements contained herein, all communications, submissions or notices to the Owner from the Design-Builder related to the Project shall be directed to the Owner's Representative.

DESIGN-BUILDER:

Environmental Remediation Contractor
6006 Groveport Rd.
Groveport, OH 43125

The Design-Builder was selected by the Owner, following the selection process outlined in Ohio Revised Code Sections 153.65 through 153.73, as the Design-Builder whose pricing proposal the Owner determined to be the best value.

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Lebanon Turtle Creek Channel and Floodplain Restoration
Design Build Project

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

1.1 Duty to Cooperate and Design-Builder's Pledge. The Design-Builder acknowledges that this is a public project involving public funds and that the Owner expects and requires the Design-Builder to adhere to the highest ethical and performance standards. The Design-Builder pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and the Criteria Architect, (b) it will use its best efforts to cooperate with the Owner and at all times will act with professionalism and dignity in its dealings with the Owner, (c) it will assign only competent supervisors, designers and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Design-Build Contract.

1.2 Definitions. Terms, words and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Modified Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) ("General Conditions of Contract").

1.3 Background Information. The Owner has provided the Design-Builder with the Project Criteria and Schematic Design, produced by the Owner's Criteria Architect under section 153.692 of the Ohio Revised Code. In addition to the Project Criteria, prior to the execution of this Agreement, Owner provided the Design-Builder with the following information related to the Project: (a) a description of the project and project delivery; (b) the anticipated completion date; (c) a description of the preconstruction services; (d) a description of the proposed design services; and (e) a description of the guaranteed maximum price, including the estimated level of design on which such guaranteed maximum price will be based subject to negotiation at the RFP stage. The Design-Builder warrants that a competent person has carefully and diligently reviewed each part of the information provided and represents and agrees, based upon its careful and diligent review of the information provided, that it is not aware of any conflicts, inconsistencies, errors, or omissions of which it has not notified the Owner.

1.4 Site Conditions and Reliance upon Technical Data. The Design-Builder warrants that a competent person has carefully and diligently inspected and examined the entire site and the surrounding area, including all parts of the site applicable to the Work, including location, condition, and layout of the site and the location of utilities, and carefully correlated the results of the inspection with the information provided by the Owner related to the Project. The Design-Builder shall include all costs attributable to site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the site and the surrounding area, and the Design-Builder shall not be entitled to any Change Order, additional compensation, or additional time on account of such conditions.

Article 2

Design-Builder's Services and Responsibilities (the "Work")

2.1 Design Service. Design-Builder shall, consistent with applicable state licensing laws and the Standard of Care set forth herein, provide design services, including architectural, engineering and other professional services, required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources in accordance with Ohio law. Except as provided in Article 9 herein, nothing in this Agreement shall be construed to create any legal or contractual relationship of any kind between Owner and any design professional procured or otherwise engaged by the Design-Builder. The Design-Builder shall be responsible for the acts and omissions of the design professionals procured or otherwise engaged by the Design-Builder under this Agreement. Any agreement or contract awarded for the Project to any subcontractor, sub-subcontractor, design consultants, or design sub-consultant or material supplier shall name the Owner as an intended third party beneficiary, and shall entitle the Owner to enforce any rights

thereunder for its benefit. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession for similar projects taking into account any unique requirements of the Owner and the location of the Project ("Standard of Care").

2.2 Preliminary Services.

2.2.1 Project Criteria. Owner has provided Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project in accordance with section 153.692 of the Ohio Revised Code. Design-Builder acknowledges that the Owner's Project Criteria includes a sufficient description of the Owner's use, space, price, time, site, performance and expandability requirements. Owner's Project Criteria may include schematic design, conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for Owner.

2.2.1.1 Design-Builder shall review and prepare a written evaluation of Owner's Project Criteria. Design-Builder shall notify the Owner's Representative of any inconsistencies in the Owner's Project Criteria. The written evaluation shall include recommendations to Owner for different and innovative approaches to the design and construction of the Project and the feasibility of incorporating environmentally responsible design and construction approaches. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria. Design-Builder shall not revise the Owner's Project Criteria unless the Design-Builder receives a written directive to change the Project Criteria from the Owner's Representative.

2.2.1.2 By providing Design-Builder with Owner's Project Criteria, neither the Owner nor the Owner's Representative assume any responsibility for the design of the Project. Design-Builder acknowledges and agrees that it is responsible for preparing all aspects of the design necessary for the completion of the Project, including the verification of any representations made in the Project Criteria or any assumption made by the Design-Builder based upon the Project Criteria.

2.2.2 Schematic Design. Owner has provided Design-Builder with Owner's Schematic Design describing the Owner's preliminary design and illustrating the scale and relationship of the major Project components.

2.2.2.1 The Design-Builder shall assist the Owner in considering the value of alternate materials, building systems, and equipment by preparing preliminary estimates of the alternatives.

2.2.2.2 Design-Builder shall attend and participate in a minimum of four coordination and review meetings with the Owner to review the Schematic Design.

2.2.2.3 The Design-Builder may also be asked to attend public meetings regarding the Project.

2.2.2.4 Design-Builder shall review and prepare a written evaluation of the Owner's Schematic Design. Design-Builder shall notify the Owner's Representative of any inconsistencies in the Owner's Schematic Design. The written evaluation shall include recommendations to Owner for major building systems and construction materials.

2.2.2.5 The Design-Builder shall prepare an estimated cost of the Work based upon the Schematic Design.

2.2.2.6 Design-Builder shall not revise the Owner's Schematic Design unless the Design-Builder receives a written directive to change the Schematic Design from the Owner that is executed by Owner's Criteria Architect.

2.2.2.7 By providing Design-Builder with Owner's Schematic Design, neither the Owner nor the Owner's Representative assume any responsibility for the design of the Project. Design-Builder acknowledges and agrees that it is responsible for preparing all aspects of the design necessary for the completion of the Project, including the verification of any representations made in the Schematic Design or any assumption made by the Design-Builder based upon the Schematic Design.

2.3 Design Development Services. Design-Builder shall provide Design Development Services based on Owner's Project Criteria and Schematic Design, as may be revised in accordance with Section 2.2 hereof, and in accordance with all laws, codes, regulations and industry standards which are applicable to the Project.

2.3.1 The Design-Builder shall prepare Design Development Documents for the Owner's Representative's approval which shall illustrate and describe the development of the approved Schematic Design.

2.3.2 The Design Development Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems, and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and such other elements as may be appropriate. The Design-Builder shall also perform a building code review and analysis, and a zoning code review and analysis.

2.3.3 The Design Development Documents shall include outline specifications that identify major materials and systems and establish in general their quality levels.

2.3.4 The Design-Builder shall be responsible for all geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site.

2.3.5 The Design-Builder shall consider the value of alternative materials, building systems and equipment in developing the Design Development Documents for the Project.

2.3.6 The Design-Builder shall attend and participate a minimum of four coordination and review meetings with the Owner during the Design Development Phase. As part of its Design Development Services, the Design-Builder may also be required to attend public meetings regarding the Project.

2.3.7 The Design-Builder shall submit the Design Development Documents to the Owner's Representative, and request the Owner's Representative's approval. The parties shall meet to discuss the Design Development Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions. Design-Builder shall not revise the Design Development Documents unless the Design-Builder receives a written directive to change the Design Development Documents from the Owner that is executed by the Owner's Representative. Neither Owner's Representative's review nor approval of the Design Development Documents shall be deemed to transfer any design liability from Design-Builder to Owner or Owner's Representative.

2.3.8 Before final payment is due to the Design-Builder under this Agreement, the Design-Builder shall submit two sets of record Design Development Documents in paper form and in CAD (.dwg) form.

2.4 GMP Proposal. Based on Owner's Project Criteria, the Schematic Design Documents, and the Design Development Documents, as each may be revised pursuant to this Agreement, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a Guaranteed Maximum Price Proposal to Owner (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

2.4.1 a schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;

2.4.2 all other information necessary for the parties to enter into DBIA Document No. 530, *Modified Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition), with the accompanying Modified General Conditions of Contract, DBIA Document 535;

2.4.3 a complete list and description of all interim design submissions including the Design Development Services;

2.4.4 a list of key personnel and consultants who will perform work on the Project (the "Project Team");

2.4.5 pricing for each of the components of the following pricing criteria:

- Design services fee;
- Preconstruction fee;
- Design-build services fee;
- General conditions;
- Contingency;
- Proposed Maximum Cost of the Work; and
- a Guaranteed Maximum Price proposal.

2.5 Review of GMP Proposal. Following the submission of the GMP Proposal, the final design build contract will be prepared, incorporating applicable portions of the Design-Builder's Proposal to the extent such portions are consistent with the contract included in the RFP. It is expected that the Design-Builder will be requested to meet with the Evaluation Committee to assist in finalizing the design build contract. If for any reason, the Design-Builder and the Evaluation Committee are unable to conclude these final negotiations and execute the design build contract, the Evaluation Committee may suspend negotiations with the Design-Builder and initiate an RFP process based upon the Design Development Documents prepared by the Design-Builder under this Agreement. The Board reserves the right to terminate negotiations of the GMP at any time and implement a different project delivery method. At the conclusion of successful negotiations, the Evaluation Committee will recommend that the Board award the design build contract to the Design-Builder. The Board reserves the right, in its sole discretion, to reject the recommendation of the Evaluation Committee and to cancel the negotiations of the design build contract in its entirety if the Board determines that such cancellation is in the best interest of the Board.

2.6 Completion of This Agreement. Design-Builder's services under this Agreement shall be deemed completed upon meeting with Owner to discuss the GMP Proposal and making the revisions to the Proposal requested by the Owner under Article 2.5 of this Agreement.

2.7 Additional Services. Design-Builder may perform the Additional Services set forth in a separate exhibit to this Agreement. The cost for such Additional Services shall be as mutually agreed upon by Owner and Design-Builder, with the Contract Price for this Agreement, as set forth in Section 6.1 hereof, being adjusted accordingly.

Article 3

Owner's Services and Responsibilities

3.1 Timely Performance. Owner shall throughout the performance of this Agreement cooperate with Design-Builder. Owner shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a reasonably timely manner.

3.2 Owner's Project Criteria. Owner shall provide Design-Builder with Owner's Project Criteria.

3.3 Owner Provided Information. Owner shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

3.3.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.3.2 Temporary and permanent easements;

3.3.3 A legal description of the Site;

3.3.4 To the extent available, as-built and record drawings of any existing structures at the Site; and

3.3.5 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Instruments of Service") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth below.

4.2 Owner's License. If Owner fails to enter into a contract on this Project with Design-Builder to complete the design and construction of the Project and Owner proceeds to design and construct the Project through its employees, agents or third parties, Design-Builder hereby, upon payment in full of the amounts due Design-Builder for any satisfactory services rendered as of the date of the termination under this Agreement exclusive of any amounts which are in dispute between the parties, transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Instruments of Service. Such transfer is conditioned on the following:

4.2.1 Use of the Instruments of Service is at Owner's sole risk without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier.

4.3 Owner's License Upon Termination of the Design-Builder. In the event of termination of this Agreement for whatever reason, the Design-Builder hereby grants the Owner a nonexclusive license permitting the Owner to authorize another design-builder to reproduce and, as permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for the purposes of completing, using, maintaining and modifying the Project.

Article 5 Contract Time

5.1 Commencement Date. Design-Builder shall commence performance of the services set forth in this Agreement within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. Design-Builder shall complete such no later than ninety (90) calendar days after the Date of Commencement.

5.2 Interim Dates. Interim milestone dates, if any, of identified portions of the services set forth in this Agreement shall be achieved as described in a separate exhibit to this Agreement.

Article 6

Contract Price

6.1 Contract Price. The Contract Price for this Agreement is as set forth below: \$35,700.

6.2 Scope of Contract Price. The Contract Price shall be the full compensation due Design-Builder for the performance of all services set forth in this Agreement, and shall be deemed to include all the sales, use, consumer and other taxes mandated by applicable Legal Requirements. The Contract Price shall be adjusted to reflect any Additional Services agreed upon by the parties after execution of this Agreement. The Owner's cumulative total liability, including the payments previously made to the Design-Builder, under this Agreement shall be limited to the amount set forth in the Fiscal Officer's certificate accompanying this Agreement. Under no circumstances will the elected officials, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

Article 7

Procedure for Payment

7.1 Payment. Design-Builder and Owner agree upon the following method for partial and final payment of the Preliminary Services Fee to Design-Builder for the services hereunder:

First Payment	25% of Contract Price	Upon the receipt of the Design-Builder's written evaluation of Owner's Project Criteria and Schematic Design.
Second Payment	50% of Contract Price	Upon the completion of the Design Development Services and submission of the Design-Builder's GMP Proposal.
Final Payment	25% of Contract Price	Upon the submission of two sets of record Schematic Design Documents in paper form and in CAD (.dwg) form.

7.2 Interest. Payments due and unpaid by Owner to Design-Builder shall bear interest commencing thirty (30) days after payment is due at the rate of a quarter percent (0.25%) per annum.

Article 8

8.1 Electronic Data.

Electronic Data

8.1.1 In addition to the requirements of Article 3.2.7, the parties agree that the Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Instruments of Service may be transmitted among Owner, Design-Builder and others in electronic media (collectively "Electronic Data") provided that the same Contract Documents are also provided to the Owner in an electronic .dwg file.

8.2 Transmission of Electronic Data.

8.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

8.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Instruments of Service. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

8.2.3 By transmitting Instruments of Service in electronic form, the transmitting party does not transfer or assign its rights in the Instruments of Service. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

8.3 Electronic Data Protocol.

8.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 8.3.

8.3.2 Electronic Data will be transmitted in the format agreed upon in Section 8.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

8.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information if such information changes prior to Final Completion.

8.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in.

Article 9

Other Provisions

9.1 Dispute Resolution.

9.1.1 Mediation. The parties agree that any claim, dispute or controversy arising out of or relating to this Agreement or the breach thereof that cannot be resolved through discussions by the parties shall be submitted to non-binding mediation administered by a mutually agreeable impartial mediator. Unless otherwise agreed to by the parties, the mediation shall take place in the county in which the Project is located and all mediation costs shall be split equally between the parties. In the event that a request for mediation is made concurrently with the filing of a complaint, the mediation shall occur within 60 days from the date of filing unless a longer period of time is agreed to by the parties.

9.1.2 Litigation. If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in the Court of Common Pleas in the County where the Project is located. The parties waive their right to remove any action under this Agreement to any federal court.

9.2 Confidentiality. The Design-Builder acknowledges that Owner is a public entity subject Ohio's public records act. If the Design-Builder claims that any information submitted to the Owner is exempt from disclosure under Ohio's public records act, then the Design-Builder shall conspicuously mark on the record "NOT A PUBLIC RECORD" and include in a cover letter or transmittal an explanation, citing legal authority, of the basis of the claim. Owner reserves the right to reject Design-Builder's position and produce said documents. In the event of a dispute with any third party requesting such records, Design Builder shall undertake the defense of Owner at Design-Builder's own expense and hold harmless and indemnify the Owner for any damages, penalties, fees, or costs that the Owner may incur as a result of such a dispute.

9.3 Assignment. Neither Design-Builder nor Owner shall without the written consent of the other party assign, transfer, or sublet any portion or part of its obligations under this Agreement.

9.4 Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

9.5 Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

9.6 Amendments. This Agreement may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

9.7 Entire Agreement. This Agreement forms the entire and integrated agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder.

9.8 Taxes. Design-Builder shall pay all sales, consumer, use, commercial activity and other similar taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

9.8.1 Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Design-Builder with a Construction Tax Exempt Certificate upon request,

made in writing to the Owner.

9.8.2 Purchases by the Design-Builder of expendable items, such as form lumber, tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.

9.8.3 In addition to any other taxes required to be withheld by the Design-Builder, the Design-Builder shall withhold any income taxes due to the Owner for wages, salaries and commissions paid to its employees for work done under this Agreement and further agrees that any of its Subcontractors shall, by the terms of its subcontract, be required to withhold any such income taxes due for work performed under this Agreement.

9.9 Cooperative Purchasing Programs. The Owner participates in various cooperative purchasing programs, including the program administered by the Ohio Department of Administrative Services. To the extent possible, the Design-Builder shall purchase items which are available through one of the cooperative purchasing program in which the Owner participates unless the Design-Builder can demonstrate that it can receive more competitive pricing by other means permitted under the Contract Documents. The Design-Builder shall include provisions within the contracts with its Design Consultants and Subcontractors which require the Design Consultants and Subcontractors to purchase items through one of the cooperative purchasing programs to the same extent required of the Design-Builder. The Owner will provide the Design-Builder with information related to the cooperative purchasing programs.

9.10 Prevailing Wage Rates. The Design-Builder and its Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work. The Design-Builder shall adjust and shall require its Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors, regardless of tier, to adjust the wage rates to conform to the current rates if the applicable wage rates change prior to completion of the Work, without increase in the Contract Sum. With each Application for Payment, Design-Builder and all Design Consultants, Subcontractors, Design Sub-Consultants, Sub-Subcontractors shall provide a properly completed Affidavit of Design-Builder or Subcontractor Prevailing Wage. The Prevailing Wage Determination Cover Letter is attached as Exhibit 13 of the Agreement and is incorporated by reference herein.

9.11 Other Provisions. Other provisions, if any, are as follows:

9.11.1 Non-Discrimination. The Design-Builder including its consultants and subcontractors, if any, shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of sex, race, color religion, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

9.11.2 Indemnification. The Design-Builder agrees, to the fullest extent permitted by law, to indemnify and hold the Owner harmless from any damage, liability, or cost (including reasonable attorney fees and costs of defense) to the extent caused by negligent acts, errors or omissions in the performance of Design-Builder's services under the Agreement and those of its design professionals, consultants, subcontractors, or anyone for whose performance the Design-Builder is legally liable, regardless of tier.

9.11.3 Ethics. The Design-Builder certifies that it is aware of the ethics responsibilities contained in Ohio Revised Code Section 3517.13 and is in compliance with this section of the Ohio Revised Code.

9.11.4 Privileged Communications. The Design-Builder acknowledges and agrees that the Owner's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the Criteria Architect. The Design-Builder agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications between the Criteria Architect and the Owner's legal counsel will be confidential work product.

9.11.5 Form of Subcontract. For any person or entity who undertakes to perform any part of the Work on the Project that is in privity with the Design-Builder, the Design-Builder shall use the form of subcontract included in Ohio Administrative Code Section 153:1-3-02. As prescribed in OAC Section 153:1-3-02, this subcontract form shall include a provision indicating that the Owner is an intended third party beneficiary of the subcontract, entitled to enforce any rights thereunder for its benefit.

9.11.6 Permits. The Design-Builder shall secure the building permit as well as other permits, including but not limited to zoning permits, fees, licenses, and inspections by governmental agencies necessary for proper execution and completion of the Work. Owner shall waive all permit fees that are within its jurisdiction. The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful order of public authorities, the Design-Builder shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

City of Lebanon
(Name of Owner)


(Signature)

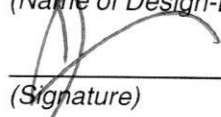
Scott Brunka
(Printed Name)

City Manager
(Title)

Date: 4/23/18

DESIGN-BUILDER:

Environmental Remediation Contractor
(Name of Design-Builder)


(Signature)

Chris McGovern
(Printed Name)

CEO
(Title)

Date: 5/9/18

Approved as to Form

Mark Yurick
City Attorney


(Signature)

DATE: 5-3-18

CERTIFICATE

(Section 5705.41, R.C.)

The undersigned, Fiscal Officer of the City of Lebanon, hereby certifies that the moneys required to meet the obligations of the County during the current fiscal year, under the attached Agreement for the services indicated herein have been lawfully appropriated for those purposes and are in the appropriate account of the County, or in the process of collection to the credit of the appropriate account or fund, free from any previous encumbrances.

DATED: 5/3/2018

City of Lebanon

By: *Dan Burke*

Dan Burke – City Auditor