

CONTRACT TO FURNISH LABOR, SUPERVISION AND MATERIALS

THIS AGREEMENT (“Agreement”), made as of _____, 2014, between _____, with offices located at _____ (“CONTRACTOR”), and **SHEETZ, INC.**, a Pennsylvania corporation, located at 5700 Sixth Avenue, Altoona, PA, 16602 (“OWNER”).

IN WITNESS WHEREOF, the parties hereto, for and in consideration of the mutual covenants and conditions herein contained, intending to be legally bound, agree as follows:

1. **SCOPE OF WORK.** The CONTRACTOR shall furnish and pay for all labor, materials, power, equipment, transportation and all other items otherwise stipulated, necessary to complete the work and achieve the results described below (the "Work"):

CONTRACTOR is to provide a completed work product, including items not expressly stated in any purchase order or work order issued hereunder, if reasonably necessary to complete the Work. All bid documents, written scope of work, construction documents, change orders, modifications, and addendums issued during the bidding phase are considered part of the “Work”. Should any Work, which is not detailed herein, be required in order to properly complete the Work to be done hereunder, CONTRACTOR shall perform all such Work as fully as is described herein (See Section 7.)

2. **TERM.** The Work shall be started on _____ and shall be substantially completed by _____ (the “Term”). Excepting either *force majeure* events (as that term is defined in Section 18 hereof) or OWNER-related delays, the CONTRACTOR shall pay liquidated damages of \$1,000.00 per day if the Work is not substantially completed within ten (10) days after the end of the Term. For purposes of this Contract, substantial completion is the stage in the progress of the Work when the Work is sufficiently complete so the OWNER, in its reasonable opinion, can occupy or utilize the Work for its intended use.

The CONTRACTOR, promptly after being awarded the Contract, shall prepare and submit to OWNER a construction schedule for the Work. The schedule shall not exceed the Term, shall be revised at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

3. COMPENSATION.

(a) Work shall be furnished for the lump sum of _____ (\$_____) Dollars.

(b) No overtime work or premium rates will be paid or authorized by CONTRACTOR unless OWNER has expressly approved such payment in writing; provided that persons expressly designated in writing by OWNER for such purpose may give oral approval to spot overtime work.

4. PAYMENT.

(a) CONTRACTOR shall have the right to request that OWNER make partial payments provided, however, that OWNER shall have the right to withhold up to and including ten percent (10%) of the amount of any invoice submitted to OWNER by CONTRACTOR for labor, supervision, and materials furnished by CONTRACTOR up to the time of completion (the "Retainage"). Payment of the Retainage shall be due only upon OWNER's acceptance of all Work (not upon substantial completion of such work) and receipt by OWNER of appropriate Waivers of Liens or other documents indicating that all payments have been made to all contractors, subcontractors, suppliers and material men.

(b) Each invoice must, in addition to total charges, show separately on its face the labor costs or equipment costs, as applicable, material costs, and any applicable freight charges and sales and use taxes. For time and material Work, time sheets, equipment logs, material tickets, or similar supporting documentation must be signed by OWNER's representative and such documentation shall be attached to CONTRACTOR'S invoice. In addition, any applicable markups such as fringe benefits, unemployment taxes, workers compensation insurance, payroll taxes, overhead and profit, etc. must be itemized on the invoice.

(c) Subject to Paragraphs (a) and (b) hereof, OWNER shall pay CONTRACTOR's invoice, within forty-five (45) days of receipt of such invoice, together with all supporting documentation, by OWNER's Accounts Payable Department.

(d) CONTRACTOR'S final invoice for payment shall be submitted no later than thirty (30) days after substantial completion.

5. CHANGES IN THE WORK.

(a) The OWNER's authorized representative shall have authority to make minor changes in the Work, not involving extra cost, but otherwise, except in an emergency endangering life or property, no extra Work or change to lump sum work shall be made without written order, signed by OWNER and delivered to CONTRACTOR. In the event that the extra work required by a written order would also require the payment of additional compensation to CONTRACTOR or the granting of additional time to complete the Work, the parties shall prepare a written instrument stating the changes in Work, the adjustment to the compensation due CONTRACTOR, and the adjustment to the Term, in accordance with the provisions as later set forth herein. Upon receipt of a written order from OWNER, the CONTRACTOR shall promptly proceed with the changes in the Work involved and notify OWNER of any agreement or disagreement with any adjustment in the compensation or in the Term. In the event the parties cannot agree on the adjustment in compensation or term, OWNER may, at its option, revoke the change in the Work, terminate this Contract, or submit the dispute to the Architect (if any) for the Work or to an arbitrator (pursuant to the Rules of the American Arbitration Association).

(b) Contract Price Adjustments. Whenever change order proposals to adjust the contract price become necessary, the OWNER shall have the right to select the method of pricing to be used by the CONTRACTOR in accordance with the pricing provisions found in this Section 5. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as set forth in the following provisions:

(i) Lump Sum Change Order Proposals: The CONTRACTOR will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format *satisfactory* to OWNER. The OWNER will require itemized change orders on all change order proposals from the CONTRACTOR, subcontractor, and sub-subcontractor's regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line items by drawing as applicable).

(ii) Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the CONTRACTOR for those workers or crews of workers who the CONTRACTOR reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in subsection (c) and (d) of this Section.

(iii) Labor Burden: Labor burden allowable in change orders shall be defined as employer's net *actual* cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses assigned risk rebates, etc. CONTRACTOR shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

(iv) Material: Estimated material change order costs shall reflect the CONTRACTOR's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the CONTRACTOR due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to OWNER if the CONTRACTOR is provided OWNER funds in time for CONTRACTOR to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

(v) Equipment: Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For CONTRACTOR owned equipment, the "bare" equipment rental rates allowed *to be used* for pricing change order proposals of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for CONTRACTOR owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

(c) Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing change orders to any Lump Sum Contract change order, the maximum Markup Percentage Fee to be paid to any contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed (the following sliding scale of percentages) of the net direct cost of: (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work; and, (3) net rental costs of major equipment and related fuel costs necessary to complete the change in the Work. The following sliding scale will apply for the pricing of the self-performed work portion of each change order proposal request:

(i) 10% on the first \$25,000 of the change order direct cost of self-performed work,

(ii) 8% on the portion of the change order direct cost of self-performed work between \$25,000 and \$50,000, and,

(iii) 6% on the portion of the change order direct cost of self-performed work greater than \$50,000.

(d) Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the CONTRACTOR supervising the lower tier contractor's work shall not-to-exceed the following scale on the aggregate amount allowed to be charged by the lower tier contractor for each change order event:

(i) 8% on the first \$25,000 of approved change order work performed by all subcontractors combined for any particular change order proposal, and

(ii) 4% on any amount greater than \$25,000 of approved change order work performed by all the subcontractors combined for any particular change order proposal.

6. WARRANTIES.

(a) CONTRACTOR represents and warrants that it is experienced in the Work to be undertaken on behalf of OWNER and possesses the skills to complete the Work, and that the Work will be performed in a good and workmanlike manner by qualified, careful and efficient workers, in accordance with the Agreement, in strict conformity with all applicable laws and regulations and with the best standard practices, and in a manner protective of its employees, the public and the environment. CONTRACTOR further warrants all Work against defects resulting from poor workmanship or materials furnished by CONTRACTOR for a period of one (1) year from the date Work is completed and accepted by OWNER. In the event any Work proves unsatisfactory within the period specified above (and without waiving any other rights or remedies OWNER may have at law) CONTRACTOR covenants and agrees to correct, at CONTRACTOR's sole expense such defects and any damage to other work or material caused by the defects or by the correction of such defects.

(b) CONTRACTOR represents and warrants that upon payment pursuant to Section 4(a) hereof that (1) title to all Work performed to that date will pass to the OWNER and (2) that is has furnished a full and unconditional release(s) for any claim or mechanics' lien for that portion of Work for which payment has been made. The CONTRACTOR further warrants that upon such payment and to the best of the CONTRACTOR's knowledge, information and belief, all Work shall be free and clear of liens, claims, security interest and encumbrances in favor of the CONTRACTOR,

subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

(c) CONTRACTOR represents and warrants that CONTRACTOR has reviewed all documents and examined the site upon which the Work is to be performed, is familiar with all specifications, drawings, plans, and schedules, has made all necessary inquiries relevant to the performance of the Work, and is not relying on any representation or other statements of OWNER. CONTRACTOR acknowledges and agrees that it is responsible for all additional construction or other costs and expenses associated with, which result from, or are in any way connected with, its failure to learn of any condition or requirement as a result of its breach of this representation and warranty.

(d) CONTRACTOR represents and warrants that CONTRACTOR is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986 (the "IRCA"), as amended and supplemented, with Sections 212(n) and 274A of the Immigration and Nationality Act, as amended and supplemented, and all implementing regulations relating thereto (including but not limited to the provisions relating thereto which prohibit the hiring and continued employment of unauthorized aliens, require verification and record keeping with respect to identity and eligibility for employment, and prohibit discrimination on the basis of national origin, United States citizenship, or intending citizen status). CONTRACTOR agrees to indemnify, defend and hold OWNER, and its affiliates, harmless from and against all claims, liabilities, losses, damages and expenses, including attorney's fees, including liability for interest and penalties, arising out of, in connection with, or in any way incurred as a result of CONTRACTOR's failure to comply with any IRCA provision. CONTRACTOR herein grants OWNER the right to audit all employer immigration documentation for the purpose of confirming compliance with all IRCA provisions

7. PERMITS, LICENSES, AND FEES. Unless expressly agreed otherwise in writing by the parties, OWNER shall secure all permits necessary for the accomplishment of the Work to be done hereunder and shall comply with all local laws and regulations and, if anything herein contained is at variance with any law or regulation, then CONTRACTOR shall notify OWNER's authorized representative and receive written instructions before proceeding with the Work. CONTRACTOR warrants that it has obtained, and shall cause its subcontractors to obtain, all necessary trade licenses and permits to perform its work.

8(A). WORK TO BE PERFORMED BY OWNER. OWNER may furnish drawings, specifications, changes and field engineering. OWNER will have the right, at any time and from time to time, to submit revised drawings and specifications. Otherwise, OWNER's obligations hereunder to CONTRACTOR shall be strictly limited to the payment for labor, materials and supervision actually furnished by CONTRACTOR under the terms of this Agreement.

8(B). EQUIPMENT FURNISHED BY OWNER. OWNER may have equipment and tools (hereinafter, "OWNER's Equipment") on the project which is owned or leased by OWNER. In the event that OWNER grants permission to the CONTRACTOR or CONTRACTOR'S subcontractors to use OWNER's Equipment, then CONTRACTOR, for itself, and on behalf of its subcontractors, regardless of tier, agrees as follows: (a) CONTRACTOR shall only use OWNER's Equipment in a careful, safe and proper manner; (b) CONTRACTOR assumes the risk for loss, damage, or destruction of OWNER's Equipment, provided, that no reimbursement will be made to OWNER for loss, damage, or destruction when due to ordinary wear and tear; (c) CONTRACTOR shall return OWNER's Equipment to OWNER in as good condition as received, ordinary wear and tear excepted; (d) CONTRACTOR'S insurance requirements under Section 15 hereof shall apply and be extended to CONTRACTOR's use of OWNER's Equipment; and (e) CONTRACTOR agrees to indemnify, defend, and hold OWNER harmless against all loss, damage, claim, and expenses arising from any action on account of any injury to person or property (including damage to OWNER's Equipment) occasioned by the operation, handling or transportation of OWNER's Equipment while OWNER's Equipment is in the possession and control, or is being used by CONTRACTOR.

9. COOPERATION WITH OTHER CONTRACTORS AND OWNERS. The OWNER reserves the right to let other contracts related to this Work, and it is agreed that CONTRACTOR shall cooperate with all other contractors and shall properly coordinate its Work with theirs. The CONTRACTOR shall cooperate fully with OWNER in performing the Work to be done hereunder and shall not interfere with OWNER's operation or its other contractors. CONTRACTOR shall permit and facilitate the inspection of the Work by OWNER at any time and it is agreed that OWNER's project manager may from time to time furnish additional instructions or drawings necessary for the proper execution of the Work.

10. LIENS

(a) In consideration of the contract price to be paid CONTRACTOR hereunder, CONTRACTOR agrees to and does hereby waive, to the maximum extent permitted by law, any claim to a lien against the property of OWNER which it now has or which may hereafter arise out of, or during the performance of, this Agreement. CONTRACTOR shall make reasonable efforts to obtain a similar waiver of lien from any subcontractor, material men or others providing work or service hereunder and shall immediately advise OWNER in writing in the event any such persons refuse to furnish a waiver of lien.

(b) Upon notification by OWNER, or upon CONTRACTOR's independently learning of, a lien or threatened lien or similar right of any kind by CONTRACTOR's laborers, material men, subcontractors or other creditors, which has been placed upon or against the Work or the real property where the Work is performed, CONTRACTOR shall immediately:

(i) pay and discharge the underlying obligations or alleged obligations of the claimed lien; or,

(ii) provide security sufficient and satisfactory to OWNER, including bonding off any lien claim filed; or,

(iii) obtain from such parties a Waiver of Lien satisfactory to OWNER.

(c) CONTRACTOR's failure to comply with the provision of this Paragraph 10(b) within thirty (30) days of the date CONTRACTOR learns or should have learned of the claimed liens shall constitute a material default hereunder and shall entitle OWNER to pay and discharge all such liens or alleged liens and deduct all such payments from any amounts due CONTRACTOR hereunder whether or not such liens are valid, and shall further entitle OWNER to such remedies as are provided herein or by law.

(d) Before making any payment, OWNER may require that CONTRACTOR furnish a full and complete waiver or release of liens, to the maximum extent permitted by law, from each subcontractor, material man, artisan, or mechanic retained by CONTRACTOR waiving or releasing any liens or claims whatever against the Work to be performed herein.

(e) CONTRACTOR hereby agrees to and shall indemnify and hold OWNER harmless from all loss, damage and expense (including reasonable attorney fees) arising from or relating in any way to any claims, causes of action, or liens asserted by a subcontractor, laborer or material supplier of CONTRACTOR against any of the following: the OWNER; the Work; the property upon which the Work is being conducted; or the underlying OWNER of the fee interest in the property (if OWNER does not own the property). CONTRACTOR shall at its expense protect and defend OWNER (and the other indemnified parties) against all such claims, causes of action, or liens by legal counsel satisfactory to OWNER. This right to indemnification is in addition to all other remedies provided in this Agreement or at law or equity.

11. TERMINATION

(a) Notwithstanding anything herein to the contrary, if (i) relief has been ordered under the Bankruptcy Code with respect to CONTRACTOR, or (ii) if CONTRACTOR should make a general assignment for the benefit of its creditors, or (iii) if a trustee, receiver, custodian or similar officer should be appointed on account of its insolvency, or (iv) should CONTRACTOR fail, neglect or refuse to perform any or all Work, or (v) if a lien has been placed upon or against the Work or the real property upon which the Work is situated and is not discharged or satisfied as provided in Paragraph 10 above, or (vi) CONTRACTOR, assigned any monies due or to become due hereunder without the previous written consent of OWNER, or (vii) if at any time OWNER believes, in its discretion, that the Work is unreasonably delayed for any reason or (viii)

any of the provisions of this Agreement are being willfully violated or executed carelessly, or that CONTRACTOR is acting in bad faith, or (ix) if the Work is delayed in whole or in part by any labor dispute involving CONTRACTOR and its employees for a period of ten (10) calendar days, *then* OWNER or its representatives may notify CONTRACTOR in writing and request that it immediately remedy the deficiency or delay. If the same shall not be remedied within twenty-four (24) hours of notice being delivered (or if not capable of being remedied in 24 hours, that CONTRACTOR has not commenced to remedy in 24 hours), then OWNER, without prejudice to any other right or remedy it may have at law or in equity, may terminate this Agreement by written notice to CONTRACTOR and take possession of the premises and of all materials, tools and appliances thereon which are or have been incorporated into the Work and finish the Work by whatever method OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payments until the Work is finished and releases or waivers of all liens have been obtained or the applicable statutory time for filing a lien has passed. If the unpaid balance of the contract price shall exceed the expenses of finishing the Work, including compensation for additional managerial and administrative services, such excess shall be paid to CONTRACTOR. If such expenses shall exceed such unpaid balances, CONTRACTOR shall pay the difference to OWNER.

(b) Notwithstanding anything herein to the contrary, OWNER may terminate this Agreement at any time by written notice to CONTRACTOR, with or without cause, which notice shall state the extent and effective date of the termination. Upon the giving of such notice, OWNER may take possession of the premises and of all materials, tools, and appliances thereon belonging to OWNER and finish the Work by whatever method OWNER may deem expedient, or elect not to complete the work. On the effective date thereof, CONTRACTOR shall (i) stop all Work and place no further orders or subcontracts, (ii) terminate work orders and subcontractors outstanding, and (iii) take any necessary action to protect property in CONTRACTOR's possession in which OWNER has or may acquire an interest. In the event of a termination under this Paragraph 11(b), OWNER shall pay CONTRACTOR for any and all labor, materials and supervision performed to date of such termination.

12. SUSPENSION. Notwithstanding anything herein to the contrary, OWNER may suspend the Work in whole or in part at any time by written notice to CONTRACTOR stating the extent and effective date of such suspension, whereupon CONTRACTOR shall suspend the Work to the extent specified. If the suspension is for cause, including but not limited to the existence of a condition described in Paragraph 19 hereof, such suspension shall continue until such cause ceases to exist or OWNER notifies CONTRACTOR to resume performance under this Agreement or OWNER terminates this Agreement in accordance with Paragraph 11(b) hereof, whichever is the earliest to occur. If suspension is for the convenience of OWNER and continues for twenty (20) working days, CONTRACTOR shall have the right to terminate this Agreement in whole or in part in accordance with the provisions of Paragraph 11, in which event OWNER shall pay CONTRACTOR for any and all labor, supervision and materials performed to the date of such termination hereof. During the period of

suspension, CONTRACTOR shall protect and care for the Work performed prior to the date of such suspension. If the cost of the Work, including the cost of additional Work made necessary by the suspension, is increased or decreased by the suspension, the agreed upon price for the Work to be furnished hereunder will be adjusted in accordance with Paragraph 5 hereof.

13. **CONFLICTING PROVISIONS.** The terms, provisions or conditions herein contained shall control in the event of any conflict with any provision, term, covenant or condition in any of the documents attached hereto and made a part hereof, or any work orders, purchase orders, requisitions, or any other forms or documents issued pursuant to this Agreement or in connection with the Work.

14. **INDEMNIFICATION.** CONTRACTOR agrees to protect, indemnify, hold harmless and defend OWNER, its subsidiaries and related companies, and the officers, directors, employees, workmen, agents, servants and invitees of OWNER, its subsidiaries and related companies from and against all losses, damages, demands, claims, suits and other liabilities (including attorney fees and other expenses of litigation), in connection with performance of the Work contemplated hereunder or by reason of CONTRACTOR and its employees, workmen, agents, servants, subcontractors and vendors being present on OWNER's premises (except to the extent the total liability, loss or damage is attributable to and caused by the sole and exclusive negligence of OWNER) because of: (a) bodily injury, including death at any time resulting therefrom; (b) property damage, including loss of use thereof and downtime; (c) violation of or failure to comply with any applicable law, regulation, rule or order, including without limitation, environmental laws and regulations, which occur, either directly or indirectly; and, (d) infringement of patent, trade secret or propriety rights of any third party by any device, process or material not specified by OWNER. CONTRACTOR's agreement to protect, indemnify, hold harmless and defend as set forth in the immediately preceding sentence shall not be negated or reduced by virtue of CONTRACTOR's insurance carrier's denial of insurance coverage for the occurrence or event which is the subject matter of the claim and/or refusal to defend CONTRACTOR or OWNER.

15. **INSURANCE.** Without limiting, negating or reducing CONTRACTOR's undertaking to protect, indemnify, hold harmless and defend OWNER and other parties as provided in Paragraph 14 hereof, and as part of the consideration of sums paid CONTRACTOR by OWNER hereunder, CONTRACTOR shall at its own cost and expense procure and keep in force and effect the insurance listed below with insurance carrier(s) acceptable to OWNER. Before commencing any Work, CONTRACTOR shall furnish OWNER with Certificates of Insurance attested by a duly authorized representative of the insurance carrier(s) evidencing that the insurance required hereunder is in force and effect and that such insurance will not be canceled or materially changed without giving to OWNER at least 30 days prior written notice. In the event CONTRACTOR fails to furnish OWNER with acceptable Certificates of Insurance before the time named in this Agreement for commencing Work, OWNER shall have the right to terminate this Agreement. The required insurance coverages are as follows:

(a) Worker's Compensation and Employer's Liability Insurance: CONTRACTOR and all subcontractor's retained by or through CONTRACTOR, and all their employees, workmen, agents and servants shall comply with all requirements of the worker's or workmen's compensation laws of the state or states or other governmental authority in which CONTRACTOR or any subcontractor retained by or through CONTRACTOR is performing any work hereunder. In addition, CONTRACTOR shall carry statutory Workers Compensation and Employer's Liability Insurance covering all operations and work hereunder in an amount not less than \$500,000 per occurrence. All such Worker's Compensation and Employer's Liability Insurance shall expressly provide that all rights of subrogation against OWNER are waived.

(b) General Liability and Automobile Liability Insurance: General Liability Insurance, including Blanket Contractual Liability, Products and Completed Operations Liability and Broad Form Property Damage, covering all Work hereunder, with limits of not less than the following:

(i) Occurrence Form Comprehensive General Liability - \$1,000,000 for all liability arising out of injury to or death of one or more persons, in any one occurrence, and \$1,000,000 for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence; or

(ii) Occurrence Form Commercial General Liability - \$2,000,000 Combined Single Limit for all liability arising out of injury to or death of one or more persons, in any one occurrence and for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence, with a General Annual Aggregate not less than \$2,000,000;

(c) Automobile Liability Insurance: Occurrence Form Automobile Liability Insurance on all motor vehicles owned, hired, or non-owned, which may be used or connected with any of the work hereunder, with limits of not less than \$1,000,000 for all liability arising out of injury to or death of one or more persons, in any one occurrence, and \$1,000,000 for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence.

(d) The policy or policies providing such General Liability and Automobile Liability Insurance shall be endorsed to specifically include the liability assumed by CONTRACTOR under this Agreement in Section 14 above in the amounts shown in this Section 15. In addition, such insurance shall specifically name OWNER as an additional insured party and shall be primary to any and all other insurance of OWNER with respect to any and all claims and demands which may be made against OWNER for bodily injury or death resulting therefrom, including injury to or death to CONTRACTOR, its employees, workmen, agents and servants, and for property damage, including damage to CONTRACTOR's property, caused by, or alleged to have been caused by, any act, omission or default, negligent or otherwise, of OWNER by reason of operations or Work hereunder. Such insurance shall specifically provide that it applies separately to each insured against which is made or suit is brought, except with respect to

the limits of the insurer's liability, and that all rights of subrogation against OWNER are waived.

(e) The above insurance requirements are minimum requirements and shall not limit CONTRACTOR's liability to OWNER in any manner.

16. RECORDS. CONTRACTOR agrees to retain all records and accounts, related to charges or CONTRACTOR's invoices for a period of at least three (3) years from the completion date of any Work performed pursuant to this Agreement. CONTRACTOR shall permit OWNER access to, either in the field or at the home office, for review and audit, at all reasonable times, all records and accounts relating to costs and expenses invoiced to OWNER under this Agreement.

17. PARTIES' RELATIONSHIP; COMMITMENTS TO GOVERNMENT AGENCIES. In the performance of all Work hereunder, CONTRACTOR shall be an independent CONTRACTOR and not the employee, agent, partner or joint venturer of OWNER. CONTRACTOR shall not make any binding commitment on behalf of OWNER with any governmental agency or office, and CONTRACTOR shall not represent that it has such authority, without prior express written authorization of OWNER.

18. FORCE MAJEURE. CONTRACTOR shall not be liable for any delay in performing the Work due to the act or negligence of OWNER or another contractor of OWNER, to changes in the Work or suspension of the Work by OWNER, or to fire, flood, or other cause beyond CONTRACTOR's control; provided, however, that this provision shall not excuse performance for weather conditions which are not extreme (for example, cold weather during the winter, moderate snows) and provided further that such causes shall not excuse any delay in performance of Sections 10, 11, 15, 16 or 20 hereunder. CONTRACTOR shall notify OWNER in writing immediately upon the occurrence of any cause as to which delay in performing the Work is claimed to be excused hereunder.

19. COMPLIANCE WITH LAWS AND REGULATIONS

(a) CONTRACTOR shall comply with the Federal Social Security Act, the Federal Unemployment Insurance Acts and all similar state laws, workers' compensation laws, wage and hour laws, any and all applicable sales, use, and gross receipts tax laws and regulations, applicable safety and health laws, immigration laws, standards and regulations, any applicable environmental laws and regulations, and all other applicable laws, regulations, codes, industry or guidelines, permits, licenses and approvals concerning performance of the Work hereunder; and CONTRACTOR assumes exclusive liability for the reporting and payment of any and all contributions and taxes required thereby.

(b) CONTRACTOR shall abide by any additional Environmental, Safety and Health regulations established by OWNER and communicated to CONTRACTOR

20. ASSIGNMENTS AND SUBCONTRACTS. CONTRACTOR shall not assign this Agreement to sublet the Work as a whole without the prior written consent of OWNER. CONTRACTOR shall be responsible to the OWNER for acts and omissions of the CONTRACTOR's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the CONTRACTOR or any of its subcontractors .

21. GOVERNING LAW. This Agreement shall be construed, and the rights of the parties shall be determined, in accordance with the laws of the State in which the Work under Section 1 hereof is to be materially performed.

22. CONFIDENTIALITY. All plans, drawings, specifications and information concerning the Work shall be treated by CONTRACTOR as confidential and shall not be disclosed to any other person or firm except as may be necessary to perform the Work, apply for permits, licenses or governmental authorizations, or otherwise to comply with applicable laws.

23. NOTICES. All notices required under this Agreement shall be in writing. Notice shall be sufficient in all respects if delivered in person or sent by registered or certified mail, return receipt requested, or by telecopy or other facsimile to:

If to OWNER: SHEETZ, INC
Attn: Doug Knisely, Director of Building & Petroleum Construction
351 Sheetz Way
Claysburg, PA 16625
Facsimile: (814) 239-8620

If to CONTRACTOR: _____
Attn: _____

Facsimile: _____

Either party may change its address for notice purposes hereunder by written notice given to the other party hereto.

24. ENTIRETY OF AGREEMENT. This Agreement is intended by the parties as the final, complete and exclusive statement of the terms, conditions and specifications of their agreement and is intended to supersede all previous agreements, and understandings between the parties relating to its subject matter. No prior stipulation, agreement, understanding or course of dealing between the parties or their

agents with respect to the subject matter of this Agreement shall be valid or enforceable unless embodied in this Agreement. No amendment, modification, termination notice or waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by the party to be charged. This Agreement shall supersede, and shall not be modified or amended in any way by the printed terms of any work order, purchase order, proposal, quotation or other document issued by either party pursuant to this Agreement or in connection with the Work.

25. NO WAIVER. The failure of any party to insist upon strict performance of any of the terms, conditions and provisions of this Agreement shall not be deemed a waiver of future compliance therewith by the party by which the same is required to be performed hereunder and shall in no way prejudice the remaining provisions of this Agreement.

26. BINDING EFFECT; AUTHORITY. All rights conferred by this Agreement shall be binding upon, inure to the benefit of, and be enforceable by or against the respective heirs, personal representatives, successors and assigns of the parties hereto. The individuals executing this Agreement represent that they have the full right and authority to do so.

27. SEVERABILITY. If any provision of this Agreement, or the application of any such provision to any person or in any circumstances is held invalid, the application of such provision to any other person or in any other circumstances, and the remainder of this Agreement, shall not be affected thereby and shall remain in full effect.

28. CONTINUING CONTRACT PERFORMANCE. Pending final resolution of any claim under this Contract, the CONTRACTOR shall proceed diligently with performance of the Contract and the OWNER shall continue to make payments in accordance with the contract.

29. HEADINGS. The headings in this Agreement are inserted for convenience of reference only and shall not affect the construction hereof.

30. NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE. The Contractor agrees:

A. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

B. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

C. The contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

D. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

E. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

**[BALANCE OF THIS PAGE LEFT BLANK]
[NEXT PAGE IS SIGNATURE PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first written above.

WITNESS/ATTEST:

SHEETZ, INC.
OWNER

By: _____
Doug Knisely, Director of Building
& Petroleum Construction

DATE: _____

WITNESS/ATTEST:

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____