DEVELOPER PERFORMANCE AND MAINTENANCE AGREEMENT

Public Infrastructure Improvements

This DEVELOPER PERFORMANCE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into this ____day of _____, 2025 (the "Effective Date"), by and between the CITY OF NEW FRANKLIN, OHIO (the "City"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio (the "State") and its Charter, and ADKINS PLX HOLDINGS, LLC, an Ohio limited liability company (the "Developer" and together with the City, the "Parties") under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I).

RECITALS:

WHEREAS, Developer is the owner of certain real property in the City as described on **EXHIBIT A**; and

WHEREAS, Developer intends to design, construct and install the Public Improvements more specifically described on **EXHIBIT B**, the approximate costs of which are also set forth on **EXHIBIT B** for the benefit of the Property; and

WHEREAS, the City has determined that it would be in the best interests of the City to contract with the Developer to provide for the design, construction and installation of the Public Improvements as set forth herein; and

WHEREAS, the City and the Developer are entering into this Agreement to provide generally for the design, construction and installation of the Public Improvements; and

WHEREAS, City Council passed Ordinance No. _____ on _____, 2025, authorizing the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2. Definitions. As used herein:

"***Agreement***" means this Developer Performance and Maintenance Agreement by and between the City and the Developer and dated as of the Effective Date.

"***Authorized City Representative***" means initially the City Engineer. The City may from time to time provide a written certificate to Developer signed on behalf of the City by an authorized officer designating one or more additional authorized City representatives who have the same authority, duties and powers as the initial Authorized City Representative.

"***Authorized Developer Representative***" means initially Timothy J. Adkins. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by an authorized officer of the Developer designating an alternate or alternates or a substitute who has the same authority, duties and powers as the initial Authorized Developer Representative.

"***City***" means the City of New Franklin, Ohio, an Ohio municipal corporation.

"***Commencement Deadline***" means, with respect to the Public Improvements identified on **EXHIBIT B** by the second (2nd) anniversary of the execution of the Development Agreement between the City and Developer, which is _____, 202__, and the approval of the final plat by the City that dedicates the right of ways wherein the Public Improvements will be constructed..

"***Completion Certificate***" has the meaning set forth in Section 4.3(a).

"***Completion Deadline***" means, with respect to the Public Improvements identified on **EXHIBIT B** by the third (3rd) anniversary of the execution of the Development Agreement between the City and Developer, which is _____, 202__, and the approval of the final plat by the City that dedicates the right of ways wherein the Public Improvements will be constructed.

"***Construction Documents***" means this Agreement, the design and construction contracts to be entered into by the Developer pursuant to Section 4.2 and the Drawings and Specifications, as such documents may be revised or supplemented from time to time.

"***Cost of the Work***" means the actual costs of the design, construction and installation of the Public Improvements, current estimates of which are reflected in **EXHIBIT B**. Costs of the Work may include construction labor and material costs, related permit and inspection fees, design and

engineering fees as approved by the Engineer, site preparation costs, and other costs necessary and appurtenant thereto, all as further described in the approved Construction Documents.

"***County***" means the County of Summit, Ohio.

"***Developer***" means Adkins PLX Holdings, LLC, an Ohio limited liability company.

"Development Agreement" means that certain Development Agreement entered into by and between the City and the Developer on _____, 2025.

"***Drawings and Specifications***" has the meaning set forth in Section 5.1, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Improvements.

"***Effective Date***" means the date as defined in the preambles of this Agreement.

"***Engineer***" means the City Engineer, or any architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by the City.

"***Engineer's Completion Certificate***" has the meaning set forth in Section 4.3(b).

"***Event of Default***" means any default in or breach of this Agreement after the expiration of any applicable cure period as further described under Section 6.1.

"***Force Majeure***" means any event that is not within the control of a party or its affiliates, employees, contractors, subcontractors or material suppliers that delays performance of any obligation under this Agreement including, but not limited to, the following acts: acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies or terrorism; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or orders or restraints of any kind of the government of the United States or of the State (and in the case of a Force Majeure claim by the Developer, the City) or any departments, agencies, political subdivisions or officials that are not in response to a violation of law or regulations. However, the inability of Developer to obtain financing for its obligations hereunder is excluded from being a Force Majeure event.

"***Notice Address***" means:

If to Developer:	Adkins PLX Holdings, LLC 4602 Dusty's Circle New Franklin, OH 44319 Attn: Timothy J. Adkins
with a copy to:	Roetzel & Andress, LPA

222 S. Main St.
Suite 400
Akron, OH 44308
Attn: Jason D. Dodson, Esq.

If to City: City of New Franklin
5611 Manchester Road
New Franklin, OH 44319
Attn: Mayor

with a copy to: City of New Franklin
5611 Manchester Road
New Franklin, OH 44319
Attn: Law Director

"***Property***" means that certain real property described on **EXHIBIT A**.

"***Public Improvement Property***" means the real property on which the Public Improvements are situated as shown in the Construction Documents.

"***Public Improvements***" means the public infrastructure improvements as described on **EXHIBIT B**, which will be more specifically described in the Construction Documents.

For the avoidance of doubt, Public Improvements includes all public infrastructure improvements set forth on **Exhibit B** other than (1) the sanitary sewer which is under the jurisdiction of, and must be accepted by, the County, upon completion; and (2) the water, which must be accepted by Aqua Ohio, Inc., an Ohio corporation ("*Aqua Ohio*"), upon completion.

"***State***" means the State of Ohio.

"***Work***" means the construction of the Public Improvements in accordance with this Agreement.

Section 1.3. **Interpretation**. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code includes such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter is applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "*hereof*", "*hereby*", "*herein*", "*hereto*", "*hereunder*" and similar terms refer to this Agreement; and the term "*hereafter*" means after, and the term "*heretofore*" means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

The parties hereto acknowledge and agree that this Agreement is the product of an extensive and thorough, arm's length negotiation and that each party has been given the opportunity to independently review the Agreement with legal counsel, and that each party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement may not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction must be utilized.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 1.5. Conflicts between this Agreement and other Construction Documents. Where there is a conflict between this Agreement and the other Construction Documents, the conflict will be resolved by providing the better quality or greater quantity and compliance with the more stringent requirement. If an item is shown on the Drawings and Specifications but not specified, Developer will provide the item of the same quality as similar items specified, as determined by the Engineer. If an item is specified but not shown on the Drawings and Specifications, it will be located as directed by the Engineer.

(END OF ARTICLE I)

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1. **General Agreement Among Parties**. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties will cooperate in the manner described herein to facilitate the design, construction and installation of the Public Improvements.

Section 2.2. **Term of Agreement**. This Agreement is effective as of the Effective Date and continues, unless sooner terminated in accordance with the provisions set forth herein, until the later of the date that (a) all Public Improvements have been completed pursuant to the terms of this Agreement and (b) the guaranty and warranty period described in Section 5.8 has expired for all of the Public Improvements.

Section 2.3. **No Agency Relationship**. The City and Developer each acknowledge and agree that in fulfilling its obligations under this Agreement Developer acts as an independent contractor of the City and not as an agent of the City.

(END OF ARTICLE II)

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1. Representations and Covenants of City. City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) To the City's knowledge, it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) 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 City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound.

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

(e) To the City's knowledge, there is no litigation pending or threatened against or by City wherein an unfavorable ruling or decision would materially and adversely affect City's ability, to carry out its obligations under this Agreement.

(f) It will do all reasonable things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

For purposes of this Section 3.1, the term "knowledge" means the actual knowledge of the Mayor, without further investigation, as of the Effective Date.

Section 3.2. Representations and Covenants of Developer. The Developer hereby represents and warrants as of the date of delivery of this Agreement that:

(a) It (i) is an Ohio limited liability company organized, validly existing and in good standing under the laws of Ohio, and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) It has the authority and power to execute and deliver this Agreement, perform its obligations hereunder and construct the Public Improvements, and it has duly executed and delivered this Agreement.

(c) The execution and delivery by it of this Agreement and the compliance by it with all of the provisions hereof (i) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, its articles of organization or operating agreement, or other instrument to which it is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, and (ii) have been duly authorized by all necessary action on its part.

(d) To its knowledge, there are no actions, suits, proceedings, inquiries or investigations pending or threatened against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Agreement or the construction of the Public Improvements, or if successful would materially impair its ability to perform its obligations under this Agreement or to construct the Public Improvements.

(e) It is in compliance with State campaign financing laws contained in Chapter 3517 of the Ohio Revised Code and is not subject to an unresolved finding for recovery issued by the auditor of state as described in Ohio Revised Code Section 9.24.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(END OF ARTICLE III)

ARTICLE IV

DESIGN, CONSTRUCTION AND INSTALLATION OF PUBLIC IMPROVEMENTS

Section 4.1. **General Considerations**. The Developer acknowledges that it has the sole responsibility to design, construct and install the Public Improvements and that all costs associated with the Public Improvements shall be Developer's sole obligation. The City has no obligation to pay for, design, construct or install the Public Improvements.

Section 4.2. **Design and Construction of the Public Improvements**. Developer will cause the design, construction and installation of all of the Public Improvements in accordance with this Agreement and the other Construction Documents. The construction and installation of the Public Improvements shall commence prior to the Commencement Deadline. The Public Improvements must be designed and built in a manner that is consistent with the requirements of all applicable zoning and building regulations. Developer agrees to design, construct and install the Public Improvements in a manner that is consistent with the Construction Documents, the requirements of the City's Subdivision Regulations, and the further requirements of the Engineer.

Developer will supervise, perform and direct the design of the Public Improvements and the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. Developer is solely responsible for and has control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work. Developer will pay the cost of the work associated with the supervision, testing, and approval of the Public Improvements within the City in accordance with this Agreement and the Construction Documents.

The Developer will enter into a design contract and a general construction contract for the Public Improvements in its own name and not in the name of the City. The Developer will submit the names of the general contractor and all major subcontractors it proposes to use for the Public Improvements to the City for pre-approval by the Authorized City Representative. Under no circumstances may Developer use any contractor or subcontractor for the Public Improvements who is not pre-approved by the Authorized City Representative. The City will promptly reply to Developer in writing stating whether it pre-approves the contractor or subcontractor or if the City has reasonable objection to any such proposed person or entity. The Developer will provide copies of all design and construction contracts signed by Developer related to the Public Improvements to the City. All such contracts shall include the completed and executed contract addendum in the form attached hereto as **EXHIBIT C**.

The Parties acknowledge that the Public Improvements to be performed by Developer within the City, including construction of roadways, curb, gutter, sidewalks, storm water facilities, including storm sewers and water quality basins, all rights-of-way and easements associated therewith, as are more fully described in **EXHIBIT B**, will be dedicated to the City for public use upon completion and acceptance as provided for in this Agreement. Developer agrees, after approval of the final plat but prior to recording, to issue the City a title guarantee in an amount to be reasonably determined by the City guaranteeing title of the lands to be dedicated as shown on the final plat indicating all taxes are paid to current date of assessment.

Section 4.3. Completion of the Public Improvements. The Public Improvements will be deemed completed upon fulfillment of the following conditions:

(a) Receipt of written notice (the "*Completion Certificate*") from the Authorized Developer Representative that the Public Improvements are complete and ready for final acceptance by the City, which notice must (i) generally describe all property acquired or installed as part of the Public Improvements; (ii) state the Cost of the Work, and (iii) state and constitute the Developer's representation that the construction of the Public Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with the Public Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the "*Engineer's Completion Certificate*") stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, that the Public Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items, that the construction of the Public Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Improvements have been approved by the relevant public authorities.

Section 4.4. Acceptance of the Public Improvements. The City has no obligation to accept the Public Improvements until:

(a) the Public Improvements are satisfactorily completed in accordance with the Construction Documents and the requirements of Section 4.2, as evidenced by the Engineer's Completion Certificate and properly dedicated as public rights-of-way and easements to the City;

(b) the City receives the Completion Certificate, the Engineer's Completion Certificate, copies of the approval letters issued by relevant public authorities as referenced in Section 4.3 herein, and all documents and instruments to be delivered to the City pursuant to the Construction Documents;

(c) the City has received evidence reasonably satisfactory to it that all liens on the Public Improvements, including, but not limited to, tax liens then due and payable, and the lien of any mortgage, have been released;

(d) the Developer has provided the City "as constructed record drawings" consisting of reproducible record drawings showing significant changes in the Public Improvements made during construction and containing such annotations as may be necessary for someone unfamiliar with the Public Improvements to understand the changes that were made to the original Construction Documents;

(e) lien waivers from all contractors and suppliers; and

(f) the final plat has been submitted to City Council for the acceptance of dedication of any street, improvements, or land for public use and for the acceptance of any easement as required by the City's subdivision regulations.

The above conditions do not alleviate the Developer from City inspections of the Public Improvements during construction. A schedule shall be provided and inspection of the Work shall be coordinated with the City at least forty-eight (48) hours in advance for key installations such as, but not limited to, sanitary, storm sewer and curb. Key installations shall be established within two (2) weeks of the date of submittal of the schedule.

The City agrees to accept in writing the Public Improvements and the rights-of-way allocable thereto upon satisfaction of the conditions listed in (a) though (f) of this Section. The City acceptance of the Public Improvements does not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.8, nor any future obligations that may be imposed on the Developer in connection with the development of property abutting or near the Public Improvements.

Section 4.5. Water and Sanitary Sewer Improvements. In addition to the Public Improvements governed by this Agreement, Developer shall also be responsible for the design, construction and installation of water and sanitary sewer improvements in conjunction with the design, construction and installation of the Public Improvements. In so doing, Developer shall take all steps necessary to obtain permission from, enter into any agreements with, and to obtain the acceptance of the water improvements by Aqua Ohio and the sanitary sewer improvements by the County of Summit Department of Sanitary Sewer Services. The installation of such water and sanitary sewer improvements shall at all times be coordinated by the Developer with the Engineer and Developer shall adhere to the directives of the Engineer in regards to the coordination of the installation of the water and sanitary sewer along with the Public Improvements.

Section 4.6 Limitation on Applicability. For the avoidance of doubt, this Agreement shall be null and void and of no further force or effect in the event that the Developer fails to commence the Public Improvements prior to the occurrence of the Commencement Deadline.

(END OF ARTICLE IV)

ARTICLE V

FURTHER PROVISIONS RELATING TO THE DESIGN, CONSTRUCTION AND INSTALLATION OF THE PUBLIC IMPROVEMENTS

Section 5.1. **Construction Documents**. The Developer shall cause to be prepared the working drawings, plans and specifications that are necessary to be prepared in connection with the Work and submit them for approval to the Engineer (collectively, the "Drawings and Specifications"). The Drawings and Specifications shall be instruments of service through which the Work to be executed is described. The City is hereby granted a perpetual, non-exclusive and irrevocable license in the Drawings and Specifications and related documents and shall be permitted to retain copies, including electronic files and reproducible copies, of the Drawings and Specifications and related documents for information and reference in connection with the City's use and occupancy of the Public Improvements and for no other purpose. The City's license to use the Drawings and Specifications and related documents for its use and occupancy shall include, but not be limited to, the right to provide the Drawings and Specifications and related documents to another design professional for information and reference in preparing new Drawings and Specifications for subsequent improvements, additions or alterations only to the Public Improvements; provided, however, that the initial design professional assumes no liability for any changes to the Drawings and Specifications made by any other design professional. The Developer shall obtain similar non-exclusive licenses consistent with this Section 5.1 from the Developer's consultants for the use of the Drawings and Specifications and related documents. Submission or distribution of the Drawings and Specifications and related documents to meet official regulatory requirements or for similar purposes in connection with the Public Improvements is not to be construed as publication in derogation of the reserved rights of the Developer and the Developer's consultants.

Section 5.2. **Prevailing Wage**. The City designates the Engineer or his designee as the prevailing wage coordinator for the Public Improvements (the "Prevailing Wage Coordinator"). Developer acknowledges and agrees that the Public Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Improvements must be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements in Summit County, Ohio, which wages must be determined in accordance with the requirements of that Chapter 4115. Developer must comply, and Developer must require compliance by all contractors and must require all contractors to require compliance by all subcontractors working on the Public Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. Developer (and all contractors and subcontractors thereof) must cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator will notify Developer of the prevailing wage rates for the Public Improvements. The Prevailing Wage Coordinator will notify Developer of any change in prevailing wage rates within seven (7) working days of receiving notice of such change from the

Director of the Ohio Department of Commerce. Developer must immediately upon such notification (a) ensure that all contractors and subcontractors receive notification of any change in prevailing wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) ensure that all contractors and subcontractors make the same necessary adjustments.

Developer or its contractor must, prior to beginning construction of the Public Improvements, notify the Prevailing Wage Coordinator of the commencement of Work on the Public Improvements, supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. Developer (and each contractor or subcontractor thereof) must also deliver to the Prevailing Wage Coordinator a certified copy of its payroll relating to laborers performing the Work within two (2) weeks after the initial pay date, and supplemental reports for each month thereafter exhibiting for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments and deductions from the employee's wages; provided, however, that Developer must submit such payroll reports weekly if construction of the Public Improvements lasts less than four (4) months. The certification of each payroll must be executed by Developer (or Public Improvements contractor, subcontractor, or duly appointed agent thereof, if applicable) and recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

Developer must provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Improvements as soon as they are available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those Public Improvements contractors or subcontractors. Developer may not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Section 5.3. **Traffic Control Requirements**. Developer is responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic during the construction of the Public Improvements. All traffic control devices must be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations and other applicable City requirements. The Developer must also submit to the City for review and approval by the City a plan for construction ingress and egress and maintain construction traffic in accordance with that plan.

Section 5.4. **Insurance Requirements.**

(a) The Developer will, at all times prior to the City's final acceptance of all of the Public Improvements, maintain or cause to be maintained the insurance coverage for the Public Improvements as follows:

(i) comprehensive general liability insurance, including auto, for property damage and personal injury or death, with limits of liability of at least $2,000,000 per occurrence and with a deductible not in excess of $10,000, which may be provided by umbrella or excess liability policies, and worker's compensation insurance (including employer's liability insurance), for all employees, contractors or other agents of the City, if any, as well as the Developer and Developer's contractors involved in the construction of the Public Improvements, in such amounts as are established by law; and

(ii) all risk (including builder's risk) property insurance in the amount of the full replacement cost of the Public Improvements, exclusive of land (and all other property insured thereby if such policy applied to property other than the Public Improvements), with a deductible not in excess of $10,000 in the aggregate.

(b) All insurance policies must name the City and the Developer as primary or additional insureds. The additional insured coverage provided is primary, notwithstanding other insurance covering the City or the Developer. All property insurance policies must name the City as loss payee. All policies must, unless otherwise agreed by the City in writing, be issued by carriers with a Best's Insurance Reports policyholder's rating, to the extent commercially reasonable, of "A-" or better and a financial size category of "IX" or better. Upon request of the City, the Developer must deliver or cause to be delivered to the City certificates of insurance for all required policies. If commercially available, all policies must contain provisions for thirty days' written notice to the City and Developer, as applicable, prior to expiration or cancellation. Each insurer under any policy must waive any defenses the insurer may have to payment as a consequence of acts or omissions of any party.

(c) Every insurance policy carried pursuant to this Section will contain provisions, if they can be so written, denying to the insurer subrogation rights against the City or Developer to the extent such rights have been waived by the insured prior to the occurrence of damage or loss. Each party waives any rights of recovery against the other party for any direct damage or consequential loss covered by any such policy to the extent the party is protected by insurance, whether or not such damage or loss is caused by any acts or omissions of the other party.

(d) Neither the City nor the Developer will be liable by way of subrogation or otherwise to the other party or to anyone claiming through the other party or to any insurance company, insuring the other party for any business interruption or for any loss or damage to the Public Improvements or other tangible property, or injury to or death of persons, occurring on or about the Public Improvement Property, or in any manner arising out of the use or occupation of the Public Improvements, including the use or occupation of the Public Improvements by City or Developer, or City's or Developer's agents, employees, representatives, visitors or guests, even though such business interruption, loss, damage, injury or death may be occasioned by the negligence of such party or its agents or employees, to the extent that such business interruption, loss, damage, injury or death is covered by a fire and extended coverage insurance policy, by a contents insurance policy or by a sprinkler leakage or water damage policy, or to the extent of recovery under any other insurance carried covering such business interruption, loss, damage, injury or death. If available, each insurance policy carried by the Developer or the City will

contain a clause to the effect that the foregoing waiver will not affect the right of the insured party to recover under such policy.

(e) If the Developer fails to procure any of the insurance coverage required by this Section, and such failure continues following written notice thereof to the Developer from the City and a reasonable opportunity to cure, the Developer acknowledges and agrees that the City may obtain such coverage with such insurers as the City chooses, and in such event, the Developer will promptly reimburse the City for the reasonable out-of-pocket cost of any such insurance.

Section 5.5. City Income Tax Withholdings. Developer will withhold and pay, will require all contractors to withhold and pay, and will require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of the City Code.

Section 5.6. Compliance with Occupational Health and Safety Act of 1970. Developer and all contractors and subcontractors are solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

Section 5.7. Security for Performance; Performance Bond. The Developer will furnish prior to commencement of construction of the Public Improvements a performance and payment bond from the general contractor for the Public Improvements in an amount not less than the full Cost of the Work that names the City as obligee in the form provided by Section 153.57 of the Ohio Revised Code, provided that the form of the performance and payment bond and the amount of the same shall be subject to the City's reasonable approval. If notice of any change affecting this Agreement is required by a provision of the bond, giving the notice shall be the Developer's responsibility. The performance and payment bond shall be conditioned upon completion of the Public Improvements located in the City as shown on the Construction Documents, and further conditioned upon Developer's construction and installation of the Public Improvements located in the City, at its own expense by the Completion Deadline, except for delays as set forth in Section 6.3. No performance bond reduction shall be permitted until the Public Improvements are fully installed and approved by the Engineer. This Agreement shall be made be made part of and incorporated into any and all bonds or other security agreements that may have been issued or entered into by the parties.

Without limiting the generality of the foregoing, the City and Developer agree that Developer may furnish a performance and payment bond from the general contractor for the site grading, stormwater control, construction drive and other pre-Public Infrastructure Work that must be performed by the Developer in an amount not less than the full Cost of the Work for such pre-Public Infrastructure Work, subject to City's reasonable approval as to the form and amount, and that the furnishing of said bond shall enable the Developer to commence such activities. Prior to the commencement of any further work, the Developer shall furnish a bond consistent with the preceding paragraph for the full Cost of Work of the Public Improvements. All bonds shall comply fully with this Section.

Any bond must be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds

signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, the Developer, within five (5) days thereafter, will substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which is acceptable to the City and the Developer. The Developer must provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

Section 5.8. Further Developer Guarantees Relating to the Public Improvements including Maintenance Bond. The Developer guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in performing comparable services in central Ohio. The Developer further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of two (2) years after final written acceptance of the Work by City. Upon completion of the Public Improvements, but before the final written acceptance of the Public Improvements and release of the performance bond provided for in this Agreement, the Developer shall submit a maintenance bond in an amount equal to ten (10) percent of the final construction cost to guarantee the workmanship and material for a period of two (2) years after final written acceptance of the Public Improvements. The guarantee provided in this Section is in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents. The Developer shall require in all construction contracts for the Public Improvements to provide that the City is a beneficiary of any guarantees provided by the Contractor and entitled to enforce those guarantees.

If defective Work becomes apparent within the warranty or guarantee period, the City will promptly notify the Developer in writing and provide a copy of said notice to the Engineer. Within fourteen (14) days of receipt of said notice, the Developer will visit the site of the Work in the company of one or more representatives of the City to determine the extent of the defective Work. The Developer will, within a reasonable time frame, repair or replace (or cause to be repaired or replaced) 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 Developer to visit the site of the Work within one (1) day of receipt of said notice. The Developer is fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Developer does not repair or replace defective Work within a reasonable time frame, the City may repair or replace such defective Work and charge the cost thereof to the Developer or the Developer's surety. Work that is repaired or replaced by the Developer is subject to inspection and acceptance by the Engineer and City and must be guaranteed by the Developer for two (2) years from the date of final written acceptance of the corrective work by the City.

Section 5.9. Indemnity.

(a) General Indemnity.

(i) The Developer releases the City and each council member, officer, official and employee thereof (collectively, the "Indemnified Parties" and each an "Indemnified Party") from, agrees that the Indemnified Parties are not liable for, and indemnifies each Indemnified Party against, all liabilities, obligations, damages, costs and expenses (including without limitation, reasonable attorneys' fees and losses and costs described in division (b) of this Section) asserted against, imposed upon or incurred by an Indemnified Party (collectively, the "Liabilities" and each a "Liability"), other than any Excluded Liability as hereinafter defined, arising or allegedly arising out of, or resulting from the Developer's or its agents, contractors, employees or representatives performance of its obligations under this Agreement or any work with respect to the Public Improvements performed by it or its agents, contractors, subcontractors, employees or representatives.

"Excluded Liability" means each Liability to the extent it is attributable to (i) the gross negligence or willful misconduct of any Indemnified Party, (ii) the failure of the City to comply with any of its obligations under this Agreement, or (iii) the failure of any Indemnified Party that is a third party beneficiary of this Section to perform any obligation required to be performed by the Indemnified Party under this Section as a condition to being indemnified hereunder. Excluded Liabilities include, without limitation, any Liabilities settled without the consent of the Developer and any Liability to the extent that the Developer's ability to defend that Liability is prejudiced materially by the failure of an Indemnified Party to give timely written notice to the Developer of the assertion of that Liability.

(ii) Upon notice of the assertion of any Liability, the Indemnified Party must give prompt written notice of the same to the Developer.

(iii) Upon receipt of written notice of the assertion of a Liability, the Developer has the duty to assume, and must assume, the defense thereof, with full power and authority to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party has the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval may not be unreasonably withheld.

(iv) At its own expense, An Indemnified Party may employ separate counsel and participate in the defense of any Liability; *provided, however*, if it is ethically inappropriate for one firm to represent the interests of the Developer and the Indemnified Party, the Developer must pay the reasonable legal expenses of the Indemnified Party in connection with its retention of separate counsel; provided, however, that the Developer is not required to pay those legal expenses if the City's Director of Law provides written approval of the law firm retained by the Developer to defend the Liability. The Developer must request any such approval by written instrument delivered to the City's Director of Law and the Authorized City Representative. The Developer is not liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of the Developer, or if there is a final judgment for the

plaintiff in an action, the Developer agrees to indemnify and hold harmless the Indemnified Party except only to the extent of any Excluded Liability.

(b) Environmental Indemnity. The Developer agrees to indemnify and hold the City harmless from and against all losses including, without limitation, investigative and remediation costs, incurred by the City as a result of the existence on, disposal or release on, to or from, the Public Improvement Property of Hazardous Materials or violations of Environmental Laws; provided, that the Developer is not required to indemnify the City to the extent the losses arise out of any gross negligence or willful misconduct of the City or any officer, employee or agent of the City. The Developer further agrees that neither the Developer, nor any of their independent contractors, invitees, licensees, successors, assignees or tenants will store, release or dispose of, or permit the storage, release or disposal of any Hazardous Materials at the Public Improvement Property at any time other than in accordance with Environmental Laws, and that it will perform its obligations under this Agreement and any other agreement among the Developer, City and any other parties thereto in compliance with Environmental Laws. If the Developer receives a notification or clean up requirement under Environmental Law, the Developer will promptly notify the City of such receipt, together with a written statement of the Developer setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of the Developer's knowledge. On receipt by the Developer of any such notification or clean up requirement, the Developer will either proceed with appropriate diligence to comply with such notification or clean up requirement or will commence and continue negotiation concerning, or contest the liability of, the Developer or the City with respect to such notification or clean up requirement.

As used in the foregoing paragraph:

"Environmental Laws" means all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing use, storage, treatment, generation, transportation, processing, handling, management, production, release or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto, including, without limitation, Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Emergency Planning and Community Right-to-Know Act, the Hazardous Materials Transportation Act, and their respective state and local counterparts.

"Hazardous Materials" means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, pollutants, contaminants or related or similar materials which are regulated by or identified in any Environmental Laws.

(c) The indemnities provided in this Section survive the termination of this Agreement.

Section 5.10. **Inspections**. The Public Improvements shall be inspected by the Engineer, at Developer's cost. The Engineer shall have full access to the property for such inspections. In the event the Engineer does not approve materials or work proposed, upon written notice to Developer, the work shall be discontinued immediately. In the event the Engineer determines that unsatisfactory materials have been installed prior to having been determined as unsatisfactory, the defective material shall be removed and replaced at the sole risk and expense of Developer and shall be subject to such correction as the City deems necessary as to comply with codes, ordinances, laws, plans, specifications, and approved practices.

Upon execution of this Agreement, the Engineer shall estimate the total costs of inspection of the Public Improvements and Developer shall, within fifteen (15) days of receipt of a written estimate from the Engineer, deposit with the City a sum equal to the estimated total costs of inspection, and all costs for inspection shall be paid by the Developer to the City prior to the City's final written acceptance of the Public Improvements. Inspection work performed on the Public Improvements shall be charged at the contractual rate ordinarily charged by the Engineer to the City for inspections performed during the construction of public infrastructure improvements undertaken by the City.

In the event the cost of inspection exceeds the amount on deposit at any time, the City shall have the right to demand a sum of money to bring the deposit equal to the actual cost of inspection within ten (10) days of written notice upon the Developer. Failure to comply with the written order to bring the inspection deposit current shall be cause for the City to discontinue any inspections until the deposit is brought current, and Developer shall not continue any Work without appropriate inspections. All funds not used for inspection fees shall be returned to the Developer after final written acceptance of the Public Improvements.

(END OF ARTICLE V)

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.1. **General**. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party, such Party will, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within that thirty (30) day period, then the Party will upon written notice from the other commence its actions to cure or remedy the breach within the thirty (30) day period, and proceed diligently thereafter to cure or remedy the breach. In case such action is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the following remedies may be pursued: (i) the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; (ii) the aggrieved Party may terminate this Agreement or suspend its obligations under this Agreement, provided the aggrieved Party must provide thirty (30) days notice of any termination to the defaulting Party and provided further that the aggrieved Party must rescind the termination notice and not terminate the Agreement if the defaulting Party cures all Events of Default within a reasonable period of time thereafter; and (iii) in addition, if the default or breach is a failure of Developer to achieve completion of the Work as provided herein, the City may perform Developer's obligations under this Agreement and, at the City's option, charge the cost of the same to the Developer or the Developer's surety.

Section 6.2. **Other Rights and Remedies; No Waiver by Delay**. The Parties each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement does not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor does any waiver in fact made by either Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of such Party with respect to any other defaults by the other Party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

Section 6.3. **Force Majeure**. Notwithstanding anything contained in Sections 6.1 and 6.2 to the contrary and except as otherwise provided herein, no Party will be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to an event of Force Majeure beyond its control and without its fault or negligence; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations will be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the

provisions of this Section must, within fourteen (14) days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Party in writing of the duration of the delay.

(END OF ARTICLE VI)

ARTICLE VII

MISCELLANEOUS

Section 7.1. **Notice**. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient previously notified the sender of in writing, and will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties must be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one Party to the other.

Section 7.2. **Extent of Covenants; No Personal Liability**. All covenants, obligations and agreements of the City contained in this Agreement are effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement is a covenant, obligation or agreement of any present or future officer, agent or employee of the City other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement are liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City contained in this Agreement.

Section 7.3. **Severability**. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 7.4. **Binding Effect Against Successors and Assigns**. The provisions of this Agreement are binding upon the successors or assigns of the Parties.

Section 7.5. **Recitals**. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 7.6. **Entire Agreement**. This Agreement, the exhibits attached hereto, and the Development Agreement embody the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 7.7. **Executed Counterparts**. This Agreement may be executed in several counterparts, each of which constitutes an original, but all of which together constitute one (1) and the same instrument. Signatures transmitted by facsimile or electronic means are deemed original signatures. It will not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 7.8. **Governing Law**. This Agreement is governed by and construed in accordance with the laws of the State or applicable federal law. All claims, counterclaims, disputes and other matters in question between any of the Parties and their respective agents and employees, arising out of or relating to this Agreement or its breach must be decided in a court of competent jurisdiction within Summit County, Ohio.

Section 7.9. **Assignment; City Consents**. This Agreement may not be assigned without the prior written consent of the non-assigning Party; provided that the Developer may, without the consent of the City, (i) assign this Agreement to an affiliate or entity under common control with the Developer.

Section 7.10. **Survival of Representations and Warranties**. All representations and warranties of the Parties in this Agreement survive the execution and delivery of this Agreement.

Section 7.11 **Dispute Resolution**. Except for any claim for injunctive relief, specific performance, or any other equitable remedy, any claim, dispute, or controversy arising out of or relating to the interpretation, application, or enforcement of this Agreement, or any breach of this Agreement, shall be settled by arbitration to be held in the State of Ohio in accordance with the construction industry arbitration rules then in effect of the American Arbitration Association or its successor.

(END OF ARTICLE VII – SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, the Parties have caused this Developer Performance and Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF NEW FRANKLIN, OHIO	ADKINS PLX HOLDINGS, LLC
By: _____	By: _____
Name: Paul Adamson	Name: Timothy J. Adkins
Title: Mayor	Title: Manager

Approved as to form:

_____

Signature Date

EXHIBIT A

DESCRIPTION OF THE PROPERTY

EXHIBIT B

DEPICTION AND DESCRIPTION OF THE PUBLIC IMPROVEMENTS AND PRELIMINARY COST ESTIMATES

EXHIBIT C

FORM OF CONTRACT ADDENDUM

1. Contractor acknowledges and agrees that Adkins PLX Holdings, LLC (the "Developer") is an independent contractor, and not an agent, of the City of New Franklin, Ohio (the "City") employed to provide construction services for the Project (as defined below) pursuant to a Developer Performance and Maintenance Agreement by and between the Developer and the City (the "Developer Performance and Maintenance Agreement").

2. Neither the Developer, the Contractor, nor any other person has any right or claim to any payment from, or any claim on any revenues or assets of, the City to pay any obligations under this contract, and this contract does not constitute a general debt or a pledge of the general credit of the City, nor gives rise to any pecuniary liability of the City.

3. Contractor acknowledges that all liens for labor and materials provided under this contract are subject to the requirements of Ohio Revised Code Section 1311.25 et seq. The Contractor acknowledges receipt of the Notice of Commencement for the Project. Contractor will provide, and will require all subcontractors to provide, conditional lien waivers for all labor and materials when submitting requests for payment under this contract.

4. The Contractor will provide a surety bond naming the City and Developer as payees prior to commencement of work under this contract. The surety bond must be in the form provided by Ohio Revised Code Section 153.57 and must cover all costs of work and materials provided under this contract throughout the term of this contract and the guaranty period described in paragraph 5. The surety bond must be issued by a surety company authorized by the Ohio Department of Insurance to transact business in the State of Ohio with an A.M. Best Company Policyholders Rating of "A-" or better and has or exceeds the Best Financial Size Category Class of Class VI at the time the bond is underwritten. The bond must also be supported by a power of attorney for the agent signing the surety.

5. Contractor warrants to the City that: (a) all work under this contract will be performed with the standard of care normally exercised by nationally recognized organizations engaged in performing comparable services; (b) all materials incorporated into that work are of good quality and new unless otherwise required or permitted by the plans and specifications for the Project approved by the City; (c) all such materials and work are of good and workmanlike quality, free of defects not inherent in the quality required or permitted; (d) all such materials and work will perform all functions for which they are intended; (e) all such materials and work conform to the requirements of the plans and specifications for the Project as approved by the City and this contract in all material respects; (f) all such materials and work will be free from defects (without regard to the standard of care exercised in the performance of the work) for a period of two (2) years after final completion of all work required by this contract. Contractor will, at its sole cost and expense, (g) promptly correct all of the work not in material conformance with the contract and the plans and specifications for the work to be performed under this contract, (ii) correct any defects in materials and workmanship (without regard to the standard of care exercised in the performance of the work) that appear within a

period of two (2) years after final written acceptance of the work performed under this contract by the City; and (iii) replace, repair or restore any parts of the work or any of the materials placed therein that are injured or damaged as a consequence of corrective action taken pursuant hereto. Contractor will remove, in a manner that at all times complies with all applicable laws, including environmental laws, from the Project all portions of the Contractor's work that are defective or nonconforming and that have not been corrected under this paragraph unless removal is waived by the City in writing. If Contractor fails to make or cause to be made corrections required by this paragraph, the City may do so at the sole expense of Contractor and Contractor will pay or reimburse all such amounts on demand with interest at the rate of ten percent per annum from the date of demand. The warranties provided in this paragraph are in addition to, and do not limit, any other guarantee, warranty or remedy provided by law, a manufacturer, this contract, each of which other guarantee, warranty or remedy may be enforced by the City as a third party beneficiary of this contract. Contractor further hereby assigns any guarantees or warranties provided to it by any of its subcontractors to the City.

6. The Contractor will indemnify, defend and hold harmless the City and its officials, agents and employees from and against any and all suits, claims damages, losses and expenses, including reasonable attorneys' fees, arising or allegedly arising out of, or resulting from the Contractor's or its agents, subcontractors, employees or representatives performance of its obligations under this contract or any work performed by it or its subcontractors. With respect to the work performed under this contract, and solely to the extent necessary to effect such indemnity, the Contractor hereby expressly and specifically waives the constitutional and statutory immunity from suit and causes of action provided to employers in Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code, as well as any other similar immunity provided for or by any statute, law or constitutional provision of the State of Ohio and of any other applicable state. The Contractor will promptly reimburse the City and its officers, agents and employees for any cost, expense or reasonable attorneys' fees incurred on account of any such suit or claim incurred or in enforcing the terms of this contract against the Contractor.

7. Contractor will comply, and to cause compliance by its subcontractors, with the requirements of Ohio Revised Code Chapter 4115 for the payment of prevailing wages for the work performed pursuant to this contract. Contractor must ensure that all laborers and mechanics employed by Contractor (or by any of its subcontractors) in the performance of such work are paid at the prevailing rates of wages of laborers and mechanics for the class of work called for with respect to that work, which wages must be determined in accordance with the requirements of Ohio Revised Code Chapter 4115; provided that in the case of any work performed by Contractor's or any of its subcontractor's regular bargaining unit employees who are covered under a collective bargaining agreement that was in existence prior to the date of this contract, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees. Contractor further acknowledges and agrees that performance of such work is the construction of a "public improvement" within the meaning of Ohio Revised Code Section 4115.03, and that as a result, Contractor must, and must cause all of its subcontractors performing any portion of such work to, comply with all applicable requirements of Ohio Revised Code Sections 4115.03 to 4115.16 and other applicable laws

related thereto. Upon request from time to time by either the City, Contractor must promptly deliver to the City satisfactory evidence that Contractor and all of its subcontractors have complied with the foregoing requirements. The prevailing wage coordinator will be the City's Contract & Procurement Coordinator. Contractor represents and warrants that neither it nor any of its subcontractors has been or will be included on any list described in Ohio Revised Code Section 4115.133.

8. Notwithstanding any other provision of this contract to the contrary, the City: (a) is not obligated to indemnify any party pursuant to the terms of this contract; and (b) retains all rights of set-off, counterclaim, recoupment and other similar remedies. All payments by the City for work performed under this contract are expressly conditioned on Contractor's compliance with the requirements of this contract and performance of its obligations under this contract (including this addendum) in all material respects.

9. Contractor will withhold and pay, will require all of its subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of the City's Income Tax Code.

10. Contractor and its subcontractors are solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970.

11. All representations and warranties under this addendum and contract are made to the City and the Developer. Any material inaccuracy of any representation at the time it was made and any material failure to fulfill any warranty or obligation hereunder is a breach of this contract by Contractor.

12. The Contractor acknowledges and agrees that upon the occurrence and continuation of an Event of Default by the Developer under the Developer Performance and Maintenance Agreement, the City may exercise any rights of the Developer under this contract and the Contractor will accept such exercise of rights in lieu of exercise of those rights by the Developer.

13. The obligations of the Contractor under this addendum survive the termination of this contract.

14. In case of conflict between the terms of this addendum and the remainder of this contract, the terms of this addendum prevail.

Accepted and Agreed by:

_____, as Contractor

By:_____

Name & Title:_____