

AMENDMENT TO A CONSTRUCTION AGREEMENT

This is an Amendment to the Agreement between Columbus Compact Corporation (Owner) and (Contractor) dated April ____, 2010. By signing in the space below, each of the parties hereto agrees to the following amendments:

1. **Contingencies.** The Agreement is entirely contingent upon Owner's ability to secure Project financing on terms and conditions that are acceptable to Owner in Owner's sole discretion as well as approval by City of Columbus
2. **Time.** Article 9.2, Time, shall have the following definitions added:
 - a. Substantial Completion shall be defined as approval by building inspection officials from the City of Columbus and any other agency with jurisdiction over the project of all plumbing, electrical, structural, gas and water systems, and any other actions required to secure an occupancy permit.
 - b. Final Completion shall be defined as completion of all punchlist items and approval of the Occupancy Permit.
3. **Progress Payments.** Article 14, Payment, is hereby amended to include the following stipulations. In the event of any inconsistency between this Amendment and the Contract, the terms of this Amendment shall control.
 - a. Prior to the Date of Commencement, Contractor will submit to Owner for approval a Schedule of Values using AIA Document G 703.
 - b. All requests for Progress Payments will be provided using AIA Documents G702 and G703 and, where appropriate, shall be certified by the Architect.
 - c. No Progress Payment or Final Payment shall be made to Contractor pursuant to this Agreement until the Contractor submits documentation verifying that it has conformed with requirements of the Secretary of Labor in accordance with the conditions of the Davis Bacon Act, as amended (40 USC 276a).
 - d. No Progress Payment or Final Payment shall be made to Contractor pursuant to this Agreement until the Contractor submits a lien waiver conforming to the applicable sections of the Ohio Revised Code.
4. **Notice to Cure and Termination.** Article 17, Notice to Cure and Termination, is hereby amended as set forth below. In the event of any inconsistency between this Amendment and the Contract, the terms of this Amendment shall control.
 - a. Events of Default. In addition to the items set forth in Article 17.1, the following items shall be considered an event of default by Contractor under this Agreement:
 - i. Failure of Contractor to commence the Work as required by this Contract.
 - ii. Failure of Contractor to prosecute the Work to completion, as required by this Contract and the Contract Documents, in a diligent and workmanlike, and skillful manner.
 - iii. Failure of Contractor to employ an adequate amount or quality of personnel or equipment to complete the Work without undue delay.
 - iv. Failure of Contractor to perform any of its obligations under the Contract Documents.
 - v. Adjudication of the Contractor as bankrupt
 - vi. Any general assignment by Contractor for the benefit of its creditors.
 - vii. Appointment of a reviewer for Contractor on account of its insolvency.
 - viii. Any other act of insolvency by Contractor.
 - ix. Failure of Contractor to make prompt payments to its subcontractors, materialmen, or laborers.
 - x. Failure of the Contractor to perform any other obligation under this Contract.
 - b. Article 17.2, Termination by Owner, shall be replaced in its entirety with the following:

If, within seven days of receipt of a notice to cure pursuant to Paragraph 17.1, Contractor fails to correct the default set forth in the notice to cure, then Owner shall have the right, subject to an additional written notice to cure to the Contractor followed by an additional seven (7) day cure period, to terminate this contract. If, following the second notice to cure period, the Contractor has failed to correct the default set forth in the notice to cure, then Owner shall also have the right to take possession of all Contractor's materials, equipment, supplies and all other property used by Contractor in the performance of the Work, and to use all of such property complete the Work in any manner Owner deems desirable, including, without limitation, engaging the services of other parties. Any action by Owner under the provisions of this Article 17 shall not be a waiver of any other remedy or right of Owner. If the cost to Owner for the completion of the Work exceeds the amount of the unpaid portion of the Payment as defined in Article 2, Contractor agrees to pay Owner an amount equal to the excess.

5. Access to Records.

- a. Contractor will maintain reasonable records relating to the conduct of the Work, including compliance with the Prevailing Wage Requirements and the Section 3 requirements that are stipulated in this Agreement. Contractor will allow Owner and its agents reasonable access to these records. Such records must be available for three years following completion of the Work.
- b. Contractor will provide Owner with a binder documenting
 - i. the solicitation process for each sub-contract including: copies of advertisements/announcements, pre-bid meeting attendance sheets, and bidder call logs; written communication with bidders; documentation of bids received; documentation of MBE/DBE status for bids received; documentation of Section 3 status for bids received.
 - ii. The solicitation process for all new job postings by Contractor and its sub-contractors, including: copies of announcements/advertisements and copies of applications received.

6. Un-intentional Omissions in Specifications. Any work, material or process that may have been un-intentionally omitted from the description of Work but that is clearly necessary for proper and complete performance of the Contract, shall be furnished by Contractor as if it had been specified.

7. Notice of Unexpected Conditions. If contractor becomes aware of any fault or defect in the program information, surveys, and reports furnished or caused to be furnished by Owner, or nonconformance with or deficiencies in the Drawings and Specifications, or conditions that are at variance with the conditions previously indicated, or conditions that differ materially from those that would be reasonably anticipated, or any other conditions which prevent the Work from being completed in the manner and timeframe anticipated, then Contractor shall give prompt written notice thereof to Owner. Additionally, if such conditions pose a threat or risk to the public safety or to the interests of the Owner, then Contractor shall suspend the activity(s) which are creating such conditions.

8. Prevailing Wage.

- a. Contractor will comply with requirements of the Secretary of Labor in accordance with the Davis Bacon Act as amended, the provisions of the Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act (40 USC 276a; 40 USC 327 and 40 USC 276c) and all other applicable federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Contractor shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Owner with each request for Progress Payment.
- b. Contractor will attend a pre-construction conference with City of Columbus

representatives to review forms and procedures for documenting compliance with Davis Bacon requirements.

9. **MBE/DBE Participation.** Contractor agrees that participation in this Agreement by Minority and/or Disadvantaged Business Enterprises shall comprise, at a minimum, in labor and materials. Contractor also agrees to provide the documentation described below in order to demonstrate compliance with this term of the Agreement. Contractor further agrees that its failure to meet this term of the contract will cause Owner to suffer losses, and agrees to pay liquidated damages in the amount of \$5,000 for any breach of this term.
 - a. From each sub-contractor whose participation is counted towards the requirement, Contractor will provide, the following:
 - i. Prior to the date of commencement, MBE/DBE certification from any one of the following organizations: Columbus Regional Airport Authority, City of Columbus, Central Ohio Transportation Authority (COTA), State of Ohio, the Ohio Department of Transportation (ODOT) or the South Central Ohio Minority Business Council. In the event that certification for an MBE/DBE participant cannot be provided from one of the organizations above, then such MBE/DBE sub-contractor may apply directly to the Owner for certification on such terms and conditions as Owner, in Owner's sole discretion, shall choose.
 - ii. Prior to the date of commencement, written and signed confirmation from the MBE/DBE of its participation in the contract and the anticipated amount of the subcontract.
 - iii. With each progress payment, an Affidavit of Amounts Paid to MBE/DBE Participants (see Exhibit F).
10. **Section 3 Compliance.** Contractor hereby agrees to observe the terms of the Section 3 Compliance Policy, set forth in Exhibit G.
 - a. With each Payment Request submitted under this Agreement, Contractor will provide an Affidavit certifying that it has complied with all of the actions set forth in Exhibit G, Section 3 Compliance Policy, of this Agreement.
 - b. With each Payment Request submitted under this Agreement, Contractor will provide an Affidavit certifying the number of Section 3 Resident New Hires employed under this Contract and any sub-contracts.
 - c. With each Payment Request submitted under this Agreement, Contractor will provide an Affidavit certifying the dollar value of Section 3 Business Concern sub-contracts awarded under this Contract and any sub-contracts.
 - d. Contractor further agrees that its failure to comply with this term of the contract will cause Owner to suffer losses, and agrees to pay liquidated damages in the amount of \$5,000 for any breach of this term.
11. **Section 3 Clause.** Contractors agrees to all of the stipulations set forth in the following Section Clause. Contractor further agrees to include this Section 3 Clause in all sub-contracts.
 - a. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
 - c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any,

a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
 - e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
 - f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
 - g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
12. **Lead:** Contractor shall comply with Section 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992, Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally assisted housing. The new regulations for lead-based paint appear at 24 CFR 35.
13. All work on the Project shall be completed in a professional, workmanlike and timely manner and plans and specifications will meet the building standards as set forth in Columbus/Franklin County AWARE Green/Universal Design Standards (AWARE manual) as specified in the manual developed for the program and distributed to contractors and developers.
14. Contractor shall comply with Title VII of the Civil Rights Act of 1968, 24 U.S.C. 3601-1 and implementing regulations: Executive Order 11063 and regulations at 25 CFR Part 1; The Age Discrimination Act of 1975, 42 U.S.C. 6101-07; Section 504 of the Rehabilitation Act, 29 U.S.C. 794; Executive Order 11246; and regulations at 41 CFR 60 Contractor agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code, Section 399.01, Equal Opportunity Clause. Failure or refusal or a Contractor or Subcontractor to comply with the provisions of Article 1, Title 39, may result in cancellation of this Contract. (Ordinance 2550-93.)
15. Pursuant to City's specifications and in keeping with the principals as provided in President's Executive Order 11246 of September 24, 1965, Contractor agrees to commit and carry out an

Affirmative Action Program. Prior to the award of any funds, Contractor may be required to submit for approval a plan for an Affirmative Action Program.

16. Contractor will use its best efforts to afford minority and female owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female owned business enterprise" means a business at least fifty-one (51) percent owned and controlled by "minority group members" who are Women, African-Americans, Spanish speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans or American Indians. Contractor may rely on written representations regarding their status as minority and female subcontractors in lieu of an independent investigation.
17. The approved Project must comply with all requirements of the Americans with Disabilities Act of 1990, Title 24 CFR 8, and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and all other applicable federal, state and local laws, regulations and ordinances as amended and the accessibility standards of the AWARE manual. In addition, Contractor shall comply with all laws, ordinances and regulations under federal, state and local government, which prohibit discrimination against qualified individuals with a disability, if applicable.
18. Contractor shall withhold all City Income Taxes due and payable under the provision of Chapter 361, Columbus City Code, for wages, salaries and commissions paid to its employees. Contractor further agrees that any of its subcontractors shall be required to withhold all City Income Taxes due under said Chapters for services performed under this Contract.
19. Contractor and/or its subcontractors, officers, employees, agents or assigns must comply with all Federal, State and City regulations and in accordance with Executive Order 12549, no contractor who is under suspension or debarment by HUD may be employed on this Project.

IN WITNESS WHEREOF, the parties have caused to be executed on their respective behalf this Addendum to the Construction Agreement between Columbus Compact Corporation and, with the intention that it constitutes a sealed instrument, the day and year first hereinabove written.

AGREED TO AND ACCEPTED:

: _____ For Columbus Compact Corporation

Date

Jonathan C. Beard

Date

EXHIBIT A
The Work

1. Renovation

1. **EXHIBIT B**
Contract Documents

The Contract Documents consist of the following documents:

EXHIBIT C
Progress Schedule

The Progress Schedule for this Agreement will be established after the date of Execution but before the Date of Commencement.

EXHIBIT D

Alternate and Unit Prices

No Alternate and Unit Prices have been established under this contract.

EXHIBIT E
Insurance Provisions

Contractor agrees to obtain and maintain at its own expense until completion of the Work under this Agreement the following forms of insurance: workers' compensation in accordance with the laws of the State of Ohio; general liability insurance, from an insurance company licensed to do business in the state of Ohio, with limits of aggregate and per occurrence no less than one million (\$1 million) dollars for damages for bodily injury, personal injury and property damage. The following parties shall be listed as additional named insured parties:

Columbus Compact Corporation
1000 E. Main Street
Columbus, OH 43205

Prior to the Date of Commencement, Contractor shall furnish certificates of insurance to Owner with respect to the coverages referred to previously.

EXHIBIT F

AFFIDAVIT OF AMOUNTS PAID TO MBE/DBE PARTICIPANTS

Contractor/Subgrantee		Date		
Address	City	State	Zip Code	
Contract Number		Project Number		
Contract Award/Loan Amount \$		MBE/DBE Award Amount \$		
MBE/DBE Participant Name and Address		Ethnic Code	Contract Type	Bid Item No.(s)
				Amount Paid Participants (Including retainage held)
Ethnic Code: B= Black American H= Hispanic Enterprise A= Asian American		I= Indian and F= Female Business O= Other	Contract Type: S= Subcontractor M= Material Supplier L= Loan S= Service	Total MBE/DBE Participation \$
Affidavit				
I, the undersigned, do hereby certify that in connection with all work on the project for which this statement is submitted, each MBD/BDE participant contracted by me has been paid the amounts shown for bid items, or portions thereof, listed.				
Signature _____ Title _____				
Notary Seal				
Subscribed and sworn before me this _____ day of _____, 200__				
_____ Notary Public				
in and for the State of Ohio				
residing at _____				

EXHIBIT G Could be switched out with attachments on Predevelopment Agreement

Section 3 Compliance Policy

1. Explanation.
 - a. 24CFR 135.1-135.92 (“Section 3”) requires that construction projects funded through HUD and/or its sub-grantees or contractors provide, *to the greatest extent feasible*, employment and other economic opportunities for low and very low income residents (“Section 3 Residents”) and bid opportunities for business concerns which provide economic opportunities to low and very low income persons (“Section 3 Business Concerns”). In order to ensure the highest level of compliance with Section 3, Contractor hereby agrees to adopt, for all activity completed as part of the Contract, the Section 3 Policy set forth in this Exhibit G.
2. Definitions: for the purposes of this contract, the following definitions shall apply:
 - a. *Section 3 Resident*: (1) A public housing resident; (2) any individual residing in metropolitan Columbus whose household income is less than 80% of the area median household income as defined by the Department of Housing and Urban Development (HUD).
 - b. *Section 3 Business Concern*: (1) A business that is 51 percent or more owned by section 3 residents; (2) a business whose permanent, full time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; (3) A business that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications of section 3 business concern.
3. Establishment of Hiring Preferences: Contractor agrees to undertake the following actions in order to establish hiring preferences for Section 3 Residents.
 - a. Starting from the date that the contract is awarded, establish job descriptions for a) any job opening for which the Contractor is seeking to hire, or b) any job opening for which any selected sub-contractor is seeking to hire. Descriptions will identify the positions to be filled, the qualifications required and where to obtain additional information about the application process.
 - b. Provide copies of such job postings to all of the individuals and organizations listed below:
 - i. Columbus Metropolitan Housing Authority
 - ii. Near East Area Commission
 - iii. Columbus Urban League
 - iv. Franklin County Department of Jobs and Family Services
 - v. Youthbuild of Columbus
 - vi. Neighborhood House, Inc.
 - vii. Central Community House
 - viii. Salvation Army
 - ix. Columbus Workforce Alliance
 - x. Any other organizations which Owner, from time to time, may identify.
 - c. Advertise job postings in media outlets available to the general public.
 - d. Along with each of its subcontractors, extend a hiring preference to individuals who certify that they are a Section 3 Resident, and require that such preference will be stated in each job posting. Section 3 Residents who certify that they are a resident of the Columbus Empowerment Zone shall be given preference over other Section 3 Residents.
 - e. After selection and prior to start of the Contract, conduct at least one public coordination meeting (at a location which is convenient to neighborhood residents) discussing all job

openings available at that time, whether through Contractor or its Sub-contractors. Contractor will make reasonable efforts to answer questions by potential applicants at this time about the selection process. To the greatest extent feasible, Contractor (and its sub-contractors) will conduct interviews at the same location.

- f. Following start of the Contract, make available a representative on-site at regular intervals, and in no case less than once a week, to accept applications and answer questions about any subsequent job openings. To the greatest extent feasible, Contractor (and its sub-contractors) will conduct interviews for such openings on site.
 - g. Document all actions undertaken to employ qualified Section 3 Residents. Document the total number of Section 3 Resident new hires.
2. Recruitment of Section 3 Business Preferences: Contractor agrees to take the following actions in order to recruit Section 3 Business Concerns for sub-contracting opportunities:
- a. Notify the Section 3 Business Concern advocacy organizations (see below) of the availability of all sub-contracts and ask for their assistance in identifying Section 3 businesses that would be potential bidders. Respond in a timely manner to any subsequent inquiries.
 - i. Minority Contractor Assistance Program
 - ii. Minority Independent Contractor Association
 - iii. Central Ohio Minority Business Association
 - iv. Greater Columbus Chamber of Commerce
 - v. US SBA Small Business Development Center
 - vi. Government Contract Assistance Center
 - vii. Any other organizations which Owner, from time to time, may identify.
 - b. Respond to all queries, whether written or verbal, from Section 3 Business Concerns who are attempting to bid on a sub-contract.
 - c. Where the total of available sub-contracts will total less than \$1 million, conduct in a timely manner, at least one pre-bid meeting where all available sub-contracts will be publicized. Such meeting shall be advertised to all of the Section 3 Business Concern advocacy organizations.
 - d. Where available sub-contracts will total more than \$1 million, conduct in a timely manner a) one workshop on sub-contracting procedures and sub-contract opportunities, which shall be advertised to all of the Section 3 Business Concern advocacy organizations, and b) at least one pre-bid meeting where all available sub-contracts will be publicized, and which shall be advertised to all of the Section 3 Business Concern advocacy organizations.
 - e. Advise Section 3 Business Concerns as to where they may seek assistance to overcome limitations such as inability to obtain lines of credit, financing, or insurance (including the Greater Columbus Chamber of Commerce, the Minority Contractor Assistance Program, the US SBA Small Business Development Center, the Government Contractor Assistance Program).
 - f. Where feasible, break out contract work items into economically feasible units to facilitate participation by section 3 business concerns.
 - g. Advertise all bid opportunities through publicly available outlets, including Dodge Reports and similar trade association publications.
 - h. Document all actions undertaken to award sub-contracts to qualified Section 3 Business Concerns. Document the dollar value of all contracts awarded to qualified Section 3 Business Concerns.
 - i. Adopt the following procurement procedure in order to establish preference for Section 3 Business Concerns (Section 3 Business Concerns located in the Columbus Empowerment Zone shall receive preference over other Section 3 Business Concerns).

3. Establishment of Preferences for Section 3 Business Concerns. Contractor agrees to adopt the following policy in order to establish a preference for the selection of Section 3 Business Concerns.
- a. *Procurement by methods other than sealed bids.* Procurement by methods other than sealed bids is not anticipated under this contract.
 - b. *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:
 - i. Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—
 1. is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and
 2. is not more than "X" higher than the total bid price of the lowest responsive bid from any responsible bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than \$100,000.	10% of that bid or \$9,000
At least \$100,000, but less than \$200,000.	9% of that bid, or \$16,000
At least \$200,000, but less than \$300,000.	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000.	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million.	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million.	4% of that bid, or \$60,000.

3. If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.