

CONTRACT NO. 2017-20

THIS CONTRACT is made as of MAY 15, 2017, in Hamilton, Ohio, by and between the Board of County Commissioners of Butler County, Ohio, on behalf of the County Engineer ("COUNTY"), and Barrett Paving Materials, Inc. ("CONTRACTOR").

WHEREAS, the Butler County Engineer, acting within the scope of his authority under the Ohio Revised Code, has determined that to effectively carry out his responsibilities to construct, reconstruct, improve, maintain, and repair all highways, roads, and bridges within Butler County and within the jurisdiction of the Board of County Commissioners will require certain construction services as hereinafter defined; and,

WHEREAS, the CONTRACTOR has represented to the COUNTY that it possesses the necessary expertise and capabilities to render such construction services as hereinafter defined; and,

WHEREAS, upon completion of the competitive bidding process set forth in the Ohio Revised Code, CONTRACTOR was determined to be the lowest and best bid; and,

WHEREAS, the COUNTY desires to engage the CONTRACTOR to render these construction services as hereinafter defined;

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth hereinafter, the sufficiency of which is hereby acknowledged, the COUNTY and the CONTRACTOR do hereto agree as follows:

I. SCOPE OF SERVICES AND COMPENSATION:

A. CONTRACTOR does hereby agree with the COUNTY, for the consideration herein below mentioned, to furnish at CONTRACTOR'S sole proper cost and expense all necessary materials, tools, equipment, plant, and labor of every description and shall construct and complete in good, substantial, workmanlike, and approved manner, acceptable to the COUNTY, as expeditiously as is consistent with professional skill and care and the orderly progress of the work hereunder, to wit:

2017 PAVING OF VARIOUS COUNTY & TOWNSHIP ROADS.

The work shall be performed in accordance with the surveys, plats, plans, cross-sections, proposal notes, specifications, and profiles on file in the office of the said County Commissioners relating to this project which are hereby made a part of this CONTRACT, being CONTRACT NO. 2017-20 (the "PROJECT"). The following are hereby combined and incorporated by reference herein, as part of this CONTRACT: the contents of the Bid

Documents packet prepared by the Butler County Engineer's Office for this CONTRACT including all engineering and legal requirements enumerated therein; the proposal submitted by CONTRACTOR for this CONTRACT which includes CONTRACTOR'S bid (also attached hereto in Exhibit A); any addenda or clarifications issued prior to opening of bids (also attached hereto in Exhibit A); the State of Ohio Department of Transportation's *Construction Material and Specifications* dated January 1, 2013 (except those provisions listed in the Bid Documents as excluded); all bonds required for this CONTRACT; any change orders which may be approved; and the surveys, plats, plans, cross-sections, proposal notes, specifications, and profiles for this PROJECT on file in the office of the County Commissioners.

COUNTY hereby agrees and promises to pay CONTRACTOR at the times, under the conditions, and in the manner specified in the Contract Funding and Payment Process (incorporated herein and attached hereto as Exhibit B) and as may be further specified in the aforementioned Bid Documents. This is not a lump sum contract. This is hereby declared and determined by the COUNTY and CONTRACTOR to be a unit price contract.

B. BLOCK GRANT REQUIREMENTS

The PROJECT is being funded, in part, by a Block Grant made available through the Butler County Department of Community Development, a department under the jurisdiction of the Board of County Commissioners of Butler County, Ohio. In projects assisted with such federal funds, contractors must comply with certain labor standards, equal employment opportunity requirements, etc. In CONTRACTOR'S bid for this CONTRACT, CONTRACTOR completed and submitted a document captioned "Certification of Compliance with Federal Labor Standards Provisions," and a document captioned "Certification of Bidder Regarding Equal Employment Opportunity." The said Certifications submitted by CONTRACTOR with its bid are hereby combined and incorporated by reference herein, as part of this CONTRACT; and the CONTRACTOR shall comply with the same in the performance of this CONTRACT. Furthermore, Form HUD-4010, a document captioned "Special Equal Opportunity Provisions," and a document captioned "Special Conditions Pertaining to Hazards Safety Standard and Accident Prevention," all of which were contained in the bid package for this PROJECT, are hereby combined and incorporated by reference herein, as part of this CONTRACT; and the CONTRACTOR shall comply with the same in the performance of this CONTRACT. CONTRACTOR shall comply with federal prevailing wage rates and with all federal requirements for the posting of notices concerning rates of pay, equal employment opportunity, and workplace safety.

II. CONTRACTOR'S RISK:

- A. The CONTRACTOR shall be responsible for the CONTRACTOR'S work under this CONTRACT and for the work of other parties undertaking any portion of the CONTRACTOR'S obligation, including compliance with all applicable local, State, and Federal laws and regulations concerning workplace safety. CONTRACTOR has or shall

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procure, without additional compensation, all permits, certificates, and licenses (including any professional licenses) necessary for CONTRACTOR legally to perform the work under this CONTRACT.

- B. The CONTRACTOR shall carry on the PROJECT at its own risk until the work under the contract is fully completed and accepted by the COUNTY. If any loss or damage occurs to or affects the work under the CONTRACT prior to completion and acceptance by the COUNTY, the CONTRACTOR shall at its expense promptly repair or replace the loss or damage, notwithstanding that the CONTRACTOR may collect compensation from the insurance proceeds of any applicable insurance policy that CONTRACTOR carries to cover such loss or damage. The COUNTY'S insurance policies will not, in any event, cover property of the CONTRACTOR.
- C. The date of commencement, the date from which the CONTRACT is measured, shall be the 8th day of May, 2017. The CONTRACTOR shall achieve substantial completion, approved and accepted by the COUNTY, of the work performed under this CONTRACT no later than the 25th day of August, 2017.
- D. Time is of the essence of the CONTRACT. CONTRACTOR hereby acknowledges and agrees that the unit price as quoted in the CONTRACTOR'S bid attached hereto in Exhibit A contains and contemplates costs associated with expediting the PROJECT to meet the PROJECT'S scheduled completion date stated in Section II.C herein. It is mutually understood and agreed by and between the parties to this CONTRACT that the COUNTY will sustain damage should the CONTRACTOR not complete the work under the CONTRACT by the substantial completion date of the, 25th day of August, 2017, but that such damages will be difficult to ascertain with particularity.
- E. The parties to this CONTRACT hereby stipulate and agree to the payment by the CONTRACTOR to the COUNTY of liquidated damages as set forth in Specification 108.07 of the State of Ohio Department of Transportation's *Construction and Material Specifications* (January 1, 2013) for each calendar day beyond the specified completion date of the 25th day of August, 2017, as stated herein and as set forth in the contract time line attached hereto in Exhibit A. Compensation to the COUNTY for damages sustained by it by reason of CONTRACTOR'S delay in not completing the work under the CONTRACT and payment of such sum by CONTRACTOR will not, in any way, be construed as the assessment of a penalty. Such sum shall be deducted from the CONTRACTOR'S final payment by the COUNTY.
- F. It is further agreed that if COUNTY accepts work or makes payments under this CONTRACT after a delay in completion of the work, such acceptance shall not constitute a waiver or modification of any provisions regarding time of completion or liquidated damages. Moreover, the parties to the CONTRACT stipulate and agree that the COUNTY'S right to recover liquidated damages under the CONTRACT shall not substitute for or

preclude any right of recovery by the COUNTY for additional costs and damages incurred by the COUNTY for causes unrelated to delay.

III. EXTENSION OF TIME FOR COMPLETION:

- A. If the CONTRACTOR is delayed in completion of the work by any act or neglect of the COUNTY, by any other contractor employed by the COUNTY, by changes ordered in the work, by unusually severe weather, strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any other cause entirely beyond the CONTRACTOR'S control, or by any cause which the COUNTY determines justifies the delay, the CONTRACTOR shall, within three (3) days after the beginning of such delay, file a written request for additional time with the COUNTY. If the COUNTY, at its sole discretion, determines that such delay is beyond the CONTRACTOR'S control and is justified, then the CONTRACTOR shall be allowed one (1) day additional to the time limitations herein stated for each and every day of delay in the completion of the work.
- B. No claim for damages or any claim, other than for extensions of time as herein provided, shall be made or asserted against the COUNTY by reason of any of the delays herein mentioned. The CONTRACTOR agrees that its sole remedy against the COUNTY for excusable delays shall be an extension of time; and the CONTRACTOR shall not be entitled to any additional compensation or damages for the delay.

The CONTRACTOR shall not be entitled to damages or to extra compensation by reason of delays occasioned by proceedings to review the awarding of the CONTRACT to the CONTRACTOR or to review the awarding of any other contract to another contractor.

IV. COUNTY'S RIGHT TO PERFORM WORK AND BACKCHARGE CONTRACTOR:

- A. If the CONTRACTOR fails or neglects to perform the work under the CONTRACT with the necessary diligence so as to complete the work within the time and to the standards specified in the CONTRACT documents, the COUNTY shall notify the CONTRACTOR in writing of such failure or neglect and the CONTRACTOR shall be given three (3) working days to cure such deficiency. If said CONTRACT involves a road improvement as set forth in Ohio Revised Code Chapter 5555, the COUNTY shall give written notice to the CONTRACTOR'S sureties.
- B. If, within ten (10) days after receipt of such notice, any one of such sureties notifies the COUNTY in writing of its intention to enter upon and complete the work covered under the CONTRACT, such sureties shall be given twenty (20) days after the receipt of such notice to resume construction, unless the time is extended by the COUNTY for good cause shown. Said surety will thereupon abide by the CONTRACT terms with respect to the remainder of the work to be performed under the CONTRACT.
- C. If the CONTRACTOR fails or refuses to cure such failure or deficiency within three (3) days,

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or if such sureties, entering upon the work according to Ohio Revised Code Section 5555.68, do not carry such work forward with reasonable progress or improperly perform, abandon, or fail to complete the work under the CONTRACT, or, if after receiving notice by the COUNTY of the CONTRACTOR'S failure to diligently perform under the CONTRACT, the sureties do not within ten (10) days give the COUNTY the written notice provided above, the COUNTY shall, without prejudice to any other remedy available to the COUNTY, employ upon the work under the CONTRACT the additional force or supply the materials, or such part of either, as is appropriate to correct the deficiency in the CONTRACTOR'S and/or surety's work under the CONTRACT.

- D. In such event, a change order shall be issued deducting from payments then or thereafter due the CONTRACTOR the costs associated with correcting such deficiencies.
- E. If the payments then or thereafter due the CONTRACTOR are not sufficient to cover such costs, the CONTRACTOR and/or the CONTRACTOR'S surety shall pay the amount of the deficiency to the COUNTY.
- F. The COUNTY'S decision to backcharge the CONTRACTOR shall be final.

V. CONTRACTOR'S WARRANTY:

CONTRACTOR warrants that upon completion of the work and for a period of one (1) year following the date of the COUNTY'S written acceptance of the work all materials provided and labor performed pursuant to this CONTRACT shall comply with the terms and requirements of the CONTRACT . Upon written notice from COUNTY of a failure of the work to comply with the terms and requirements of the CONTRACT, the CONTRACTOR shall promptly take such corrective action as the COUNTY deems necessary to cure the failure of the work to comply with the terms and requirements of the CONTRACT. If the CONTRACTOR fails or neglects to promptly take such corrective action, the COUNTY may perform or cause to be performed the necessary corrective action and backcharge the CONTRACTOR as provided above. Neither the final payment nor payment in full shall relieve the CONTRACTOR of any responsibility for the CONTRACTOR'S breach of this warranty or for any damage to the work resulting therefrom. The remedies provided in this section shall be cumulative and shall not deprive or deny the COUNTY of the right to any other remedy provided either in this CONTRACT or by Ohio or Federal law.

VI. CHANGE ORDERS:

Any work performed by the CONTRACTOR that is not specified in the CONTRACT or its accompanying documents will not be recognized or compensated unless such deviation from the CONTRACT terms is agreed to in writing by the COUNTY prior to the initiation of the work which would result in the deviation from the CONTRACT terms.

VII. SAFETY:

CONTRACTOR must provide manufacturer's data sheets for hazardous materials. All safety requirements and regulations are the responsibility of the CONTRACTOR. CONTRACTOR shall indemnify the COUNTY for all fines, penalties, and corrective measures that result, directly or indirectly, from acts or omissions of the CONTRACTOR or from failure to comply with such safety rules and regulations.

VIII. INDEMNIFICATION AND INSURANCE:

- A. The terms and conditions governing damage claims and liability insurance which are contained in Specification 107.12 of the State of Ohio Department of Transportation's *Construction Material and Specifications* dated January 1, 2013 ("CMS") are hereby incorporated into this CONTRACT as though rewritten herein, with the exception that, for purposes of this CONTRACT, the CMS references to "Director," "Department," "State," and the like shall refer to COUNTY.
- B. Without limitation upon Section VIII.A. of this CONTRACT, CONTRACTOR agrees as follows in regard to indemnification:
1. CONTRACTOR has the absolute and entire responsibility and liability for all damage, loss, or injury of any kind, direct or indirect, to any person (including death) or property arising out of, or in any manner based on, the performance by CONTRACTOR under the CONTRACT or caused by, or resulting from, the performance of any work on or relating to the PROJECT. CONTRACTOR shall, to the fullest extent permitted by law, protect, indemnify, and hold harmless the COUNTY against all losses, claims, damage, expenses (including attorneys' fees and costs), and liabilities arising by reason of any act, omission, conduct, negligence, willful conduct, or default by CONTRACTOR or a subcontractor or their respective employees or agents. Except as may be otherwise provided by applicable law of any governmental authority, the COUNTY'S right to indemnification shall not be impaired or diminished by any act, omission, misconduct, negligence, or default (other than gross negligence or willful misconduct) of the COUNTY or any employee, or agent of the COUNTY who contributed or may be alleged to have contributed thereto.
 2. For any work performed under the CONTRACT by CONTRACTOR at the site of the PROJECT or any other site or facility of the COUNTY, CONTRACTOR shall, to the full extent permitted by law, indemnify and hold harmless the COUNTY against all losses, claims, expenses (including attorneys' fees and costs), and liabilities arising out of or based upon bodily injury (including death at any time resulting therefrom) to any person, including employees of the CONTRACTOR or its subcontractors, caused by or related to the performance of any work on or related to the PROJECT.

C. Without limitation upon Section VIII.A. of this CONTRACT, CONTRACTOR agrees as follows in regard to insurance:

1. Prior to the performance of any work under the CONTRACT at the PROJECT site or at any site or facility of the COUNTY, CONTRACTOR shall provide and, thereafter, shall maintain in effect all insurance types, coverages, and minimum limits stipulated in CMS Specification 107.12. The insurance provided and maintained in effect by CONTRACTOR shall name and cover as additional insureds, at least until final payment on the CONTRACT, all of the entities enumerated in the Bid Documents (see also Exhibit A). CONTRACTOR'S coverage for the additional insureds shall be primary and non-contributory. The Products-Completed Operations coverage shall commence when final payment on the CONTRACT is made and shall extend for a period of two years after the final payment. CONTRACTOR shall require, prior to the performance of any work by any subcontractors, that each subcontractor provide and maintain in effect all insurance types, coverages, and minimum limits stipulated in CMS Specification 107.12.
2. Prior to the performance of any work on the PROJECT, CONTRACTOR shall furnish COUNTY with satisfactory evidence of insurance coverage in accordance with the insurance types, coverages, and minimum limits stipulated in CMS Specification 107.12. CONTRACTOR agrees that the insurance provided and maintained in effect by CONTRACTOR shall satisfy all of the insurance requirements enumerated in Section VIII.C.1. of this CONTRACT and shall provide for the waiver of all rights of recovery against COUNTY or its insurer for claim payments made by CONTRACTOR'S insurer. Separate evidence of the insurance stipulated in CMS Specification 107.12, including the Products-Completed Operations coverage described in Section VIII.C.1. of this CONTRACT, shall be furnished by CONTRACTOR with its application for final payment and thereafter upon request of COUNTY until the two years following final payment has expired.

D. COUNTY does not waive, nor shall its insurer be required to waive [1] any right of recovery against CONTRACTOR or its insurer for claim payments made by COUNTY or its insurer, or [2] the right to recover the cost of making good any faulty or noncomplying workmanship, material, or design with respect to work under this CONTRACT. CONTRACTOR shall not be entitled to compensation by COUNTY for repairing or replacing faulty or noncomplying workmanship, material, or design.

IX. DOCUMENTATION:

A. The CONTRACTOR is responsible for maintaining and securing complete documentation of the work provided under the CONTRACT. Documentation shall mean and include all documents of the CONTRACTOR prepared pursuant to this CONTRACT, including but not

limited to all plans, drawings, specifications, reports, maps, electronic files, and other documents in any and all form, regardless of whether the work under the CONTRACT is completed, and all documents provided by the COUNTY to the CONTRACTOR. The documentation shall be subject to audit on a periodic basis and shall be in a form suitable for supporting COUNTY decisions, for work implementation, for making any reports, for historical analysis, and for developing counterclaims or claims analysis in the event of a dispute with any party involved in or affected, directly or indirectly, by the work under this CONTRACT.

- B. Upon completion of the work or termination of this CONTRACT, whichever first occurs, the CONTRACTOR shall provide to the COUNTY, in a properly organized fashion, one (1) copy of each element of the documentation. That copy shall, in the first instance, be the original of any documentation in the custody of the CONTRACTOR, but if no original is available, then a legible and reproducible copy.
- C. During the performance of the work specified under the CONTRACT, the CONTRACTOR shall provide copies of any documentation to the COUNTY upon request.
- D. Suitable security backup shall be provided for all documentation to assure that a reproducible copy of any document is available. For any electronic files generated by the CONTRACTOR and any files provided to the CONTRACTOR in an electronic form, the CONTRACTOR shall maintain an electronic "back-up" copy for submission to the COUNTY upon completion of the services or the termination of the CONTRACT. The electronic "back-up" copy of any documents generated by the CONTRACTOR shall be provided in a format acceptable to the COUNTY.
- E. The CONTRACTOR shall keep complete and accurate books of account showing the cost of work which shall be open at all reasonable times for inspection by representatives of the COUNTY.
- F. As the COUNTY may request from time to time, CONTRACTOR shall make available for inspection and/or reproduction by COUNTY all records, books, and documents of every kind and description that relate to this CONTRACT.

X. INDEPENDENT CONTRACTOR STATUS:

- A. The CONTRACTOR is an independent contractor and nothing herein contained shall constitute or designate the CONTRACTOR or any of its employees or agents as employees of the COUNTY.
- B. CONTRACTOR warrants that at the time of entering into this CONTRACT, it has no direct or indirect interest, nor shall it acquire any such interest, in any contract which will impede its ability to perform under this CONTRACT.

XI. ASSIGNMENT AND SUBCONTRACTING:

The CONTRACTOR shall not have the right or power to assign this CONTRACT or any parts thereof without the express written consent of the COUNTY. The CONTRACTOR shall not subcontract any of its duties under this CONTRACT without notifying the COUNTY and providing the COUNTY with the identity of said subcontractors. *All subcontracts shall be subject to the same terms, conditions, and covenants contained within this CONTRACT.* CONTRACTOR shall require and verify that each subcontractor acquire and maintain the minimum amount of insurance specified in Section VIII of this CONTRACT. CONTRACTOR is responsible for making direct payment to all subcontractors for any and all work performed and/or services provided by such subcontractor.

XII. DISCLOSURE:

CONTRACTOR shall not use the COUNTY'S name or photographs of any phase of the work performed under this CONTRACT in any professional publication, magazine, trade paper, newspaper, seminar, or other medium without first receiving the express written consent of the COUNTY. All press releases relating to the work or this CONTRACT, including graphic display information to be published in newspaper, magazines, and other publications, are to be issued only by the COUNTY unless otherwise agreed to in writing by the CONTRACTOR and the COUNTY.

XIII. DATA, PATENTS, AND COPYRIGHTS:

Any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by CONTRACTOR become the property of COUNTY. When requested, such designs, specifications, processes, devices, or other intellectual properties shall become available to COUNTY with an unrestricted right to reproduce, distribute, modify, maintain, and use. The CONTRACTOR shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties. In providing such designs, specifications, processes, devices, or other intellectual properties to the PROJECT, CONTRACTOR shall relinquish any proprietary protections if they exist.

CONTRACTOR shall not utilize within the development of the PROJECT any copyrighted, patented, or similarly protected design, specification, process, device, or other intellectual property unless CONTRACTOR has provided for such use by suitable legal agreement with the owner of the copyright, patent, or similar protection. If CONTRACTOR makes use of such protected items for the PROJECT, CONTRACTOR shall indemnify and save harmless the COUNTY and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by

reason of infringement at any time during the performance of the work or after completion of the work on the PROJECT.

XIV. TERMINATION:

A. TERMINATION FOR CONVENIENCE

1. In addition to any other rights provided herein, the COUNTY shall have the right, at any time, for convenience and without cause, to terminate further performance of work under the CONTRACT by delivery of written notice to the CONTRACTOR twenty (20) days prior to such termination date as that notice shall designate. The CONTRACTOR shall comply with the terms of the notice, after the receipt of which, it shall reduce, minimize, or eliminate any activities for which it would seek compensation from the COUNTY, except as directed by the COUNTY in the notice.
2. Within five (5) days of receiving such notice, the CONTRACTOR shall prepare and submit to the COUNTY a work plan to accomplish the remainder of the work under the CONTRACT that the COUNTY wishes to have performed prior to the designated termination date. The work plan shall contain the information required to complete the PROJECT, including the activities to be completed and a final projected estimate for the work to be performed under the CONTRACT, which will be compensated based upon the percentage of the activities to be performed during the period prior to termination. Other than the payment authorized in the approved work plan, the CONTRACTOR expressly understands that it shall not have a right to other compensation, lost profits, mobilization or demobilization costs, or other termination costs. Within five (5) days of its receipt, the COUNTY shall review the proposed work plan and specify any required changes to the CONTRACTOR. Upon approval by the COUNTY, the termination work plan shall supersede and replace outstanding, incomplete task orders.
3. On or before the designated termination date, CONTRACTOR shall turn over or preserve all documentation in accordance with the COUNTY'S instructions. Within fifteen (15) days of the designated termination date, the CONTRACTOR shall submit to the COUNTY a final progress report, including a final invoice. The final invoice shall contain a certificate that the invoiced amount is the final claim for all work and that payment by the COUNTY will constitute a release of any and all claims by CONTRACTOR. Within ten (10) days of its receipt, the COUNTY shall review the final progress report and request any additional information which it requires. Receipt and approval by the COUNTY of a satisfactory final progress report shall be required prior to approval of the final invoice.

B. TERMINATION AND OTHER ACTIONS FOR CAUSE:

1. For the purposes of this CONTRACT, an event of default includes the CONTRACTOR filing a petition in bankruptcy, making a general assignment for the benefit of its creditors, having a petition in bankruptcy filed against CONTRACTOR or a receiver appointed on account of its insolvency, or default in the performance of any express obligation to be performed by it under this CONTRACT. If an event of default occurs, the COUNTY may, without prejudice to any other rights or remedies the COUNTY may have: (a) hold in abeyance further payments to the CONTRACTOR, (b) stop any work of CONTRACTOR or its subcontractors related to such failure, and/or (c) terminate this CONTRACT by delivery of written notice to CONTRACTOR specifying the date of termination.
2. Upon receipt of a termination notice, CONTRACTOR shall comply with its terms and shall reduce, minimize, or eliminate any activities for which it intends to seek any compensation from the COUNTY under this CONTRACT. Prior to the designated termination date specified in the notice, or within any extension of that period to which the parties have agreed, the COUNTY may cancel the notice and authorize performance of the work under the CONTRACT to continue; otherwise, the termination shall take effect on the designated termination date.
3. In the event of such termination by the COUNTY, the COUNTY may take possession of documentation and finish work under the CONTRACT by whatever method the COUNTY may deem expedient. In the event of any termination, CONTRACTOR shall deliver to the COUNTY all finished and unfinished documentation, including all documents, in whatever form, furnished to CONTRACTOR by the COUNTY.
4. Any claims for compensation after termination for cause shall be strictly limited to any work under the CONTRACT satisfactorily performed by the CONTRACTOR prior to the termination date. Any such claim shall be related to the percentage of completion of the work under CONTRACT and shall be supported by complete documentation submitted to the COUNTY and shall be satisfactory in form and content to the COUNTY. Other than any payment for work under the CONTRACT performed prior to termination, the CONTRACTOR expressly understands that it shall not have a right to other compensation, lost profits, mobilization or demobilization costs, or other termination costs.

C. TERMINATION NOT A LIMIT ON REMEDIES:

Nothing in this section shall be construed as a limitation on the remedies available to the parties hereto under the law or the terms of the CONTRACT in the event of a breach hereof by either or both of the parties.

XV. EXTENT OF CONTRACT:

- A. This CONTRACT, the exhibits attached hereto, and the documents incorporated herein by reference represent the entire integrated agreement between the COUNTY and the CONTRACTOR and supersede all prior negotiations, representations, or agreements, either written or verbal.
- B. This CONTRACT may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.
- C. The captions or headings in this CONTRACT are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.
- D. If there are any inconsistencies between the provisions contained in this instrument and any other document attached hereto or incorporated herein, the provisions of this instrument shall prevail.

XVI. GOVERNING LAW; RESOLUTION OF DISPUTES AND CLAIMS:

This CONTRACT, any modifications, amendments, or alterations thereof, and any disputes or claims arising out of this CONTRACT in any stage of resolution in court or out of court shall be governed, construed, and enforced under the laws of the State of Ohio to the exclusion of the law of any other jurisdiction.

Disputes and claims related to the work under the CONTRACT shall be subject to resolution according to the process shown on the BCEO Dispute/Claim Resolution Flow Chart included in Exhibit A. If, at the conclusion of the dispute/claim resolution process shown on the BCEO Dispute/Claim Resolution Flow Chart, the parties pursue any further steps to resolve the dispute or claim, the proceedings shall be conducted by a court of proper jurisdiction venued in Butler County, Ohio, or by a qualified local arbitration panel or a qualified local mediator agreed upon by the parties and located in Butler County, Ohio, unless otherwise agreed.

Any dispute resolution beyond the dispute/claim resolution process shown on the BCEO Dispute/Claim Resolution Flow Chart shall be commenced within thirty days of the conclusion of the dispute/claim resolution process. Nothing shall preclude the parties from negotiating without the assistance of a court, arbitration panel, or mediator the resolution of a dispute or claim which previously went through the dispute/claim resolution process.

XVII. NOTICES:

All notices, certificates, requests, or other communications hereunder shall be in writing and shall be deemed to be given if delivered in person to the organization for which the notice is intended or if delivered at or mailed by registered or certified mail, postage prepaid, to the appropriate designated addresses as follows:

If to the COUNTY:

**Melissa Taylor, Contract Specialist
Butler County Engineer's Office
1921 Fairgrove Avenue
Hamilton, Ohio 45011**

If to the CONTRACTOR:

**Bill Wohlford, Chief Estimator
Barrett Paving Materials, Inc.
3751 Commerce Drive
Franklin, Ohio 45005**

XVIII. SEVERABILITY:

If any provision of this CONTRACT or any covenant, obligation, or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof; and each such provision, covenant, obligation, or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

XIX. NON-WAIVER:

Neither a failure by the COUNTY to exercise any of its options hereunder, nor failure to enforce its rights or seek its remedies upon any default or breach, shall effect or constitute a waiver of the COUNTY'S right to exercise such option, to enforce such right, or to seek such remedy with respect to that default or breach of contract or any prior or subsequent default or breach. Remedies provided in this CONTRACT shall be cumulative and shall not in any way abridge, modify, or preclude any other rights or remedies to which the COUNTY is entitled either at law or in equity.

Approved as to Form Only:

Mary Anne Nardiello
Assistant Prosecuting Attorney
Butler County, Ohio

XX. AVAILABILITY OF FUNDS:

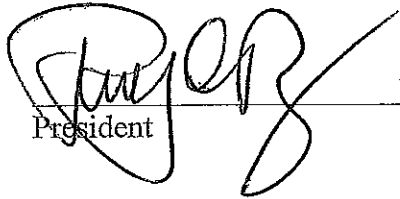
This CONTRACT is conditioned upon the availability of Federal, State, and/or local funds which are appropriated or allocated for payment of this CONTRACT.

XXI. AMENDMENT:

This CONTRACT may not be altered, waived, amended, or extended and no change orders shall be made, except by an instrument in writing signed by the duly authorized officer or agent of the COUNTY and duly authorized officer of the CONTRACTOR.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT on this MAY 15, 2017, for the amount of \$5,182,169.68.

**BOARD OF COUNTY COMMISSIONERS
BUTLER COUNTY, OHIO**



President


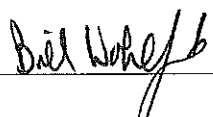
Vice President



Member

BARRETT PAVING MATERIALS, INC.

Red Russell Bill Wohlford

Name

V.P. CHF 951

Title