

**CONTRACT FOR MIAMI COUNTY JOB AND FAMILY SERVICES PROFESSIONAL DESIGN SERVICES**

This " CONTRACT FOR MIAMI COUNTY JOB AND FAMILY SERVICES PROFESSIONAL DESIGN SERVICES" ("Contract") is entered into by and between the Board of Miami County Commissioners ("Board"), 201 West Main Street, Troy, Ohio 45373 and Kleinfelder Incorporated ("Design Consultant"), with business address 1168 North Main Street, Bowling Green, Ohio 43402, pursuant to law.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Board and Design Consultant agree as follows:

1. Term. The term of this Contract shall commence on the date this Contract is executed by the Board and shall terminate on the 31st day of December, 2028 or after the one-year construction warranty walk for the project contemplated by the professional design services contemplated herein, whichever comes first. This Contract may be terminated by the Board or by Design Consultant for any or no reason upon delivery by first class U.S. mail, postage prepaid, or delivery by hand, of a written "Notice of Termination" to either party at least seven days prior to the date of the intended early termination date of this Contract.

2. Scope of Design Services. Pursuant to the terms and conditions set forth in this Contract the Design Consultant shall provide all labor, equipment, materials and things necessary to perform the professional design services ("Design Services") set forth and described in "EXHIBIT A-Appendix A Architectural and Engineering Services Proposal" attached hereto and incorporated herein by reference as if fully rewritten.

3. Design Consultant Compensation. The Board shall pay the Design Consultant for Design Services performed in accordance with this Contract an amount not to exceed SEVEN HUNDRED THIRTY-THREE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$733,750.00). Any unused portion of the design fees will be change ordered out of the project. The Design Consultant will bill the Board monthly for Design Services performed and accepted during the previous month. The Board shall pay such invoice within 30 days of its approval by the Board. However, regardless of when payment is made, and notwithstanding any terms set forth on the invoice and/or any other document to the contrary, the Board shall never be obligated or liable to Design Consultant and/or any other party for any late payment or collection costs, fees or interest charges. Notwithstanding any term or condition set forth in this Contract and/or any other document to the contrary, the total monetary obligation of the Board under this Contract shall not exceed the total sum of SEVEN HUNDRED THIRTY-THREE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$733,750.00).

4. Design Consultant Duty to Indemnify Board. To the fullest extent permitted by law and consistent with Ohio Revised Code section 2305.31, the Design Consultant shall indemnify Board as follows:

4.1. *Indemnification of Board for Professional Negligence.* The Design Consultant shall indemnify and hold harmless the Board, its individual commissioners, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments, and expenses (including reasonable attorney's fees and other reasonable costs of defense), of any nature, kind or description, which (a) are caused by or result from the performance of the Design Services by the Design Consultant, anyone directly or indirectly employed by the Design Consultant, any sub-contractor of the Design Consultant, or anyone for whose acts the

Design Consultant is legally liable, and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property or any other loss, cost or expense, but (c) only to the extent they are caused by any negligent act, error or omission of the Design Consultant, anyone directly or indirectly employed by the Design

Consultant, any sub-contractor of the Design Consultant or anyone for whose acts the Design Consultant is legally liable, in performing the Design Services. The terms and conditions of this paragraph 4.1 shall survive termination of this Contract for any reason.

4.2. *Intellectual Property Indemnification.* The Design Consultant shall indemnify and hold harmless the Board and its individual commissioners, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant is legally liable. The terms and conditions of this paragraph 4.2 shall survive termination of this Contract for any reason.

5. Design Consultant Liability Insurance. The Design Consultant shall purchase and maintain the following liability and other insurance at the indicated limits and under the terms set forth below:

5.1. *General Liability Insurance*, containing the following limits and terms:

5.1.1. \$1,000,000.00 per occurrence

5.1.2. \$2,000,000.00 aggregate

5.1.3. \$1,000,000.00 Products/Completed Operations Aggregate

5.1.4. Name the Board as an additional insured

5.1.5. Waiver of subrogation in favor of the Board and all related entities or subsidiaries, employees, agents and/or representatives

5.2. *Automobile Liability Insurance*, containing a limit of \$1,000,000.00 per occurrence

5.3. *Worker's Compensation and Employer's Liability Insurance*, containing the following limits:

5.3.1. Statutory Limits for the State of Ohio

5.3.2. \$500,000.00/\$500,000.00/\$500,000.00 Employer's Liability Limit

5.4. *Professional Liability or Professional Errors and Omissions Insurance* with the following limits:

5.4.1. \$5,000,000.00 per claim

5.4.2. \$5,000,000.00 aggregate

5.5. *Umbrella Liability Insurance*, containing the following limits and terms:

5.5.1. \$1,000,000.00 per occurrence

5.5.2. Following Form Coverage

5.6. *Loss Deductible*. Insurance policies required to be purchased and maintained by the Design Consultant may include a reasonable loss deductible, as is customary for the professional design services industry, which shall be the sole responsibility of the Design Consultant to pay in the event of any covered loss.

5.7. *Furnishing Of Insurance Certificates*. Within fifteen days of the execution of this Contract by the Board, the Design Consultant shall without demand furnish the Board with a certified copy of any such insurance certificate required to be purchased or maintained by the Design Consultant.

5.8. *Insurance Coverage Dates*. The Design Consultant shall maintain all insurance in the agreed upon amounts, without interruption, from the date of the execution of this Contract until the date of the termination of this Contract or the date of payment of the final invoice issued by Design Consultant, whichever is later.

5.9. *Excess Damages Over Insurance Recovery*. Regardless of the amount of any insurance proceeds recovered by the parties under any insurance policies required to be maintained under this Contract, the Design Consultant shall be liable to the Board for the full amount of any claims, damages, losses, liens, causes of action, suits, judgments and expenses (including reasonable attorney's fees and other reasonable costs of defense) of any nature, kind or description which are in excess of such insurance proceeds.

6. Compliance With Law. By executing this Contract, Design Consultant acknowledges that it is in compliance with, and will remain in compliance with, all pertinent provisions of the Ohio Revised Code (including, without limitation, R.C. section 3517.13), the Ohio Administrative Code, federal and/or local statutes, ordinances, rules, and regulations.

6.1. The laws of the State of Ohio, without regard to its own "choice of law" provisions, shall govern the interpretation and construction of the terms and conditions of this Contract as well as any other claim, suit or action between the parties, whether such other claim, suit or action is based upon tort or otherwise. Any action or proceeding pertaining to this Contract or any other claim, suit or action between the parties shall be heard in a court of appropriate jurisdiction and venue located in Miami County, Ohio.

6.2. Nothing contained in this Contract is intended to be or shall be construed to create or establish the relationship of a partnership, joint venture or other business organization between the parties hereto nor to create an agency, representative or employment relationship between the

Design Consultant or its employees and the Board. Neither the Design Consultant nor its employees shall be considered an employee of the Board nor shall they acquire or be entitled to any compensation, rights, benefits and/or participation of any kind whatsoever offered by the Board including, without limitation, participation in the Ohio Public Employees Retirement System, worker's compensation coverage and/or benefits, medical and hospital care, sick and vacation leave, unemployment compensation, disability, and severance pay.

6.3. Design Consultant agrees that during the performance of this Contract, that neither it nor any sub-contractor will discriminate against any employee or qualified applicant for employment who is both available and qualified to perform the Design Services because of age, race, color, religion, sex, disability, creed, national origin or military veteran status. Neither the Design Consultant nor any sub-contractor shall discriminate based upon age, race, color, religion, sex, disability, creed, national origin, or military veteran status, in any undertaking related to employment including (but not limited to) such actions as hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, pay rates, compensation, and/or selection for training, including apprenticeship.

7. Miscellaneous Terms. The parties each bind themselves, their successors, assigns, and legal representatives to the other party to this Contract, which represents the entire and integrated agreement between them and supersedes all prior negotiations, representations, agreements or contracts, either written or oral, between the parties.

7.1. No person or organization other than the parties hereto shall have any interest hereunder, and nothing contained herein shall be construed so as to give any person or organization other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Contract.

7.2. If any term or condition contained herein is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other term or condition contained herein, each of which shall be construed and enforced to the fullest extent of the law as if such invalid or unenforceable term or condition were not contained herein. Captions or headings are for convenience only.

7.3. The parties acknowledge each of them had access to legal counsel and that each party participated materially in the negotiation and drafting of this Contract.

7.4. Neither the Board nor its commissioners, either individually or collectively, nor any Board official executing this Contract or any modification hereto shall be subject to any personal liability by reason of such execution.

7.5. The Design Consultant shall not assign or transfer any right, title, or interest in this Contract without the prior written consent of the Board, which consent may be withheld by the Board for any or no reason.

7.6. This Contract may only be modified by a writing signed by the parties.

7.7. Risk Allocation. In recognition of the relative risks, rewards and benefits of the project to both the Board and Design Consultant, the risks have been allocated so that the Owner agrees, that to the fullest extent permitted by law, Design Consultant's total liability to the Owner, for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement, from any cause(s) shall not exceed the total contract amount or SEVEN HUNDRED THIRTY-THREE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$733,750.00). Such causes include, but are not limited to, Design Consultant's negligence, errors, omissions, strict liability, breach of agreement or breach of warranty. In recognition of the relative risks, rewards and benefits of the project to both the Owner and Design Consultant, the risks have been allocated so that the Owner agrees, that to the fullest extent permitted by law, Owner's total liability to Design Consultant, for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement, from any cause(s) shall not exceed the total amount of Design Consultant's fee. Such causes include, but are not limited to, Owner's negligence, errors, omissions, strict liability, breach of agreement or breach of warranty. Neither party will be liable to the other party for any special, incidental, indirect, exemplary, punitive, penal or consequential damages, however arising, incurred by either Design Consultant or the Board or for which either may be liable to a third party.

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IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates set forth below.

Board of Miami County Commissioners:

Date: \_\_\_\_\_

\_\_\_\_\_  
Gregory A. Simmons, Commissioner

\_\_\_\_\_  
Ted S. Mercer, Commissioner

\_\_\_\_\_  
Wade H. Westfall, Commissioner

DESIGN CONSULTANT

Kleinfelder Incorporated

Date: \_\_\_\_\_

\_\_\_\_\_  
S. Sonny Hamizadeh, AIA  
Department Manager

\_\_\_\_\_  
Brad M. Thomas, PE  
Area Manager

Approved As to Form Only

By: \_\_\_\_\_  
Miami County Prosecutor's Office