

VILLAGE OF COVINGTON, OHIO

RESOLUTION R36-23

A RESOLUTION AUTHORIZING THE VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH CAPITOL INDEMNITY CORPORATION AND WESTERHEIDE CONSTRUCTION COMPANY FOR SCHOOLHOUSE PARK – RUDY PROPERTY

WHEREAS, on or about October 3, 2022, the Village of Covington and Tall View Palladium, Inc. (“Tall View”) entered into a construction contract (collectively with all executed contract documents making up that construction contract, “the Contract”) relative to a construction project referred to in the Contract as the Schoolhouse Park - Demo and Development Project for the Village of Covington, Ohio (“the Project”), which included the Tall View Bid dated September 20, 2022 (“the Principal’s Bid”);

WHEREAS, as more fully set forth in the Contract, Tall View undertook the obligation to perform, and the Village of Covington agreed to pay Tall View to perform, certain items of work for lump sums and certain quantities of work at the unit prices stipulated in the Principal’s Bid, which Lump Sum Work and Unit Price Work (collectively, “the Work”) is summarized as the “Original Contract Prices” in the attached **Exhibit A**;

WHEREAS, Capitol Indemnity Corporation (“the Surety”) issued Bid Guaranty & Contract Bond No. CIC1927076 (“the Bond”) on behalf of Tall View relative to the Contract;

WHEREAS, during the life of the Contract and/or the Project, the Village of Covington issued payments to Tall View totaling \$261,334.96 (exclusive of retainage) as defined within the attached **Exhibit A**;

WHEREAS, during the life of the Contract and/or the Project, the Village of Covington withheld retainage from Tall View totaling \$20,152.48 and thereby left an unpaid balance under the Contract totaling \$159,003.48 inclusive of that retainage based upon the quantities of the Work encompassed in the Principal’s Bid (“the Remaining Balance of the Contract”);

WHEREAS, the Village of Covington (1) contends that Tall View has failed to well and faithfully perform under the Contract and (2) has asserted a claim against the Surety under the Bond with respect to the Work that remains unfinished under the Contract;

WHEREAS, pursuant to the terms of this Agreement, Westerheide Construction Company (“the Completion Contractor”) has agreed to complete the Work that remains unfinished under the Contract and/or associated with the Work that remains unfinished (collectively, “the Completion Work”) for a price defined within **Exhibit A**;

WHEREAS, the cost of the Completion Work at the Completion Prices would total \$279,900, which would exceed the Remaining Balance of the Contract by \$120,896.52 (“the Excess Completion Costs”); and

WHEREAS, pursuant to the terms of this Agreement, the Surety has elected to discharge its obligations under the Contract, the Bond, and Ohio Revised Code 5525.17 by (1) tendering the Completion Contractor to complete the Completion Work, (2) paying the Excess Completion Cost (*i.e.*, \$120,896.52) to the Village of Covington to fund the

Village of Covington's payment of the Completion Contractor for its completion of the Completion Work at the Completion Prices, and (3) agreeing to fund the remediation of any latent defects in the Work that Tall View performed that would not have been discovered through an inspection of the Work using ordinary care by persons knowledgeable in the type of construction required under the Contract at the time of the execution of this Agreement (collectively, "Latent Defects") subject to the remaining penal sum of the Bond.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Covington, Ohio:


SECTION 1: The Village Administrator is hereby authorized to enter into an agreement with Capitol Indemnity Corporation and Westerheide Construction Company (**Exhibit A**) to complete the project known as Schoolhouse Park – Rudy Property, which Westerheide Construction Company has been selected at a bid price of \$279,900.

SECTION 2: The Village Administrator is authorized to accept a lump sum payment of \$120,896.52 from Capitol Indemnity Corporation for the purposes of completion of the Contract.

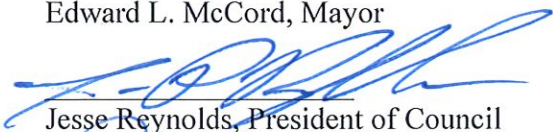
SECTION 3: The lump sum payment from Capitol Indemnity Corporation shall be added to the remaining \$159,003.48 of funding within the Village Capital and Street Funds to complete the project under the proposed contract – **Exhibit A**.

SECTION 4: This resolution shall be in effect at the earliest period as permitted by law.

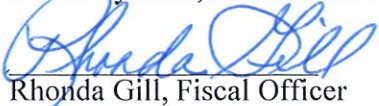
Approved: October 30, 2023



Edward L. McCord, Mayor



Jesse Reynolds, President of Council



Rhonda Gill, Fiscal Officer

EXHIBIT A

AGREEMENT REGARDING COMPLETION OF CONTRACT FOR SCHOOLHOUSE PARK RUDY PROPERTY DEMO AND DEVELOPMENT PROJECT

This Agreement Regarding Completion of Contract for Schoolhouse Park Rudy Property Demo and Development Project (“**this Agreement**”) is entered into by and among the Village of Covington, Ohio (“**the Owner**”), Capitol Indemnity Corporation (“**the Surety**”), and Westerheide Construction Company (“**the Completion Contractor**”).

RECITALS

WHEREAS, on or about October 3, 2022, **the Owner** and Tall View Palladium, Inc. (“**the Principal**”) entered into a construction contract (collectively with all executed contract documents making up that construction contract, “**the Contract**”) relative to a construction project referred to in **the Contract** as the Schoolhouse Park - Demo and Development Project for the Village of Covington, Ohio (“**the Project**”), which included the Principal’s Bid dated September 20, 2022 (“**the Principal’s Bid**”);

WHEREAS, as more fully set forth in **the Contract**, **the Principal** undertook the obligation to perform, and **the Owner** agreed to pay **the Principal** to perform, certain items of work for lump sums (collectively, “**the Lump Sum Work**”) and certain quantities of work at the unit prices stipulated in **the Principal’s Bid** (collectively, “**the Unit Price Work**”), which **Lump Sum Work** and **Unit Price Work** (collectively, “**the Work**”) can be summarized as follows (collectively, “**the Original Contract Prices**”):

Lump Sum Work in the Principal’s Bid

SPEC. NO.	DESCRIPTION	LUMP SUM – SCHEDULED VALUE
1	Building Demolition	\$103,400.00
12	Excavation/Embankment	\$29,000.00
14	Seeding and Mulching	\$4,500.00
15	Signage	\$700.00
16	Pavement Marking	\$600.00
17	Construction Staking	\$2,350.00
18	Preconstruction Video	\$600.00
34	Pavement Marking	\$500.00
35	Erosion Control	\$2,000.00
36	Traffic Control	\$2500
CO1	Underground Tank Removal, Cutting, and Stabilization of Wet and Unsuitable Soils	\$21,056.44
CO2	Exploratory Excavation	\$8,752.68
CO3	Revision to Change Order 2 and Revised Curb Inlet	-\$469.38
	Total Value of Lump Sum Work in the Principal’s Bid	\$175,489.74

Unit Price Work in the Principal's Bid

SPEC. NO.	DESCRIPTION	EST. UNITS	UNIT PRICE	ESTIMATED PRICE
2	Concrete Sidewalk Removal	2,047	\$0.85	\$1,739.95
3	Concrete Drive Approach Approval	862	\$10.00	\$8,620.00
4	Concrete Curb Removal	435	\$3.00	\$1,305.00
5	Signs Removed for Re-Use or Salvage	3	\$375.00	\$1,125.00
6	Full Depth Pavement Removal	2,055	\$2.65	\$5,445.75
7	12" Storm Sewer	169	\$63.00	\$10,647.00
8	Catch Basin CB-3A	4	\$4,400.00	\$17,600.00
9	Catch Basin CB-2-2B	1	\$3,500.00	\$3,500.00
10	Manhole Type 3	1	\$7,400.00	\$7,400.00
11	Adjust Manhole to Grade	1	\$1,000.00	\$1,000.00
13	Topsoil	50	\$90.00	\$4,500.00
19	Tack Coat	75	\$12.00	\$900.00
20	1 1/2" Asphalt Surface Course	32	\$445.00	\$14,240.00
21	2 1/2" Asphalt Intermediate Course	55	\$340.00	\$18,700.00
22	Curb Ramp (ADA)	2	\$1,700.00	\$3,400.00
23	Curb Type 6	527	\$6.00	\$3,162.00
24	6" Concrete Drive Approach	30	\$110.00	\$3,300.00
25	8" Aggregate Base	190	\$150.00	\$28,500.00
26	Planing	370	\$20.00	\$7,400.00
27	Tack Coat	50	\$12.00	\$600.00
28	1 1/2" Asphalt Surface Course	23	\$450.00	\$10,350.00
29	2 1/2" Asphalt Intermediate Course	30	\$340.00	\$10,200.00
30	Stamped Asphalt Cross Walk	508	\$13.00	\$6,604.00
31	Curb Ramp (ADA)	4	\$2,100.00	\$8,400.00
32	Sidewalk	4,650	\$6.00	\$27,900.00
33	Curb Type 6	1,385	\$6.00	\$8,310.00
CO5	8" Aggregate Base	600	\$50.00	\$30,000.00
	Total Value of Unit Price Work in the Principal's Bid			\$244,848.70

WHEREAS, the Surety issued Bid Guaranty & Contract Bond No. CIC1927076 ("the Bond") on behalf of the Principal relative to the Contract;

WHEREAS, during the life of the Contract and/or the Project, the Owner issued payments to the Principal totaling \$261,334.96 (exclusive of retainage) based upon the following amounts the Principal earned under the Contract at the Original Contract Prices:

Lump Sum Work Performed at the Original Contract Prices

SPEC. NO.	DESCRIPTION	LUMP SUM – SCHEDULED VALUE	PERCENTAGE PERFORMED	VALUE PERFORMED
1	Building Demolition	\$103,400.00	100%	\$103,400.00
12	Excavation/Embankment	\$29,000.00	100%	\$29,000.00
14	Seeding and Mulching	\$4,500.00	0%	\$0.00
15	Signage	\$700.00	100%	\$700.00
16	Pavement Marking	\$600.00	100%	\$600.00
17	Construction Staking	\$2,350.00	85%	\$1,997.50
18	Preconstruction Video	\$600.00	100%	\$600.00
34	Pavement Marking	\$500.00	0%	\$0.00
35	Erosion Control	\$2,000.00	32%	\$640.00
36	Traffic Control	\$2500	100%	\$2,500.00
CO1	Underground Tank Removal, Cutting, and Stabilization of Wet and Unsuitable Soils	\$21,056.44	100%	\$21,056.44
CO2	Exploratory Excavation	\$8,752.68	100%	\$8,752.68
CO3	Revision to Change Order 2 and Revised Curb Inlet	-\$469.38	100%	-\$469.38
	Total Value of Lum Sum Work Earned			\$168,777.24

Unit Price Work Performed at the Original Contract Prices

SPEC. NO.	DESCRIPTION	UNITS PAID	UNIT PRICE	VALUE PERFORMED
2	Concrete Sidewalk Removal	2047	\$0.85	\$1,739.95
3	Concrete Drive Approach Approval	862	\$10.00	\$8,620.00
4	Concrete Curb Removal	435	\$3.00	\$1,305.00
5	Signs Removed for Re-Use or Salvage	3	\$375.00	\$1,125.00
6	Full Depth Pavement Removal	2055	\$2.65	\$5,445.75
7	12" Storm Sewer	169	\$63.00	\$10,647.00
8	Catch Basin CB-3A	4	\$4,400.00	\$17,600.00
9	Catch Basin CB-2-2B	1	\$3,500.00	\$3,500.00
10	Manhole Type 3	1	\$7,400.00	\$7,400.00
11	Adjust Manhole to Grade	1	\$1,000.00	\$1,000.00
13	Topsoil	0	\$90.00	\$0.00
19	Tack Coat	0	\$12.00	\$0.00
20	1 1/2" Asphalt Surface Course	0	\$445.00	\$0.00
21	2 1/2" Asphalt Intermediate Course	0	\$340.00	\$0.00
22	Curb Ramp (ADA)	0	\$1,700.00	\$0.00
23	Curb Type 6	527	\$6.00	\$3,162.00
24	6" Concrete Drive Approach	0	\$110.00	\$0.00

SPEC. NO.	DESCRIPTION	UNITS PAID	UNIT PRICE	VALUE PERFORMED
25	8" Aggregate Base	190	\$150.00	\$28,500.00
26	Planing	0	\$20.00	\$0.00
27	Tack Coat	0	\$12.00	\$0.00
28	1 1/2" Asphalt Surface Course	0	\$450.00	\$0.00
29	2 1/2" Asphalt Intermediate Course	0	\$340.00	\$0.00
30	Stamped Asphalt Cross Walk	0	\$13.00	\$0.00
31	Curb Ramp (ADA)	0	\$2,100.00	\$0.00
32	Sidewalk	0	\$6.00	\$0.00
33	Curb Type 6	0	\$6.00	\$0.00
CO5	8" Aggregate Base	435.31	\$50.00	\$22,655.50
	Total Value Earned at the Original Contract Prices			\$112,700.20

WHEREAS, during the life of the Contract and/or the Project, the Owner withheld retainage from the Principal totaling \$20,152.48 and thereby left an unpaid balance under the Contract totaling \$159,003.48 inclusive of that retainage based upon the quantities of the Work encompassed in the Principal's Bid ("the Remaining Balance of the Contract");

WHEREAS, the Owner (1) contends that the Principal has failed to well and faithfully perform under the Contract and (2) has asserted a claim against the Surety under the Bond with respect to the Work that remains unfinished under the Contract;

WHEREAS, pursuant to the terms of this Agreement, the Completion Contractor has agreed to complete the Work that remains unfinished under the Contract and/or associated with the Work that remains unfinished (collectively, "the Completion Work") at the following lump sum and/or unit prices (collectively, "the Completion Prices"):

Lump Sum Completion Work to be Performed at the Completion Prices

SPEC. NO.	DESCRIPTION	LUMP SUM – SCHEDULED VALUE	PERCENTAGE TO PERFORM	VALUE TO PERFORM
14	Seeding and Mulching	\$3,200.00	100%	\$3,200.00
15	Signage	\$2,065.00	100%	\$2,065.00
16	Pavement Marking	\$400.00	100%	\$400.00
17	Construction Staking	\$20,000.00	15%	\$3,000.00
34	Pavement Marking	\$570.00	100%	\$570.00
35	Erosion Control	\$1911.76	68%	\$1,300.00
36	Traffic Control	\$450.00	100%	\$450.00
GC	General Conditions	\$77,150.00	100%	\$77,150.00
	Total Value of Lum Sum Work to be Performed at the Completion Prices			\$88,135.00

Unit Price Work to be Performed at the Completion Prices

SPEC. NO.	DESCRIPTION	UNITS	UNIT PRICE	VALUE TO BE PERFORMED
13	Topsoil	50	\$202.00	\$10,100.00
19	Tack Coat	75	\$9.07	\$680.00
20	1 1/2" Asphalt Surface Course	32	\$259.38	\$11,500.00
21	2 1/2" Asphalt Intermediate Course	55	\$331.91	\$18,200.00
22	Curb Ramp (ADA)	2	\$,2250.00	\$4,500.00
23	Curb Type 6	527	\$28.16	\$14,800.00
24	6" Concrete Drive Approach	30	\$110.00	\$3,300.00
26	Planing	370	\$16.49	\$6,100.00
27	Tack Coat	50	\$9.07	\$450.00
28	1 1/2" Asphalt Surface Course	23	\$360.89	\$8,300.00
29	2 1/2" Asphalt Intermediate Course	30	\$330.00	\$9900.00
30	Stamped Asphalt Cross Walk	508	\$33.66	\$17,100.00
31	Curb Ramp (ADA)	4	\$2250.00	\$9000.00
32	Sidewalk	4,650	\$6.78	\$31,500.00
33	Curb Type 6	1,385	\$28.16	\$39,000.00
CO5	8" Aggregate Base	146.70	\$50.00	\$7335.00
	Total Value of Unit Price Work to be Performed at the Completion Prices			\$191,765.00

WHEREAS, the cost of the Completion Work at the Completion Prices would total \$279,900, which would exceed the Remaining Balance of the Contract by \$120,896.52 ("the Excess Completion Costs"); and

WHEREAS, pursuant to the terms of this Agreement, the Surety has elected to discharge its obligations under the Contract, the Bond, and Ohio Revised Code 5525.17 by (1) tendering the Completion Contractor to complete the Completion Work, (2) paying the Excess Completion Cost (i.e., \$120,896.52) to the Owner to fund the Owner's payment of the Completion Contractor for its completion of the Completion Work at the Completion Prices, and (3) agreeing to fund the remediation of any latent defects in the Work that the Principal performed that would not have been discovered through an inspection of the Work using ordinary care by persons knowledgeable in the type of construction required under the Contract at the time of the execution of this Agreement (collectively, "Latent Defects") subject to the remaining penal sum of the Bond.

NOW, THEREFORE, in consideration of the agreements and undertakings hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner, the Surety, and the Completion Contractor (collectively, "the Parties") agree as follows:

1. The Completion Contractor's Examination of the Contract, the Project, Etc. The Completion Contractor has (a) examined the Contract, the Project, and its site to the

extent visible without demolition or removal of **the Work**, and all other information **the Completion Contractor** has deemed relevant, (b) satisfied itself as to the cost of completing **the Completion Work** at **the Completion Prices**, which includes but is not limited to all required overhead expenses and the payment of subcontractors, labor, and material expenses incurred during the completion of **the Completion Work**, and (c) fully informed itself with respect to those items required to complete **the Completion Work** — independent of any representation of **the Owner, the Surety, or the Principal**.

2. **The Surety's Tender of the Completion Contractor.** Conditioned upon **the Parties'** execution of **this Agreement**, **the Surety** shall tender **the Completion Contractor** to **the Owner** to complete **the Completion Work** pursuant to **this Agreement** to discharge **the Surety's** obligations under **the Bond, the Contract**, and/or Ohio Revised Code 5525.17. **The Owner** acknowledges that **the Surety** is acting solely in its capacity as surety for **the Principal** while tendering **the Completion Contractor** for the completion of **the Completion Work**. **The Surety's** actions shall forever be construed and considered as those of a surety and not as a contractor. Except to the extent inconsistent with the terms of **this Agreement**, including but not limited to the releases provided for herein, **the Completion Contractor** shall be entitled to all of the rights and remedies that would have otherwise been available to **the Principal** under **the Contract**, and **the Completion Contractor** is not assuming any obligations or liabilities beyond those set forth in **the Bond, the Contract**, Ohio Revised Code 5525.17, and/or or the terms of **this Agreement**. To aid **the Completion Contractor's** completion of **the Completion Work**, and to the extent **the Owner** possesses any right, title, or interest in and to any subcontracts, purchase orders, contracts, equipment, materials, inventory, and appurtenances furnished or supplied to **the Principal** relative to **the Contract**, however derived, **the Owner** hereby irrevocably assigns all such rights, title and/or interest to **the Completion Contractor** and further agrees that **the Completion Contractor** shall have the right to utilize the same without charge.
3. **The Surety's Tender of the Excess Completion Cost to the Owner.** Conditioned upon **the Parties'** execution of **this Agreement**, **the Surety** shall tender a lump sum payment to **the Owner** in the amount of **the Excess Completion Cost** (*i.e.*, 120,896.52) pursuant to **the Bond**, Ohio Revised Code 5525.1,7 and the terms of **this Agreement** within 14 business days of **the Surety's** receipt of a fully executed copy of **this Agreement**, and **the Owner** shall use that payment to fund the payment for **the Completion Contractor's** completion of **Completion Work** at **the Completion Prices** as **the Completion Contractor** performs **the Completion Work**.
4. **The Completion Contractor's Completion of the Completion Work at the Completion Prices.** In consideration of **the Owner's** agreement to pay **the Completion Contractor** for **Completion Work** at **the Completion Prices** as **the Completion Work** is performed, **the Completion Contractor** agrees to complete **the Completion Work** at **the Completion Prices**. **The Completion Contractor** agrees to be substituted for **the Principal** under **the Contract** and to abide by all the terms, conditions, and provisions of **the Contract** relative to **the Completion Work**. In accordance with the terms of **the Contract**, **the Completion Contractor** agrees to furnish and pay for all of the labor, material, supplies, equipment, services, insurance, warranties, and all other items necessary

to perform and fully complete the **Completion Work** and perform any other obligations arising under the **Contract** relative to the **Completion Work** just as if the **Completion Contractor** were the **Principal** performing under the **Contract**. The **Completion Contractor** shall submit pay requests to the **Owner** pursuant to the terms of the **Contract** but based upon the **Completion Prices**. The **Completion Contractor** acknowledges that the **Owner** or its designated representative shall measure and determine the actual quantities of work performed by the **Completion Contractor** pursuant to the terms of the **Contract**. To the extent the actual quantities of work performed by the **Completion Contractor** are less than those set forth above, the **Owner** shall be entitled to deduct the cost of such reduced quantities at the **Completion Prices** from amounts otherwise payable to the **Completion Contractor** under the **Contract** and/or **this Agreement**. To the extent the actual quantities of work performed by the **Completion Contractor** exceed those set above, the **Owner** shall pay the **Completion Contractor** for such excess quantities at the **Completion Prices**. **Completion Contractor** shall assume no obligation to pay claims of subcontractors of the **Principal** for any of the **Work** performed for the **Principal** prior to the date of **this Agreement**. All claims and damages arising from the failure of the **Completion Contractor** to complete the **Completion Work** shall be the sole responsibility of **Completion Contractor** and/or its surety.

5. **The Completion Contractor's Correction of Latent Defects and the Surety's Payment Therefor.** Notwithstanding any other provision of **this Agreement**, the **Completion Contractor** does not assume any liability or responsibility for **Latent Defects** in the **Work** that the **Principal** performed prior to the execution of **this Agreement**. In the event any **Latent Defects** are discovered after the date of **this Agreement**, the **Completion Contractor** shall immediately notify the **Owner** and **Surety** in writing of the existence of such **Latent Defects** and, if directed by the **Surety** and the **Owner** to do so, shall correct, repair, and/or replace such **Latent Defect** at the price and/or rate agreed upon among the **Owner**, the **Surety**, and the **Completion Contractor**. Conditioned upon obtaining written approval from the **Surety** prior to commencement of corrective work and an agreement among the **Owner**, the **Surety**, and the **Completion Contractor** regarding the price of the corrective work, the **Surety** shall pay the price and/or rate agreed upon to the **Completion Contractor** for the correction, repair, and/or replacement of **Latent Defects**. The **Surety** and the **Completion Contractor** shall endeavor in good faith to enforce the responsibility of any of the **Principal's** subcontractors (and/or their sureties) to correct, replace, or repair any **Latent Defects** and the **Surety** shall have no responsibility to reimburse the **Completion Contractor** for said corrective work if and to the extent the subcontractors (and/or their sureties) remedy the **Latent Defects** at their own expense.
6. **The Surety's Other Remaining Obligation Under the Bond.** Notwithstanding any provision of **this Agreement** to the contrary, any duties or obligations the **Surety** may owe to the **Principal's** subcontractors, material suppliers, and laborers under the **Bond** shall remain in full force and effect in accordance with its terms and provisions relative to any labor, materials, etc. that were furnished to or for the **Principal** relative to the **Contract**, and nothing in **this Agreement** shall modify, waive, or otherwise impair any right or defense of the **Surety** under the **Bond**. The **Owner** acknowledges that the **Surety's** total liability under the **Bond** shall not exceed its penal sum and that all payments the **Surety** has made or may make under the **Bond**, including the **Surety's** payment of the **Excess**

Completion Cost, any payments relative to **Latent Defects**, and any payments to subcontractors, material suppliers shall be credited against the penal sum of **the Bond**. **The Owner** acknowledges that **the Principal's** subcontractors, material suppliers, or laborers have or may assert claims against **the Bond**. **The Owner** shall not make any representations or promises in relation to any such claims but will instead refer all claimants to **the Surety**, who shall pay, defend, dispute, or settle such claims in accordance with the terms of **the Bond** and applicable law. Except to the extent they had been procured by **the Principal**, **the Owner** further acknowledges that **the Bond** shall not cover any labor, materials, etc. that may be furnished to or for or utilized by **the Completion Contractor** pursuant to **this Agreement**.

7. **The Completion Bonds.** **The Completion Contractor** shall provide all bonding required under **the Contract** in respect to **the Completion Work** (collectively, "**the Completion Bonds**"). **The Completion Bonds** shall each be in the amount of \$279,900 (*i.e.*, the cost of completing **the Completion Work** at **the Completion Prices**) and each name **the Owner** and **Surety** as obligees. **Completion Contractor** warrants that the cost of **the Completion Bonds** is included in and is part of the cost of completing **the Completion Work** at **the Completion Prices**.
8. **The Owner's Acceptance of the Tender of Completion Contractor and the Surety's Payment of the Excess Completion Cost.** In consideration of **Surety's** payment of **the Excess Completion Cost** and **the Completion Contractor's** agreement to complete **the Completion Work** at **the Completion Prices** pursuant to **this Agreement**, **the Owner** accepts the tender and substitution of **Completion Contractor** as the completion contractor relative to **the Completion Work**. **The Owner** agrees that it shall (a) act with **Completion Contractor** in the performance of **the Completion Work** as though **the Completion Contractor** were **the Principal** and (b) as between **the Owner** and **the Completion Contractor**, be responsible for contract administration and payment in accordance with the terms and conditions of **the Contract** at **the Completion Prices**. At their discretion and pursuant to the applicable provisions of **the Contract**, **the Owner** and **the Completion Contractor** may execute any additional agreements governing the scope and/or completion of **the Completion Work**, payment for **the Completion Work** at **the Completion Prices**, or any other obligations between **the Owner** and **the Completion Contractor** to effectuate the completion of some or all of **the Completion Work**.
9. **Release and Indemnification of the Surety and the Owner by the Completion Contractor.** **The Completion Contractor** (a) shall forever indemnify, defend, and hold harmless **the Surety** and **the Owner**, and their respective predecessors, successors, and assigns, of and from any and all claims, rights, demands, or damages of whatsoever kind or nature as may arise from **the Completion Contractor's** completion of **the Completion Work** and (b) acknowledges that the execution of **this Agreement** and the negotiation of any term hereof were (i) independent of any statement, representation, or analysis of **the Surety**, **the Owner**, or **the Principal** or their respective consultants, agents, or representatives and (ii) made after an opportunity to consult with counsel. Notwithstanding any other provision to the contrary, **the Owner** acknowledges that **the Completion Contractor** shall have all rights and remedies under **the Contract** except to the extent

inconsistent with the terms of **this Agreement**, including but not limited to the releases provided for herein.

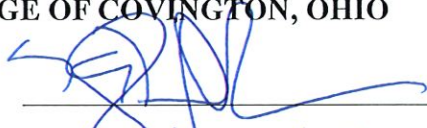
10. **The Owner's Release of the Surety.** Conditioned upon **the Parties'** execution of **this Agreement** and **the Surety's** payment of **the Excess Completion Cost**, and with the sole exception of **the Surety's** obligations relating to **Latent Defects** and **the Surety's** obligations owed to **the Principal's** subcontractors, material suppliers, and laborers, **the Surety** will have satisfied its obligations under **the Contract, the Bond, and/or Ohio Revised Code 5525.17**, and **the Owner** releases **the Surety** and its successors and assigns from any and all claims against **the Surety** under **the Contract, the Bond, and/or Ohio Revised Code 5525.17**, and any other claims, rights, demands, claims for extra costs, attorneys' fees, or liquidated damages (or any other delay damages), and causes of actions of whatsoever kind or nature that **the Owner** may have, or may ever claim to have, now or in the future, against **the Surety** under, or by reason of, **the Contract, the Bond, and/or Ohio Revised Code 5525.17**. The Release contemplated by this Paragraph will occur automatically upon **the Owner's** receipt of **the Excess Completion Cost** without any further action by **the Parties**.
11. **The Surety's Release.** Conditioned upon **the Parties'** execution of **this Agreement** and **the Owner's** acceptance of **the Surety's** tender of **the Completion Contractor** and acceptance of **the Surety's** payment of **the Excess Completion Cost**, **the Surety** releases **the Owner** and its successors and assigns from any and all claims under **the Contract, the Bond, and/or Ohio Revised Code 5525.17** and any other claims, rights, demands, claims for extra costs, attorneys' fees, or liquidated damages (or any other delay damages), and causes of actions of whatsoever kind or nature, whether known or unknown, that **the Surety** may have, or may ever claim to have, now or in the future, against **the Owner** under, or by reason of, **the Contract, the Bond, and/or Ohio Revised Code 5525.17** including, but not limited to, any claim to payment or recoupment of **the Remaining Balance of the Contract** or any amounts heretofore asserted to be owed by **the Owner** to **the Principal** or **the Surety**. The Release contemplated by this Paragraph will occur automatically upon **the Owner's** acceptance of **the Excess Completion Cost** without any further action by **the Parties**.
12. **The Completion Contractor Not an Agent of the Surety or the Owner.** **The Completion Contractor** is an independent contractor and is not an agent, servant, partner, or joint venturer of **the Surety** or **the Owner**.
13. **The Surety's Reservation of Rights Against the Principal and Third-Parties.** Except as otherwise provided in **this Agreement**, **the Parties** expressly acknowledge that **the Surety** reserves all claims, rights, remedies, and defenses that it may possess against any person or entity not a signatory hereto, including, but not limited to, **the Principal** (and any indemnitors), subcontractors, suppliers, etc.
14. **No Third-Party Beneficiaries.** **This Agreement** is solely for the benefit of **the Parties**, and **the Parties** do not intend to create any third-party beneficiaries or to confer any benefit upon or enforceable rights under **this Agreement**, or otherwise, upon anyone other than **the Parties**.

15. **Amendments/Modification Must Be in Writing.** This Agreement may not be modified unless in writing and executed by the Parties.
16. **Advice of Counsel.** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against either of the Parties as drafter.
17. **Governed By Ohio Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.
18. **Severability.** If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
19. **Dispute Resolution.** Notwithstanding any provision to the contrary in the Contract, the Parties agree that mediation and/or arbitration relating to this Agreement shall be undertaken only by the consent of the Parties.
20. **Entire Agreement.** This Agreement and the Contract represent the entire understanding between the Parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein.
21. **Authority of Signatories.** This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be deemed to an original with all the counterparts constituting but one and the same Agreement. Furthermore, (a) this Agreement may be transmitted between the Parties by facsimile machine or electronic mail, (b) this Agreement may be executed by facsimile or scan and electronically mailed signatures, and (c) facsimile or scan and electronically mailed signature shall have the effect of an original signature relative to this Agreement. The execution of this Agreement by the Parties will not become effective until all the counterparts hereof have been executed by all of the Parties.
22. **Representation of Signatories.** The signatories of this Agreement represent, covenant, and warrant to each other that (a) they have carefully read the Agreement, (b) the Agreement is a negotiated document, (c) they understand its provisions and intend to be bound thereby, and (d) they have consulted with legal counsel regarding the terms and conditions of this Agreement.
23. **Counterparts.** The Parties may execute this Agreement independently in any number of counterparts, all of which together will constitute one and the same instrument, which is valid and effective as if all Parties had executed the same counterpart.
24. **Section Headings.** The section headings in this Agreement are for convenience only and do not limit, define, or construe the contents of the sections.

OWNER:

VILLAGE OF COVINGTON, OHIO

BY: _____



ITS: _____

Village Administrator

DATE: _____

10/30/23

SURETY:

CAPITOL INDEMNITY CORPORATION

BY: _____

ITS: _____

DATE: _____

COMPLETION CONTRACTOR:

WESTERHEIDE CONSTRUCTION COMPANY

BY: _____

ITS: _____

DATE: _____