



**CITY OF JOHNSTOWN
STATE OF OHIO**

**PROPOSAL
CONTRACT DOCUMENTS
AND
SPECIFICATIONS**

FOR

2026 Resurfacing Project – LEAFY DELL RD AND PERSHING AVENUE

June 2026

Administrative Officials

D. Jeffery Sheridan, City Manager
Jack Liggett, Utility Director

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ADVERTISEMENT FOR BIDS

2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue City of Johnstown

Sealed bids for the City of Johnstown's 2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue will be received at City Hall, City of Johnstown, 599 South Main St, Johnstown Ohio 43031 until **9:00 a.m. on Tuesday July 14, 2026**, at which time they will be publicly opened and read aloud in the City Council Chambers.

The work for which these bids are invited consists of providing all labor, equipment, and materials for the milling, resurfacing and other miscellaneous improvements required to complete the 2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue project. The owner intends and requires that the **entire project be completed by October 15, 2026**. Materials and workmanship shall conform to the State of Ohio Department of Transportation (ODOT) Construction and Materials Specifications, January 1, 2023, Edition or most recent Edition, unless otherwise noted. Proposals must include all items.

The estimated cost of construction for the work outlined in the plans and specifications is \$170,938. Copies of plans and specifications are available for inspection on or after June 30, 2026. Documents may be obtained from the City web site at <https://johnstownohio.org> under public notices. Bid documents will not be printed or mailed. All bidders must be registered plan-holders to bid on this project. It is the bidder's responsibility to check the website for any addendum information.

The Contractor shall be required to pay not less than the minimum wage rates established by the Department of Industrial Relations of the State of Ohio. This is a prevailing wage project.

All bids shall be signed and include a guaranty that the successful bidder will enter into a contract with the City. **A bidder shall secure a bid bond in the amount of 100 % of the bid. In lieu of a bid bond, the City will also accept a certified check, or a bank cashier's check, drawn on a solvent bank, payable to the City of Johnstown, Ohio in the amount of 10% of bid, as a guaranty that if the bid is accepted a contract will be entered into with the bidder. The guaranty is subject to conditions provided in the Instructions to Bidders.** The successful Bidder will be required to furnish a satisfactory Performance Bond in the amount of 100% of the bid. All bidders shall include a copy of the bidder's Workers Compensation Certificate and Certificate of Liability Insurance.

The City reserves the right to reject any or all bids, to waive any irregularities in the bids, and to accept any bid which is deemed by the City to be in their best interest. All Bids will remain subject to acceptance for 90 days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to the end of this period. Bids shall be enclosed in a sealed envelope marked:

2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue

And addressed to the attention:
Jack Liggett
599 South Main St
Johnstown Ohio 43031

Advertised in Newark Advocate: June 30 and July 7, 2026

BID DOCUMENT

CITY OF JOHNSTOWN, OHIO

A. GENERAL CONDITIONS, INSTRUCTIONS TO BIDDER AND INFORMATION

1. Sealed bids will be received by the Department of Municipal Services & Engineering of the City of Johnstown, Ohio, until **9:00 a.m. on July 14, 2026**, and subject to all provisions contained in this bid document. Specifications shall take precedence over the general conditions. Bids will only be accepted during normal business hours of the City of Johnstown City Hall, 599 South Main St, Johnstown Ohio 43031
2. Submission of Bids
 - a. Bids shall be submitted on the printed blanks provided for that purpose and bound herewith and must be signed.
 - b. Each bid shall be sealed and addressed to the City Manager of the City of Johnstown, Ohio and shall bear on its face: **2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue**
 - c. Bids received after the time specified in the advertisement will not be considered.
 - d. Erasures or corrections may invalidate a bid unless properly noted over the signature of the bidder.
 - e. Prices must be provided for any and all alternates included within the bid.
3. Surety
 - a. Bid Bond: **Each bid must be accompanied by either a bid bond for the full amount of the bid or a certified check, or a bank cashier's check, drawn on a solvent bank, payable to the City of Johnstown, Ohio in the amount of 10% of bid, as a guaranty that if the bid is accepted, a contract will be entered into.** Bid Bonds, checks or cash will be returned to the unsuccessful bidders as soon as the contract is officially awarded by the City Council. The bid bond of the successful bidder will be retained until a contract is affected.
4. Rejection of Bids
 - a. The City Manager reserves the right to waive informalities, to reject any or all bids, or to accept any bid which may be deemed to be for the best interest of the City of Johnstown, Ohio.
5. Withdrawal of Bids

No bid shall be withdrawn within 30 (30) days after the scheduled time for opening bids.
A bid shall be valid for **90 days** following the date of the bid opening.
6. Infringements and Indemnifications

- a. The bidder, if awarded an order or contract, agrees to protect, defend and save the City, its employees and agents harmless against any demand for payment for the use of any patented material, process, article, or device that may enter into the manufacture, construction or form of the work covered by either order or contract and he further agrees to indemnify and save the City harmless from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by a party or parties, by or from any of the acts of the contractor, his servants, or agents.

7. Default Provisions

- a. In case of default by the bidder or contractor, the City of Johnstown may procure the articles or services from any other sources without further advertising and may hold the bidder or contractor responsible for any excess costs occasioned thereby.

8. Pricing

- a. Where unit prices are requested and there is a discrepancy in the total amount of the bid, the unit prices shall govern.

9. Interpretation of the Bid Documents

- a. If any person contemplating submitting a bid is in doubt as to the true meaning of the plans and specifications, he may submit to the Utility Director a written request for interpretation thereof. Any interpretation of the proposed specifications will be made only by addenda duly issued, and a copy of such addenda will be delivered to each person receiving a set of specifications. The Director of Municipal Services will not be responsible for any other explanations of the plans and specifications. Verbal explanations received from any City employee or agent shall not be the basis for any deviations from the specifications. Written requests will be responded to by the City up to **3 working days** before the bid opening.

10. Taxes

- a. The City is generally exempt from Federal Excise and Ohio State Sales Taxes. Prices shall not include taxes. If taxes of any kind are applicable, they shall be listed separately on the bid form or in an attachment. Exemption forms, when required, will be executed by the City.

11. Specifications

- a. The City of Johnstown's requirements, identified within these contract documents and project specifications, together with the latest revision of the Ohio Department of Transportation (ODOT CMS) as modified herein relating to the technical aspects to the improvement shall govern this improvement. In the case of any conflict among these identified technical specifications the greater requirement shall take precedence (as determined by the sole discretion of the Engineer) unless directed otherwise by any City of Johnstown designated Engineer.

General provisions of the ODOT CMS shall not apply. This exclusion includes but is not necessarily limited to Division 100 of the ODOT CMS.

The Supplemental Specifications included herein are specifically applicable to this improvement, previous customs or practices to the contrary, notwithstanding. In case there is any actual or apparent discrepancy or conflict between the Supplemental Specifications and other specifications contained herein, the former shall take precedence and govern the work of the Contractor.

12. Pre-Construction Conference

- a. A Pre-Construction Conference involving the Owner, Owner's Agent, the Contractor, and all of his available Sub-Contractors will be held prior to the start of construction.

13. Schedule

- a. The owner intends and requires that the **entire project be completed by October 15, 2026.**

14. Statement of Qualifications and Sub-Contractors

- a. The Bidder will be required to state in full detail, with his Proposal, his experience in this class of work; bids from contractors inexperienced in this particular class of work will not be considered. Prevailing wage rates apply to this project. Information is included in the bid documents. The bidder's particular attention is directed to Pages 29 and 30 of these documents. These pages must be filled in by the bidder.

15. Request for Information

- a. The person, firm, or corporation submitting a request for information shall be responsible for its prompt delivery and do so in a manner that will allow a sufficient period of time for the issuance and delivery of a memorandum prior to the receipt of bids. An addendum or clarification, if warranted at the discretion of the Engineer and the City of Johnstown, shall be issued to all plan holders and shall be issued at least seventy-two (72) hours prior to the Bid Opening. Any explanation, interpretation, correction, or modification will be issued in writing in the form of an Addendum which shall be the only means considered binding.

16. Steel Products Made in the United States

- a. Domestic steel use requirements as specified in Ohio Revised Code §153.011 apply to this project. Copies of §153.011 can be obtained from any of the offices of the department of administrative services or through <http://codes.ohio.gov/orc/153.011>

17. Prevailing Wages on State Projects with No Federal-Aid

- a. This contract is subject to Ohio Prevailing Wage Laws, Chapter 4115 of the Ohio Revised Code and the Contractor and all subcontractors shall comply with all provisions contained therein or as otherwise provided by this note. The

Contractor guarantees that the prevailing wage scale to be paid to all laborers and mechanics employed on this contract shall be in accordance with the schedule of the prevailing hourly wage and fringe benefits as determined by the Ohio Department of Commerce for the county in which the work is being performed. The failure to pay prevailing wages to all laborers and mechanics employed on this project shall be considered a breach of contract. Such a failure may result in the revocation of the contractor's and/or subcontractor's certificate of qualification and debarment. A schedule of the most current prevailing wage rates may be accessed by logging in/registering with the Ohio Department of Commerce, Labor and Worker Safety Division, Wage and Hour Bureau at the following web address:

<http://198.234.41.198/w3/webwh.nsf/wrlogin/?openform>

The Contractor and all subcontractors shall compensate the employees on this contract at a pay rate not less than the hourly wage and fringe rate listed on the website noted above, for the applicable job classification or as may be modified by the Ohio Department of Commerce, Division of Labor and Worker Safety Wage and Hour Bureau, when new prevailing rates are established.

Overtime shall be paid at one and one-half times the basic hourly rate for any hours worked beyond forty hours during a pay week. The Contractor and all subcontractors shall pay all compensation by company check to the worker and fringe benefit program.

The wage and fringe rates determined for this project or as may be later modified, shall be posted by the Contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers or otherwise made available to the workers. On the first pay date of contract work the Contractor and all subcontractors shall furnish each employee covered by prevailing wage a completed form (WHPW-1512) in accordance with section 4115.05 of the Ohio Revised Code, showing the classification, hourly pay rate, and fringes, and identifying the public authority's Prevailing Wage Coordinator, if such employees are not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor. These forms shall be signed by the Contractor or subcontractor and the employee and kept in the Contractor's or subcontractor's payroll files.

The Contractor and all subcontractors shall submit to the Prevailing Wage Coordinator, certified payrolls on form WHPW-1512 or equivalent, in accordance with sections 4115.07 and 4115.071 (C) of the Ohio Revised Code, three weeks after the start of work and every subsequent week until the completion of the contract. Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council, must accompany all certified payrolls submitted, for all apprentices working on this project. Upon completion of the contract and before the final payment, the Contractor shall submit to the Prevailing Wage Coordinator a final wage affidavit in accordance with section 4115.07 of the Ohio Revised Code stating that wages have been paid in conformance with the minimum rates set forth in the contract. Please be aware that it is ultimately the responsibility of the Contractor to ensure that all laws relating to prevailing wages in Chapter 4115 of the Ohio Revised Code are strictly adhered to by all subcontractors.

The Contractor and all subcontractors shall make all of its payroll records available for inspection, copying or transcription by any authorized representative of the contracting agency. Additionally, the Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

18. Unresolved Finding for Recovery

- a. The Contractor affirmatively represents to the local contracting authority that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken the appropriate remedial steps required under §9.24 or otherwise qualifies under that section. The Contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by the state hereunder shall be immediately repaid to the local contracting authority, or an action for recovery may be immediately commenced by the local government and/or for recovery of said funds.

19. Ohio Workers' Compensation Coverage

- a. Contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by the local contracting authority. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the local contracting authority before the contract is executed.
- b. The Contractor must immediately notify the local contracting authority, in writing, if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the Contractor must notify the local contracting authority, in writing, if it's or any of its subcontractor's workers' compensation policies are canceled, terminated or lapse.
- c. The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the Contractor or subcontractor being removed from the project, withholding of pay estimates and/or termination of the contract.

20. Drug-Free Workplace Program

- a. In accordance with Ohio Revised Code §153.03 and during the life of this project, the Contractor and all its Subcontractors that provide labor on the Project site must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Workplace Program ("DFWP") or a comparable program approved by the OBWC.

21. Ohio Preference

- a. In accordance with Ohio Revised Code §164.05 (A)(6), to the extent practicable, the Contractor and subcontractor shall use Ohio products, materials, services and labor in connection with this project.

22. Bid Guaranty
- a. In accordance with Ohio Revised Code §153.54, the contractor shall file with the bid a bid guaranty in the form of either: **1) a bond for the full amount of the bid, or 2) a certified check, cashier's check, or letter of credit equal to 10% of the bid.**
23. Ohio Ethics Law
- a. Contractor agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics Law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
24. State of Ohio Equal Employment Opportunity Requirements
- a. The provisions of the Ohio Administrative Code (OAC) 123:2-3-02 through 124:2-9 regarding Equal Employment Opportunity on State Construction Contracts and State-assisted Construction Contracts, and OAC 123:2-3-02 through 123:2-9 regarding Equal Employment Opportunity and Female Utilization Goals are applicable to this project, and each contractor will be required to comply in all aspects of these provisions.
25. SUB-SURFACE CONDITIONS: No Information Available.
26. WORKING HOURS: The contractor shall operate his equipment only during the hours of 7:00 AM to 6:00 PM without permission from the City Manager's office. No work shall be permitted on Sundays or holidays unless otherwise authorized. Refer to section 2.13.3 for additional lane closure restrictions.
27. ENGINEERING WORK: All construction staking will be the responsibility of the contractor.
28. SUBCONTRACTORS: None of the work to be done under this contract shall be sublet or assigned without the written consent of the Owner and of the contractor's surety. Any assignment of this contract will not release the contractor or his surety from the faithful performance of the contract. All contracts made by the contractors with subcontractors are to be covered by the terms and conditions of the General Contract. The contractor shall fully inform his subcontractors in regard to these terms and conditions. The contractor is, and remains, fully responsible to the City of Johnstown for the full and complete performance of the contract.
29. MATERIAL TICKETS: It is the contractor's responsibility to assure that the inspector receives a copy of all tickets showing the quantity and type of materials delivered to the site. Such material tickets to be given to the owner at the end of **each** working day.
30. SAFETY CONSIDERATIONS: It shall be the duty of the contractor to erect and maintain adequate lights, signs and barricades to insure the safety of the traveling public during the progress of the work, and same are to be maintained until final acceptance by the City. All construction warning devices shall be new or like new condition and placement shall comply with the Ohio Manual of Uniform Control Devices.

31. REMOVAL AND DISPOSAL OF MATERIALS: Removal and the proper disposal of materials, as needed, is the sole responsibility of the contractor. The City shall be informed of locations and any associated agreements for disposal.
32. USE OF RECLAIMED MATERIALS: The City is specifying the use of virgin materials for all asphalt courses. All bids received must reflect those materials.
33. NOTIFICATION OF UTILITY COMPANIES: It is the sole responsibility of the contractor to coordinate with all utility companies and notify them prior to work disturbing any valves, sanitary manholes, lines, bracing of utility poles, etc. Raising or lowering gas or water valves which are affected by the work must be initiated by the contractor; the actual work of raising or lowering will be done either by the utility company or by this contractor.
34. NOTIFICATION LETTERS: The contractor shall supply the City of Johnstown with a copy of a notification letter which is to be transmitted by the contractor to all affected parties 48 hours before any work starts.
 - .01 Delivery of this letter to notify adjacent property owners is the sole responsibility of the contractor. One or more of the contractor's employees shall be designated to hand deliver the letters and the City shall be notified when delivery is complete.
 - .02 If work does not commence within 14 days of delivery of the letter, a second copy of the notification letter shall be delivered to all affected property owners.

PENALTIES

35. FAILURE TO COMPLETE WORK: The contractor shall have completed the work on or before the calendar date specified in the contract or before a later date determined as specified. For any delay beyond the completion date of this contract, the Contractor shall be subject to liquidated damages as set forth in ODOT CMS 108.07. The amount shall be deducted from any money due the Contractor.
36. TRAFFIC CONTROL: If traffic control, or signage, is not properly maintained as outlined in the construction plans and in conformance with the OMUTCD, each instance of non-compliance will result in a \$1,500 deduction from the total contract price.
37. DISPOSAL OF MATERIALS: If the contractor fails to properly dispose of materials as cited above, the City will deduct three (3) times the cost to the City to dispose of the materials from the total contract price

BID FORM

PROJECT IDENTIFICATION: 2026 Resurfacing Project Leafy Dell Rd and Pershing Avenue

THIS BID IS SUBMITTED TO:

Jack Liggett
Utility Director
City of Johnstown
599 South Main St,
Johnstown Ohio 43031

- 1.01** The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into the Agreement with the OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** BIDDER accepts all of the terms and conditions of the Advertisement for Bids and Instruction to BIDDERS, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for sixty days after the Bid opening, or for such longer period of time that BIDDER may agree in writing upon request of the Owner.
- 3.01** In submitting this Bid, BIDDER represents, as set forth in the Agreement, that:
- A. BIDDER has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged:(List Addenda by Addendum Number and Date)
- | | | | |
|-------|--------|-------|------|
| _____ | Number | _____ | Date |
| _____ | Number | _____ | Date |
- B. BIDDER has visited the Site and become familiar with and is satisfied as to general, local, and site conditions that may affect cost, progress, and performance of the Work;
- C. BIDDER is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. BIDDER is aware of the general nature of Work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- E. BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that BIDDER has discovered in the Bidding Documents, and the written resolution thereof by ENGINEER is acceptable to BIDDER; and

F. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

4.01 BIDDER further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed Individual or Entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any Individual or Entity to refrain from Bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.

5.01 BIDDER will complete the Work in accordance with the Contract Documents for the following unit prices:

UNIT PRICE BID PROPOSAL OF ESTIMATED QUANTITIES							
2026 RESURFACING PROJECT – LEAFY DELL RD AND PERSHING AVENUE							
Ref.	Spec.	Item No.	Description	Quantity	Units	Present Prices in Figures	
						Unit Price	Total
1	ODOT	253	Full Depth Pavement Repair	1350	SQ YD		
2	ODOT	254	Pavement Planing, Asphalt Concrete (1.5")	6780	SQ YD		
3	ODOT	407	Tack Coat, Trackless Tack, Surface Course @ 0.085 Gal/S.Y.	576	GAL		
4	ODOT	448	Asphalt Concrete Surface Course Type 1(448) PG 64-22 (1.5"), As Per Plan	285	C.Y.		
5	ODOT	614	Maintenance of Traffic	1	LUMP		
6	ODOT	644	Channelizing Line, 8"	106	FT		
7	ODOT	644	Stop Line	26	FT		
8	ODOT	644	Lane Arrow	2	EACH		
			TOTAL AMOUNT OF PROJECT				

Base Bid To Be Filled in By Bidder:

TOTAL

\$

In Figures

In Words

Bidder's Name :

- 6.01** BIDDER acknowledges that the estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided in the Contract Documents.
- 7.01** BIDDER agrees that the Work will be substantially completed and ready for final payment in accordance with the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 8.01** BIDDER accepts the provision of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.
- 9.01** The following document is attached to and made a condition of this Bid:
- A. Required Bid Security
 - B. Statement of Qualifications
 - C. List of any proposed contractors for project.

Complete the following if BIDDER is:

A Corporation

(Corporation Name) (State of Incorporation)

By: _____ Name _____
(Signature of Officer Authorized to Sign, attach evidence of authority to sign) (Typed or Printed)

Title: _____

Business
Address: _____

Phone No.: _____ Fax No.: _____

Federal I.D. Number: _____

An Individual

Name: _____
(Signature) (Typed or Printed)

doing business as: _____

Business
Address: _____

Phone No.: _____ Fax No.: _____

Federal I.D. Number: _____

A Partnership

(Signature of Authorized Partner, attach evidence of authority to sign) (State of Formation of Partnership)

Business
Address: _____

Phone No.: _____ Fax No.: _____

Federal I.D. Number: _____

SCOPE OF WORK PROVISIONS

The Contractor shall provide all labor, equipment, supervision, administration, financing and insurance necessary to perform the work specified in the specifications. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees, and shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its employees.

The Contractor agrees that in the hiring of employees for the performance of work under this contract, the Contractor shall not by reasons of race, sex, creed or color, discriminate against any person in the employment of labor or workers, who are qualified and available to perform the work to which the employment relates.

The RFP does not attempt to define the entire scope of the work nor all the terms and conditions in the Contract. Rather, the RFP and Contract are intended to be flexible and allow for the successful Bidder to demonstrate its expertise necessary to fully complete the Contract in accordance with the specifications on budget and on time. Johnstown reserves the right to modify the scope of Work at any time before execution of the Contract, as it deems necessary, in its sole judgment, and in the best interest of the public.

LOCATION	SQ YD
Leafy Dell Road	5,061
Pershing Avenue	1,719

Refer to map provided for additional details. Contractor is responsible for verifying all quantities. The items outlined in the remainder of the documents the following specifications shall apply.

ITEM 253 Pavement Repair

Description:

This item consists of all Labor, Materials, and equipment needed to remove existing asphalt concrete, brick, concrete, and/or aggregate pavement courses (assumed depth of 6 inches), shaping and compacting the subgrade per ODOT Item 204 subgrade compaction requirements, placing and compacting 301 Bituminous Asphalt Base in maximum 3-inch lifts. The final lift shall be flush with the adjacent milled pavement surface. Refer to the ODOT CMS for additional information related to Item 253 Pavement Repair

ITEM 407 - Tack Coat, Trackless Tack, Surface Course

Description:

This work shall be done in accordance with Item 407 of the most current Construction and Materials Specifications Manual of the Ohio Department of Transportation

ITEM 448 – Asphalt Concrete Surface Course Type 1(448) PG 64-22 (1.5”), As Per Plan

Description:

This work shall be done in accordance with Item 448 of the most current Construction and Materials Specifications Manual of the Ohio Department of Transportation with the following addition:

Addition: The City will require that all asphalt be a virgin asphalt mix and that seams where 2 lifts of asphalt meet occur on the edge line, center line or lane line of the roadway and not in the middle of a travelled lane. Contractor shall follow ODOT standard drawing BP-3.1 for all butt joint locations.

ITEM 644 Thermoplastic Pavement Markings

Description:

The location, sizes and shapes of proposed pavement markings will match existing. It is the contractor's responsibility to verify the location, size and shape of the existing pavement markings prior to pavement planning and resurfacing them obliterates them. This work shall be done in accordance with Item 644 of the most current Construction and Materials Specifications Manual of the Ohio Department of Transportation with the following addition:

Addition: The City will require that contractor “pre-mark” /layout the pavement markings for review and approval of placement.



PAVEMENT IMPROVEMENTS FOR:

LEAFY DELL ROAD & PERSHING AVENUE

DOCUMENT 00410 - BID GUARANTY AND CONTRACT BOND (ORC 153.571)

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____

_____, as Principal, and

_____, as Surety are

hereby held and firmly bound unto _____

as Oblige in the penal sum of the dollar amount of the bid submitted by the Principal to the

Oblige on _____ to undertake the project known as _____

_____. The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Oblige, incorporating any additive or deductive alternate proposals made by the Principal on the date referred to above to the Oblige, which are accepted by the Oblige. In no case shall the penal sum exceed the amount of _____ dollars (\$_____). (If the above line is left blank, the penal sum will be the full amount of the Principal's bid, including alternates. Alternately, if completed, the amount stated must not be less than the full amount of the bid, including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this _____ day of _____, 20_____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named Principal has submitted a bid for _____.

NOW THEREFORE, if the Oblige accepts the bid of the Principal and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the Principal pays to the Oblige the difference not to exceed ten percent of the penalty hereof between the amount specified in the bid and such larger amount for which the Oblige may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the Oblige does not award the contract to the next lowest bidder and resubmits the project for bidding, the Principal pays to the Oblige the difference not to exceed ten percent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect. If the Oblige accepts the bid of the Principal and the Principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein; and

IF THE SAID _____ shall well and faithfully do and perform the things agreed by _____

to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking

shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said Surety on its bond.

Principal:

Surety:

By: _____

Title: _____

QUALIFICATIONS STATEMENT

(Attach to and submit with Bid.)

Project Identification:

Bidder: _____

Address: _____

Phone No.: _____

List work completed or in progress that is similar in character to that of the Project for which this Bid is being submitted. Provide appropriate detail, and give name and phone number of someone familiar with Bidders performance.

Description	Reference
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

SUB-CONTRACTORS LIST

The bidder is required to state, in detail, in the space provided below, the name, address, experience and the work to be performed by sub-contractors in this Contract.

If no sub-contractors are to be used, so state.

CONTRACT

BETWEEN
THE CITY OF JOHNSTOWN
PARTY OF THE FIRST PART

AND

PARTY OF THE SECOND PART		
Street		
City,	State	Zip

INSTRUCTIONS FOR EXECUTING CONTRACT:

CONTRACT: The contract must be signed in full by the Contractor with his usual signature and title, and the original, together with copies of same, returned to the City Manager, Johnstown, Ohio. One copy will be returned to the Contractor when finally executed by the City. This contract shall be deemed null and void if not duly authorized and made effective by legislation of the City Council of Johnstown.

CORPORATION: If a corporation, must be signed with the full name of the corporation, followed by the signature of the President, Vice-President, or a person authorized to bind it in the matter. Should other than the President or Vice-President sign the contract, authorization to bind the company must be evidenced by attaching a certified copy of the extracts of the minutes of this corporation.

PARTNERSHIP: If a partnership, the full name of the partners composing the same must be given and the contract signed by one or more of the partners in the following manner:

“John Jones and James Smith, dba, as
Jones-Smith Company, by John Jones, a partner.”

SOLE OWNERSHIP: If a sole ownership, contract should be signed in the following manner: “John Jones, Sole Owner.”

BOND OR CERTIFIED CHECK: A bond or certified check must be submitted by the Contractor to guarantee the faithful performance of this contract.

INSTRUCTIONS FOR THE EXECUTING PERFORMANCE BOND

SURETY REQUIRED: The performance bond must be executed by an authorized surety, guaranty or trust company. The surety required must be in the amount of not less than one hundred percent (100%) of the total amount of the contract. The City shall determine the amount and sufficiency of all sureties.

CORPORATE SURETY: If the corporate surety is given, the surety or guaranty company must indicate in the bond the State in which it is incorporated. It is necessary that a certificate of authority authorizing the “attorney-in-fact” to sign the bond accompany the same.

MISCELLANEOUS REQUIREMENTS: If the principal is a “partnership”, the names of the partners composing the same must be given, and the bond signed by one or more of the partners in the following manner: “John Jones and James Smith, dba, Smith-Jones Company, by John Jones, a partner.” The same party or parties who sign the contract must also sign the bond as principal. All

signatures must be in full. The Bond must be witnessed. A certified check may be submitted in lieu of the Bond, made payable to the City of Johnstown, Ohio and drawn on a solvent bank.

GENERAL CONDITIONS AND TERMS OF AGREEMENT

1. The legal Advertisement, General Conditions, Special Conditions, Instructions to Bidders, Specifications, plans, profiles included in the original proposal are made a part of this agreement.
2. The term "City" wherever used in this agreement shall mean the City of Johnstown, the party of the first part, acting through its properly authorized agent.
3. The term "Contractor" wherever used in this agreement shall mean the party of the second part entering into a contract with the City for furnishing material, supplies, or equipment, or for the performance of the work set forth herein.
4. The contractor agrees to protect, defend, and save harmless the City against any demand for payment for the use of any patented material, process, article or devise that may enter into the manufacture, construction, or form a part of the work covered by this agreement: and the contractor further agrees to indemnify and save harmless the City from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties, by or from the acts of the Contractor, his servants or agents.

To this extent, the Bidder, or Contractor agrees to furnish adequate Public Liability and Property Damage Insurance, the amount of which will be determined by the City wherever such insurance in the opinion of the City, is deemed necessary.

5. The General Code of the State of Ohio, and City ordinances, insofar as they apply to the laws of competitive bidding, contracts, and purchases, are made a part hereof. Insofar as Workman's Compensation act is concerned, the Contractor agrees to furnish an official certificate or receipt of the Industrial Commission of Ohio, showing that he has paid into the State Insurance Fund the necessary premiums, whenever in the opinion of the City such certificates are deemed necessary.
6. Partial payments will be made upon presentation of properly executed claim vouchers unless otherwise stated in this agreement. The final payment will be made by the City when the material, supplies or equipment of the work performed has been fully delivered or completed to the full satisfaction of the City.

ARTICLES OF AGREEMENT

This agreement made and entered into by and between the party of the first part and the party of the second part.

WITNESSETH, that the said party of the second part has agreed and by these present does agree, with the party of the said first part, for the consideration hereinafter named to furnish all the materials, supplies or equipment, or to do the work necessary to complete in good, substantial and workman-like manner, ready for use in strict accordance with the proposal, specifications, plans, profiles or drawings of the items hereinafter set forth in accordance with the foregoing terms and general conditions, all of which are made a part hereof.

APPROVED AS TO FORM:

THE CITY OF JOHNSTOWN, OHIO

By: _____
Director of Law

Date: _____

By: _____
City Manager

Date: _____

Contractor

By: _____

Date: _____

NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT

SECTION 1311.252 Ohio Revised Code

State of Ohio, County of Licking, SS:

Notice is hereby given by the undersigned public authority ("Public Authority") of the commencement of a public improvement ("Project") as follows:

- (1) The Project is identified as:

2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue

Location: Johnstown, Ohio

- (2) The Public Authority responsible for the Project is:

City of Johnstown

Public Authority

599 South Main St

Johnstown, Ohio 43031

Address

- (3) All principal contractors on the Project and the trade of each are as follows:

Principal Contractors

Trade

Name

Address

Phone

- (4) The date the public authority first executed a contract with a principal contractor for the improvement is: _____

Date

NOTICE OF AWARD

Dated: _____

To:

ADDRESS:

PROJECT: 2026 Resurfacing Project – Leafy Dell Rd and Pershing Avenue

CONTRACT FOR:

You are notified that your Bid dated _____ for the above Contract has been considered. You are the apparent successful bidder and have been awarded a contract for the _____.

The contract Price of your contract is: _____ Dollars (\$))

Four copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by _____.

1. You must deliver to the OWNER four fully executed counterparts of the Agreement including all the Contract Documents. This includes the four sets of Drawings. Each of the contract Documents must bear your original signature on every page indicated for signature.
2. You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders, General Conditions and Supplementary Conditions.
3. (List other conditions precedent).

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with those conditions, OWNER will return to you two fully signed counterparts of the Agreement with the Contract Documents attached.

City of Johnstown, Ohio

By: _____ City Manager

Dated: _____

CONSTRUCTION PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable

CONTRACTOR (Name and Address): SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:

(Corp. Seal)

SURETY

Company:

(Corp. Seal)

Signature: _____ Signature: _____
Name and Title: Name and Title:

CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)
Seal)

SURETY

Company: (Corp.

Signature: _____ Signature: _____
Name and Title: Name and Title:

GENERAL CONDITIONS/SUPPLEMENTARY CONDITIONS

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

MODIFIED STANDARD GENERAL CONDITIONS OF THE

CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by



The Associated General Contractors of America



Knowledge for Creating
and Sustaining
the Built Environment

Construction Specifications Institute

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1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters or with all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Engineer, Contractor, and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by ~~Owner or~~ Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective,

but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. The Owner is the City of Johnstown.

30. *Owner's Agent* -- The authorized individual or entity as designated by the Owner for the project.

31. *PCBs*--Polychlorinated biphenyls.

32. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

33. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

38. *Resident Project Representative*--The authorized representative of Owner Agent who may be assigned to the Site or any part thereof.

39. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

40. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

41. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

42. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

43. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

44. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto, **including supplemental specifications provided to the Contractor.**

45. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

46. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Owner's Agent, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended as described in SP-2 of the Supplemental Specifications and project clean-up completed. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

47. *Successful Bidder*--The Bidder submitting the lowest and best Bid to whom Owner makes an award.

~~47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.~~

48. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or

equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance

with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents, or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
 - c. has been damaged prior to Engineer’s - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or

equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

~~A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish. When CONTRACTOR delivers the executed counterparts of the Agreement to OWNER, CONTRACTOR shall also deliver to OWNER such bonds, insurance certificates, insurance endorsements, and other documents as CONTRACTOR may be required to furnish.~~

~~B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.~~
Evidence of Insurance: Before any Work at the Site is started, CONTRACTOR shall deliver to OWNER with copies to each additional insured identified in the Modified General Conditions OWNER-approved copies of certificates of insurance, copies of endorsements, and other evidence of insurance which either of them or any additional insured may reasonably request, which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to four printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run ~~on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~

2.04 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Owners Agent for timely review:

1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The total of the schedule of values prepared for the Work, as required by the General Conditions, shall not exceed the Bid submitted for the Work, unless such amount is adjusted as provided in the Contract Documents.

4. a proposed listing of subcontractors and major material and equipment suppliers. The list shall include any proposed substitutions in accordance with Paragraph 6.05 of the General Conditions.

2.06 Preconstruction Conference

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Owner's Agent, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Owner's Agent, and others as appropriate will be held to review for acceptability to Owner's Agent as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Owner's Agent.

1. The Progress Schedule will be acceptable to Owner's Agent if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Owner's Agent responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Owner's Agent if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Owner's Agent as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

4. The Progress Schedule will be presented to the Owner for the Owner's approval.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Owner's Agent as provided in Article 9.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Owner's Agent, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements.

Contractor shall promptly report in writing to Owner's Agent any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Owner's Agent before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Owner's Agent in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Owner's Agent for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

4. If CONTRACTOR proceeds with work that CONTRACTOR had actual knowledge or should have known that a conflict, error, ambiguity, or discrepancy existed as indicated above, correction of work constructed without such notification to OWNER'S AGENT shall be at CONTRACTOR's expense, (except in an emergency as authorized by Paragraph 6.16.A.).

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

2. Within the Contract Documents, requirements of the Agreement shall take precedence over the Modified General Conditions, which shall take precedence over the Technical Specifications, which shall take precedence over the Drawings.

3. Within a particular Contract Document, figure dimensions on Drawings shall take precedence over general Drawings. Specific instructions or specifications shall take precedence over general instructions or specifications.

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Owner's Agent approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Owner's Agent written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

A. Copies of data furnished by Owner or Owner's Agent to Contractor or Contractor to Owner or Owner's Agent that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

~~B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations. Upon reasonable request, Owner shall furnish Contractor with a Notice of Commencement prepared for the Project, conforming with the provisions of Ohio Revised Code Section 1311.252.~~

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

~~A. Reports and Drawings: The Supplementary Conditions identify~~ Section 4.02C herein identifies:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in ~~the Supplementary Conditions~~ Section 4.02C herein. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Owner's Agent, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which Owner does not warrant.

C. The documents which indicate subsurface physical conditions at the Site are as follows.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly within 48 hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and owner's Agent in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so. Failure to provide such notice as required herein or disturbing the differing condition shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the differing subsurface or physical condition.

B. *Owner's Agent Review:* After receipt of written notice as required by Paragraph 4.03.A, Owner's Agent will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Owner's Agent's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for

Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner, Engineer, and Owner's Agent and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided elsewhere in these Modified General Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

~~a. reviewing and checking all such information and data,~~

~~b. locating all Underground Facilities shown or indicated in the Contract Documents,~~ protecting all Underground Facilities in a manner at least as cautious and protective of safety and of underground facilities as those methods identified in Ohio Revised Code Sections 3781.25 and 3781.30.

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Owner's Agent. Owner's Agent will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Owner's Agent concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel. Contractor is referred to the General Requirements for additional requirements for laying out the work.

4.06 Hazardous Environmental Condition at Site

~~A. Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of these reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.~~ **No reports or drawings identifying material Hazardous Environmental Conditions are known to OWNER or OWNER'S AGENT except as listed below:**

N.A.

~~B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:~~

~~1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or~~

~~2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or~~

~~3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.~~ **Not Used.**

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Owner's Agent (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Owner's Agent concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

~~G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of~~

~~the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Owner's Agent, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

~~A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents. Contractor shall furnish a Contract Bond in the amount of the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. Such bond shall be in the form included in the Project Manual or such other form that meets the requirements of the Ohio Revised Code. If the Contractor submitted a combined Bid Guaranty and Contract Bond with its bid for the Work, that form of Bond shall satisfy the Contractor's requirement to provide a Contract Bond as described herein. Contractor shall also furnish such~~

other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

D. Material Default or Termination.
If the Owner notifies the Contractor's surety that the Contractor is in material default, the surety will complete its investigation of the claimed material default within 21 days. The surety is advised to start looking for a replacement contractor upon notice of material default. As part of its investigation, the surety shall promptly visit the offices of the Contractor, Owner's Agent, and Owner to inspect and copy the available Project records. The Owner, Owner's Agent, and Contractor, upon written request by the surety, shall make such records available during regular business hours for such inspection and copying. The Owner and Owner's Agent making such records available as provided herein shall satisfy the Owner's obligation to the surety to furnish documents for the investigation. The surety will provide the Owner with the results of its investigation, including any written report or documents.

If the Owner terminates the Contract and the surety proposes to takeover the Work, the surety shall do so no later than

the later of the expiration of the 21-day investigation period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Contract, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents. If the Contractor is terminated for cause, the replacement contractor shall not be the Contractor or its employees, unless the Owner agrees in writing. In the event the Surety takes over the Project, the surety's obligation shall not be limited to the penal sum of the Bond.

If the surety does not propose an acceptable contractor as required by this Paragraph 5.01.D, the Owner may complete the Work by such means as it deems appropriate. In the event the Owner agrees to accept a replacement contractor, the replacement contractor shall furnish its own bond for the replacement contractor's scope of work, and neither the Contractor nor the surety shall be relieved of their obligations under the Contract Documents.

This Paragraph 5.01.D is in addition to any other rights of the Owner under the Contract Documents and is not intended to create any rights of the surety, including but not limited to the right to take over the Contractor's obligations.

In the event of the Contractor's termination and if the surety does not takeover the Work as provided in this Paragraph 5.01.D., the Owner may take possession of and use all materials, facilities and equipment at the Project Site or stored off-site for which Owner has paid in whole or in part.

5.02 Licensed Sureties and Insurers

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by

Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Modified General Conditions.

5.03 Certificates of Insurance

~~A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.~~ CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Modified General Conditions, certificates of insurance, copies of endorsements, and other evidence of insurance requested by OWNER or any other additional insured, which CONTRACTOR is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the ~~Supplementary~~ Modified General Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of OWNER to demand such certificates or other evidence of full compliance with these insurance requirements or failure of OWNER to identify a deficiency from evidence provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.

D. By requiring such insurance and insurance limits herein, OWNER does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to OWNER in the Contract Documents.

5.04 Contractor's Liability Insurance

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the

Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to **CGL, Auto and Umbrella coverage** ~~insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive~~, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the ~~Supplementary~~ Modified General Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in

~~the Supplementary Conditions 5.04B.2.a.~~ or required by Laws or Regulations, whichever is greater;

a. The minimum limits of liability for the required insurance policies listed in Paragraph 5.04.A shall not be less than the following unless a greater amount is required by law:

1. Commercial General Liability ("CGL"): Bodily injury (including death and emotional distress) and property damage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal/Advertising Injury with Employment Exclusion deleted, (ix) Stopgap liability with Ohio Intentional Tort endorsement for \$1,000,000 limit, and (x) per project aggregate endorsement.

2. Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 per person and \$1,000,000 each accident.

3. Such policies shall be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount of \$1,000,000 for each occurrence and \$1,000,000 aggregate for contracts with a Contract Price of \$250,000 or less; \$2,000,000 each

occurrence and \$2,000,000 aggregate for contracts with a Contract Price greater than \$250,000 but less than or equal to \$500,000; \$3,000,000 each occurrence and \$3,000,000 aggregate for contracts with a Contract Price greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and \$5,000,000 aggregate for contracts with a Contract Price greater than \$1,000,000.

The following provisions shall also apply to the insurance provided by the Contractor:

1. Contractor's insurance shall be primary and non-contributory.

2. Insurance policies shall be written on an occurrence basis only.

3. The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability Insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount.

4. Owner shall be named as a certificate holder on the policies of insurance maintained by Contractor. The Contractor shall provide each additional insured with a certificate of insurance.

5. The additional insured endorsement shall be ISO 20 10 11 85 or its equivalent so that Completed Operations liability extends to the additional insureds after the completion of the Project.

3. include products and completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed with respect to coverage for the Project or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the ~~Supplementary~~ Modified General Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to products and completed operations insurance, ~~and any insurance coverage written on a claims-made basis,~~ remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the ~~Supplementary~~ Modified General Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, (other than caused by flood) and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of full replacement cost thereof. Insurance shall be completed value form.

1. This insurance shall:

a. include the interests of OWNER, CONTRACTOR, Subcontractors, OWNER'S AGENT and ENGINEER, and any other individuals or entities identified

herein, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured (Insurance certificates shall specifically indicate by name the additional insureds which are to include OWNER and OWNER'S AGENT as well as other individuals or entities so identified.);

b. be written on a Builder's Risk "all-risk" form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism, and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (including that caused by flood or hydrostatic pressure), and such other perils or causes of loss as may be specifically required by the Modified General Conditions;

c. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

d. cover the total value of materials and equipment supplied under the Contract from the time CONTRACTOR takes possession of them until they are installed and tested by CONTRACTOR and the project is accepted as complete by OWNER under an endorsement to this policy or in the form of Installation Floater Insurance of the "all risk" type;

e. allow for partial utilization of the Work by OWNER;

f. include testing and startup; and

g. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and OWNER'S AGENT with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

2. CONTRACTOR shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this Paragraph SC-5.06.A shall comply with the requirements of Paragraph 5.06.C. of the General Conditions.

B. Owner shall not purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Modified General Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Owner's Agent, and any other individuals or entities identified in the Supplementary Modified General Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

~~D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions.~~ CONTRACTOR shall pay all deductible provisions applicable to claims related to the Project made under and paid by insurance. If more than one Contractor is responsible for the incident giving rise to the insurance coverage, the Contractors shall be responsible on a pro rata basis, according to their responsibility for the occurrence or accident giving rise to the claim, for payment of the deductible. The maximum deductible shall be less than \$10,000. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Owner's Agent, and all other individuals or entities identified in the Supplementary Modified General Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of

the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Owner's Agent, and all other individuals or entities identified in the Supplementary Modified General Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Owner's Agent, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Owner's Agent, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner ~~as fiduciary~~ for the insureds, as their interests may appear, subject to the requirements of any

applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner ~~as fiduciary~~ shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner ~~as fiduciary~~ shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner ~~as fiduciary~~ shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner ~~as fiduciary~~ shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to

Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent ~~resident~~ project superintendent who shall not be replaced without written notice to Owner and Owner's Agent except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 Labor; Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during the City's designated regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably

withheld) given after prior written notice to Owner's Agent.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Owner's Agent, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. Suppliers shall be deemed to impliedly warrant that their products and all component materials incorporated into them are suitable and fit for the intended use of such products and shall be free from defect in material, workmanship or design, such warranty to run to the benefit of OWNER and OWNER'S AGENT. The foregoing applies whether the products or their component materials are specified in the Contract Documents or are of Supplier's design.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Owner's Agent for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

B. THE PERIODS OF TIME IN THE PROJECT CONSTRUCTION SCHEDULE ARE OF THE ESSENCE TO THIS CONTRACT. THE CONTRACTOR SHALL PROSECUTE ITS WORK IN ACCORDANCE WITH THE CURRENT PROJECT CONSTRUCTION SCHEDULE.

1. Notice of Delays. The Contractor shall give the Owner and the Owner's Agent verbal notice of any delay affecting its Work within two (2) business days of the commencement of the delay. In addition, the Contractor shall give the Owner and Owner's Agent written notice of the delay within ten (10) business days of the commencement of the delay with specific recommendations about how to minimize the effect of the delay. The written notice of the delay shall conspicuously state that it is a "NOTICE OF DELAY." A notice of a delay shall not constitute the submission of a Claim. The failure to give either of the required notices will be an irrevocable waiver of the Contractor's right to seek an extension of time and/or compensation or damages for the delay. Any extensions of time will only be granted pursuant to the procedures set forth under Paragraph 12.02. The Contractor acknowledges and agrees that timely notice of delays gives the Owner the opportunity to take action to minimize the cost and/or effect of delays.

6.05 Substitutes and “Or-Equals”

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. ~~Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below. No substitutes or “or-equals” will be allowed unless the required information is submitted to the Owner’s Agent at least 10 days prior to the bid date, and the Owner’s Agent issues an addendum listing the approved substitute or or-equal more than 72 hours prior to the bid date. Substitutes will not be accepted by Owner’s Agent unless sufficient information, in the Owner’s Agent judgment, is submitted by the Contractor to allow the Owner’s Agent to determine that the material or equipment proposed is equivalent to that named in the specifications.~~

1. “Or-Equal” Items: If in Owner Agent’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Owner’s Agent determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Owner’s Agent sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Owner’s Agent to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Owner’s Agent from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Owner’s Agent may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time;

- b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
- a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services;
- 4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Owner's Agent. Contractor shall submit sufficient information to allow Owner's Agent, in Owner's Agent sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Owner's Agent will be similar to those provided in Paragraph 6.05.A.2.

C. Owner's Agent Evaluation: Owner's Agent will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Owner's Agent may require Contractor to furnish additional data about the proposed substitute item. Owner's Agent will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Owner's Agent review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Owner's Agent will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Owner's Agent Cost Reimbursement: Owner Agent will record Owner's Agent's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Owner's Agent approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Owner's Agent for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Owner's Agent for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection. If OWNER or OWNER'S AGENT after due investigations has reasonable objections to any proposed Subcontractor, Supplier, or other individual or entity, either may request CONTRACTOR submit an acceptable substitute without an increase in Contract Price.

B. If the ~~Supplementary~~ Modified General Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the ~~Supplementary~~ Modified General Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Owner's Agent to reject defective Work.

C. Contractor shall be fully responsible to Owner and Owner's Agent for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Owner's Agent and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Owner's Agent to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Owner's Agent through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Owner's Agent. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Owner's Agent, and all other individuals or entities identified in the Supplementary Modified General Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms

to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Owner's Agent its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Owner's Agent, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

~~A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. Unless otherwise indicated in the General Requirements, OWNER will obtain and pay for permits for construction on or across railroad company property, for permits from municipalities and agencies, for work in highways, waterways, and wetlands, and for permits required for construction in public right-of-way. See General Requirements for listing and specific requirements of permits obtained by OWNER.~~

6.09 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Owner's Agent shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

B. Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Contractor with a Construction Tax Exempt Certificate upon request, made through the Owner's Agent.

C. Purchases by the Contractor of expendable items, such as form lumber,

tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.

D. Contractor shall withhold all income taxes due to the City of Johnstown for wages, salaries and commissions paid to its employees for work done under this Agreement and further agrees that any of its subcontractors shall, by the terms of its subcontract, be required to withhold any such income taxes due for Work performed under this Agreement.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Owner's Agent, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Owner's Agent, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall

keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site ~~one~~ two ~~record copy~~ copies of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. ~~Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner. Upon completion of the Work, these record documents, samples, and shop drawings shall be delivered by CONTRACTOR to OWNER.~~

6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Owner's Agent, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

B. CONTRACTOR shall keep at the Site at all times during excavation activities a competent person to comply with OSHA trenching and excavation requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions that are unsanitary,

hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner's Agent determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Owner's Agent for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Owner's Agent may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Owner's Agent the services, materials, and equipment Contractor proposes to provide and to enable Owner's Agent to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:* Contractor shall also submit Samples to Owner's Agent for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner's Agent may require to enable Owner's Agent to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Owner's Agent review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Owner's Agent specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract

Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Owner's Agent Review

1. Owner's Agent will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Owner's Agent. Owner's Agent's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Owner's Agent's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Owner's Agent's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Owner's Agent has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Owner's Agent's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Owner's Agent and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Owner's Agent on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner's Agent and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Owner's Agent;

2. recommendation by Owner's Agent or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Owner's Agent or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Owner's Agent;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

~~A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and~~

~~charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, hold harmless, and defend Owner and Owner's Agent, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, (whether alleged or proven), demands, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, including the breach of any warranty provided in the Contract Documents. The Contractor's obligations under this Paragraph 6.20.A are joint and several.~~

B. In any and all claims against Owner or Owner's Agent or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Owner's Agent and Owner's Agent officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

~~1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications the preparation of Drawings, Specifications, or Property Surveys; or~~

~~2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.~~

D. For any matter for which OWNER'S AGENT is indemnified under Paragraph 6.20.A, CONTRACTOR shall pay for OWNER'S AGENT'S reasonable defense, including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs or awards until ENGINEER is found negligent.

6.21 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Owner's Agent will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Owner's Agent.

C. Owner and Owner's Agent shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Owner's Agent have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Owner's Agent's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Owner's Agent's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Agent and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Owner's Agent in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's

Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Modified General Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Modified General Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

7.04 Claims By Other Contractors

A. Should CONTRACTOR cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of CONTRACTOR's performance of the Work at the Site be made by any other contractor against CONTRACTOR, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement or to otherwise resolve the dispute by arbitration or at law.

B. Should CONTRACTOR cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of CONTRACTOR's performance of the Work at the Site be made by any other contractor against OWNER or ENGINEER, CONTRACTOR shall indemnify OWNER and ENGINEER as required under Paragraph 6.20.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Owner's Agent.

8.02 Replacement of Owner's Agent

A. In case of termination of the employment of Owner's Agent, Owner shall appoint an owner's agent to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Owner's Agent.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface

structures at or contiguous to the Site that have been utilized by Owner's Agent in preparing the Contract Documents.

8.06 Insurance

A. Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Modified General Conditions.

ARTICLE 9 - OWNER'S AGENT'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

A. Owner's Agent will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Owner's Agent as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Owner's Agent.

9.02 Visits to Site

A. Owner's Agent will make visits to the Site at intervals appropriate to the various stages of construction as Owner's Agent deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Owner's Agent, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Owner's Agent will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Owner's Agent's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Owner's Agent will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Owner's Agent's visits and observations are subject to all the limitations on Owner's Agent's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Owner's Agent's visits or observations of Contractor's Work Owner's Agent will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Owner's Agent agree, Owner's Agent will furnish a Resident Project Representative to assist Owner's Agent in providing more extensive observation of the Work. The authority and

responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Modified General Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Owner's Agent's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Modified General Conditions.

B. Resident Project Representative personnel on this project may include personnel furnished by OWNER, OWNER'S AGENT, or both. The duties and responsibilities of the resident project representative(s) include the following:

1. Review schedules as required in Paragraph 2.05.A of the General Conditions and amendment thereto.

2. Attend conferences and meetings with CONTRACTOR.

3. Serve as liaison between OWNER'S AGENT and CONTRACTOR and help OWNER'S AGENT serve as liaison between OWNER and CONTRACTOR.

4. Conduct on-site observation of the work.

5. Observe tests, equipment, and system startups.

6. Report to OWNER'S AGENT when clarifications and interpretations of the Contract Documents are needed. Consider, evaluate, and report to OWNER'S AGENT, CONTRACTOR's requests for modification.

7. Maintain orderly records, keep a daily log (when on a part-time basis, keep log for days visiting site), and furnish periodic reports to OWNER'S AGENT of the progress of the Work.

8. Before project completion, prepare final list of items to be completed or corrected and make recommendations to

OWNER'S AGENT concerning acceptance of the Work.

The resident project representatives shall not:

1. Authorize any deviation from the Contract Documents or substitutions of materials or equipment.

2. Exceed limitations of OWNER'S AGENT's authority as set forth in the Contract Documents.

3. Undertake any of the responsibilities of CONTRACTOR, Subcontractor, or Contractor's superintendent.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction.

5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the Work.

6. Accept shop drawing or sample submittals from anyone other than CONTRACTOR.

7. Authorize OWNER to occupy the Project in whole or in part.

8. Participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by OWNER'S AGENT

9.04 Authorized Variations in Work

A. Owner's Agent may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

ments. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to

reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

B. Unit Price Work for which a typical cross section or other detail from the Contract Documents applies shall be paid only up to the quantity determined by using the dimensions provided in the typical cross section or other detail. By way of example only, and not implying any limitation, this provision means that if a typical trench width detail in the Drawings shows a maximum width of 30-inches, all pay quantities associated with the actual work of constructing the detail shall be calculated using a trench width not greater than 30-inches. This means that the actual pay quantity could also be less than that based upon a 30-inch wide trench, if the actual trench width is smaller and otherwise in conformance with the Contract Documents, but the Contractor would not be paid more if the actual trench width exceeds 30 inches. Contractor is responsible for determining what actual trench width may be required due to field conditions and applicable laws and regulations existing at the time of its bid.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the

event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders recommended by Owner's Agent covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Owner's Agent pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change. Failure to provide notice to the surety of any such change shall not exonerate the surety from its obligations under the bond.

10.05 Claims

A. *Owner's Agent's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Owner's Agent for decision. A decision by Owner's Agent shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* ~~Written notice stating the general nature of each Claim, shall be delivered by the claimant to Owner's Agent and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Owner's Agent and the other party to the Contract within 60 days after the start of such event (unless Owner's Agent allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any~~

response to Owner's Agent and the claimant within 30 days after receipt of the claimant's last submittal (unless Owner's Agent allows additional time). Notice: Claims by the Contractor shall be made by delivering to the Engineer and the Owner, within 21 days after the start of the event giving rise to the Claim, a fully completed Statement of Claim Form, a copy of which is included in the Project Manual. The Contractor shall be responsible for substantiating its Claim. Failure to provide submit the properly completed Statement of Claim form shall be an irrevocable waiver of Contractor's right to any form of additional compensation, be it in time or money, arising out of the Claim or the circumstances underlying the Claim.

C. *Owner's Agent's Action:* Owner's Agent will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,
2. approve the Claim, or

3. notify the parties that the Owner's Agent is unable to resolve the Claim if, in the Owner's Agent's sole discretion, it would be inappropriate for the Owner's Agent to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Owner's Agent does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

~~E. Owner's Agent's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial. Owner's Agent's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor commences an action in a court of exclusive jurisdiction as set forth in Paragraph 16.01.A.2 within 30 days of such action or denial.~~

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

G. *Claim Certification:* Contractor shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31

USC Section 3729 et seq.), present or cause to be presented a false or fraudulent Claim. As a condition precedent to Contractor making a Claim, the written notice of Claim (made using the Statement of Claim Form included in the Contract Documents) shall be accompanied by an affidavit sworn before a notary public or other person authorized to administer oaths in the State of Ohio and executed by an authorized representative of Contractor, which states that:

The Claim that is submitted herewith complies with Section 10.05 of the General Conditions, which provide that the Contractor shall not knowingly present or cause to be presented a false or fraudulent Claim.

Failure to submit such affidavit with Statement of Claim Form shall constitute an irrevocable waiver of the Claim.

H. *Claim Documentation:* Within ten (10) days of written request from the Owner, Contractor shall make available to Owner or its representative any books, records, or other documents in its possession or to which it has access, including but not limited to Contractor's daily logs/reports, original estimates of Work and applicable agreements, correspondence with subcontractors and suppliers, internal correspondence (including e-mail), accounting records, and other information from which the Contractor's costs may be derived. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. As requested by the Owner, the Contractor shall provide such documents and information in paper copies and/or computer format (including the format of the Contractor's accounting software and/or ASCII format). The Contractor's provision of the requested documents and

information shall be a condition precedent to any further proceeding under the Contract Documents or to payment of an Application for Payment

Failure to provide the requested documents shall be a material breach of the Contract, and Contractor shall indemnify Owner for all of Owner's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be precluded from presenting such documents in any subsequent dispute resolution proceedings, if the data was reasonably available at the time of the request.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for

employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Owner's Agent, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Owner's Agents, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Owner's Agent, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of

partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner's Agent an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Owner's Agent.

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Owner's Agent to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner's Agent subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

E. Notwithstanding any other provision in the Contract Documents (except for 9.07 of these Modified General Conditions) for Unit Price Work, Contractor shall be paid the Total Extended Price arrived at by calculating Contractor's Unit Price bid by actual quantities up to and including 100% of the Owner's Agent's estimated quantity, provided that such quantities are confirmed by Owner's Agent and such Work is otherwise in conformance with the technical requirements of the Contract Documents.

Contractor shall not be paid for any Unit Price Work that represents an actual quantity greater than 100% of the Owner's Agent's estimated quantity, without a Change Order.

It is the Contractor's responsibility to track actual in-progress quantities of Work in anticipation of the applicability of this provision.

F. Owner may, without alteration or modification of this Contract, increase, diminish, or omit the work covered by any item of this Contract. When such item is covered by a unit price the amount actually required will be paid for; if a lump sum price is applicable, the net addition or deduction, representing the actual value of the work added or dispensed with, shall be agreed upon before the work is done, and if

agreement cannot be reached, the work shall be completed pursuant to a Work Change Directive under Article 10 of the General Conditions. No claim for loss of anticipated profits shall be made or allowed on account of such changes, and the validity of the Contract or bond shall not be affected thereby.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Owner's Agent and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Owner's Agent and the other party to the Contract in accordance with the provisions of Paragraph 10.05, unless otherwise directed in the contract documents.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

A.1 Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay, except for weather delays resulting in workdays lost from December 1 to April 30, if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God. When the Contractor's accepted Progress Schedule depicts Work on the critical path occurring during the period from December 1 to April 30 and the Contractor is prevented from completing its Work within the Contract Times due to abnormal weather conditions not reasonably anticipatable, then subject to the following paragraph 12.03.A.2, the Contract Times will be extended by one (1) day for each weather day lost in excess of those in the following table:

<u>Month</u>	<u>Number of Workdays Lost Due To Weather</u>
<u>December</u>	<u>6</u>
<u>January</u>	<u>8</u>
<u>February</u>	<u>8</u>
<u>March</u>	<u>7</u>
<u>April</u>	<u>6</u>

A.2 The Contract Times will be extended for every workday that abnormal weather conditions not reasonably anticipatable reduce production by more than 50 percent on items of Work on the critical path. Weekends, Shutdown Days, and holidays will not be considered as lost workdays unless the Contractor normally works those days or unless the Contractor is directed to work those days.

B. If Owner, Owner's Agent, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Owner's Agent and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Owner's Agents, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

F. Liquidated Damages:

1. For each calendar day for which Contractor has not yet achieved Substantial Completion, Owner may, without Change Order, deduct the sum specified in Paragraph 12.03(F)(4) herein from any amount due, or which may thereafter become due, the Contractor, not as a penalty, but as liquidated damages. Owner and Contractor agree that in the event of such delay in reaching Substantial Completion, Owner shall incur damages that are difficult to calculate and the liquidated damages provided for herein are reasonable.

2. Permitting Contractor to continue and complete the Work or any part thereof after any specified Contract Time will in no way operate as a waiver of any right of the Owner under this Contract.

3. The Bidder acknowledges by submitting its bid and entering into a contract with the Owner that such amounts of Liquidated Damages stated in Paragraph

12.03(F)(4) herein represent a reasonable estimate of the actual damages that the Owner would incur if the work is not substantially complete by the dates stated in the Contract between the Owner and Contractor.

4. Schedule Of Liquidated Damages

Original Contract Amount (Total Amount of the Bid)		Amount of Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time
From More Than	To and Including	
\$0.00	\$250,000.00	\$ 500.00
\$250,000.00	\$1,000,000.00	\$ 700.00
\$1,000,000.00	\$3,000,000.00	\$ 900.00
\$3,000,000.00	\$10,000,000.00	\$1,400.00
\$10,000,000.00		\$2,300.00

**ARTICLE 13 - TESTS AND
INSPECTIONS; CORRECTION,
REMOVAL OR ACCEPTANCE OF
DEFECTIVE WORK**

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Owner's Agent has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Owner's Agent, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. All Work is subject to testing to indicate compliance with Contract Document requirements. Duplicate copies of test results of all tests required shall be submitted to OWNER'S AGENT. Testing laboratories are subject to the approval of OWNER'S AGENT. Tests and inspection of work may be conducted by OWNER or an independent laboratory employed by OWNER. Tests may also be performed in the field by OWNER'S AGENT as a basis for acceptance of the Work. Contractor shall give Owner's Agent timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Samples required for testing shall be furnished by CONTRACTOR at no cost to OWNER. In the event that completed Work does not conform to specification requirements during the initial test, the Work shall be corrected and retested for conformance. The entire cost of retesting completed Work shall be borne by CONTRACTOR. This shall include the extra cost for inspection to OWNER which will be deducted from the final amount due CONTRACTOR.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner's Agent the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Owner's Agent's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Owner's Agent.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor

without written concurrence of Owner's Agent, it must, if requested by Owner's Agent, be uncovered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Owner's Agent timely notice of Contractor's intention to cover the same and Owner's Agent has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Owner's Agent, it must, if requested by Owner's Agent, be uncovered for Owner's Agent's observation and replaced at Contractor's expense.

B. If Owner's Agent considers it necessary or advisable that covered Work be observed by Owner's Agent or inspected or tested by others, Contractor, at Owner's Agent's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner's Agent may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Owner's Agents, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such

order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Owner's Agent, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Owner's Agents, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or limitation upon, or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Owner's Agent's recommendation of final payment, Owner's Agent) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of Owner's Agents, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Owner's Agent as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Owner's Agent's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the

amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

~~A. If Contractor fails within a reasonable time after written notice from Owner's Agent to correct defective Work or to remove and replace rejected Work as required by Owner's Agent in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency. If Contractor fails within two (2) business days of a written notice from Owner's Agent, or such longer time as may be stated in such notice, to correct, or take reasonable steps to commence to correct, defective Work or to remove and replace, or take reasonable steps to remove and replace, rejected Work as required by Owner's Agent in accordance with Paragraph 13.06.A., or if Contractor fails to perform the Work in accordance with the Contract Documents, Owner may correct or remedy any such deficiency. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable costs arising out of or related to the investigation and correction of correcting such deficiencies, including Owner's attorneys' and consultants' fees and expenses and other expenses and compensation for the Owner's Agent's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor irrevocably designates the Owner as the Contractor's attorney-in-fact to execute the Change Orders provided for in this Subparagraph.~~

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Owner's Agent and Owner's Agent's

consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work or others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

~~A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner's Agent. Progress payments on account of Unit Price Work will be based on the number of units completed.~~

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner's Agent. The OWNER'S AGENT-approved version of the Application for Payment form, which includes information on completed Schedule of Values items, is to be used by the CONTRACTOR when making an Application for Progress Payment. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

~~1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Owner's Agent for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. At least by the 20th day of the month (but not more often than once a month), Contractor shall submit to Owner's Agent for review an Application for Payment (on a form approved by the OWNER'S AGENT) filled out and signed by Contractor covering the Work completed as of the date of the Application, and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.~~

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment. The requirement to provide such affidavit shall be fulfilled by providing waivers of lien in a form acceptable to Owner from the Contractor and from its major Subcontractors and suppliers.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Retainage. Partial payments to Contractor for labor performed shall be made at the rate of 92 percent of the amount invoiced through the Application for Payment that shows the total Contract Completion at 50 percent or greater, pursuant to Ohio Revised Code Section 153.14. After the Contract is 50 percent complete as evidenced by payments in the amount of at least 50 percent of the Contract Price to Contractor, no additional funds shall be retained from payments for labor.

4. CONTRACTOR shall submit with each pay request CONTRACTOR's partial waiver of lien for the full amount of the requested payment. Beginning with the second pay request, and with each succeeding pay request, CONTRACTOR shall submit partial waivers of lien for each

Subcontractor and Supplier showing that the amount paid to date to each is at least equivalent to the total value of Subcontractor's or Supplier's work, less retainage, included on the previous pay request. CONTRACTOR shall submit with each pay request a signed Waiver of Lien Log clearly documenting the following:

a. The names of all Subcontractors/Suppliers on the project.

b. Contract amounts for each Subcontractor/Supplier.

c. Amount paid to date to each Subcontractor/Supplier.

d. Lien waivers provided with current pay application for previous month's payments.

e. Amount to be paid to each Subcontractor/Supplier included in the pending pay request.

f. Remaining balance for each Subcontractor/Supplier.

5. CONTRACTOR shall submit one original and one copy on 8-1/2 by 11 paper of each lien waiver submitted.

6. CONTRACTOR shall submit six copies of each pay request for approval.

7. No advanced payment for shop drawing preparation will be made. Shop drawing costs will be paid when equipment and materials are delivered and suitably stored on the site.

8. All stored equipment and materials for which payment is requested shall have two copies of invoices included with the pay request. Equipment shall be identified thoroughly on the invoices, including serial numbers.

9. Payment for the stored equipment and material which are on the site shall not exceed the invoiced amount for each item, less the Contract retainage. The overhead and profit for the stored items shall not be invoiced until the item is installed.

10. Payment for off-site storage is normally reserved for sensitive or very large pieces of equipment that in OWNER'S AGENT's opinion would not be practical to have stored on the site. Payment for off-site stored items shall be limited to 75% of the invoiced value of the item, less Contract retainage. CONTRACTOR shall reimburse OWNER the Cost of inspecting off-site stored items. When off-site storage is approved, CONTRACTOR shall provide Insurance Certificates and Document of Ownership to OWNER.

B. Review of Applications

1. Owner's Agent will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Owner's Agent's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Owner's Agent's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Agent to Owner, based on Owner's Agent's observations on the Site of the executed Work as an experienced and qualified design professional and on Owner's Agent's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Agent's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work

under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Owner's Agent's responsibility to observe the Work.

3. By recommending any such payment Owner's Agent will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Owner's Agent in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Owner's Agent's review of Contractor's Work for the purposes of recommending payments nor Owner's Agent's recommendation of any payment, including final payment, will impose responsibility on Owner's Agent:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Owner's Agent may refuse to recommend the whole or any part of any payment if, in Owner's Agent's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Owner's Agent may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke

any such payment recommendation previously made, to such extent as may be necessary in Owner's Agent's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Owner's Agent has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Owner's Agent's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Owner's Agent because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or

d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Owner's Agent, Owner will give Contractor immediate written notice (with a copy to Owner's Agent) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor,

when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Owner's Agent in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner's Agent issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Owner's Agent shall make an inspection of the Work to determine the status of completion. If Owner's Agent does not consider the Work substantially complete, Owner's Agent will notify Contractor in writing giving the reasons therefor.

C. If Owner's Agent considers the Work substantially complete, Owner's Agent will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Owner's Agent as to any provisions of the certificate or attached list. If, after considering such objections, Owner's Agent concludes that the Work is not substantially complete, Owner's Agent will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Owner's Agent considers the Work substantially complete, Owner's Agent will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate

as Owner's Agent believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Owner's Agent will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Owner's Agent in writing prior to Owner's Agent's issuing the definitive certificate of Substantial Completion, Owner's Agent's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

F. Time for Completion of Items on Tentative List and Remedies. The time fixed by the Owner's Agent for the completion of all items on the list accompanying the tentative certificate of Substantial Completion shall not be greater than thirty (30) days, unless the Owner's Agent states a longer time in the certificate. The Contractor shall complete all items on the list within such 30-day period or such other time as is specified. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged to the Contractor. The Contractor irrevocably designates the Owner as the Contractor's attorney-in-fact to execute a Change Order deducting such cost from the balance of the Contract Price and also any additional costs or expenses incurred by the Owner arising out of or related to the failure of the Contractor to complete such items, including but not limited to attorneys', consultants', and Owner's Agent's fees. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial Work, even if performed by others. If more than one inspection by the Owner's Agent for purposes of evaluating corrected Work

is required, it will be performed at the Contractor's expense.

14.05 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Owner's Agent, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Owner's Agent that such part of the Work is substantially complete and request Owner's Agent to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Owner's Agent in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner's Agent to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Owner's Agent shall make an inspection of that part of the Work to determine its status of completion. If Owner's Agent does not consider that part of the Work to be substantially complete, Owner's Agent will notify Owner and Contractor in writing giving the reasons therefor. If Owner's Agent considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any part of the Work although it is not substantially complete. A copy of such request will be sent to OWNER'S AGENT, and within a reasonable time thereafter, OWNER, CONTRACTOR, and OWNER'S AGENT shall make an inspection of that part of the

Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER and OWNER'S AGENT that such part of the Work is not ready for separate operation by OWNER, OWNER'S AGENT will finalize the list of items to be completed or corrected and will deliver such lists to OWNER and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation (unless they shall have otherwise agreed in writing and so informed OWNER'S AGENT). During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

~~4.~~ 5. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner's Agent will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After Contractor has, in the opinion of Owner's Agent, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. CONTRACTOR's request for final payment shall also include CONTRACTOR's final waiver of lien which shall be for the full amount of Contract, including any change orders thereto. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Owner's Agent's Review of Application and Acceptance

1. If, on the basis of Owner's Agent's observation of the Work during construction and final inspection, and Owner's Agent's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Agent is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been

fulfilled, Owner's Agent will, within ten days after receipt of the final Application for Payment, indicate in writing Owner's Agent's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Owner's Agent will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Owner's Agent will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Owner's Agent, less any sum Owner is entitled to set off against Owner's Agent's recommendation, including but not limited to liquidated damages, will become due and, will be paid by Owner to Contractor.

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Owner's Agent so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Owner's Agent, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner's Agent with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract

Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Owner's Agent which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's ~~persistent~~ failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Owner's Agent; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) ~~seven~~ three business days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

Such termination shall be effective as of the date stated in the termination notice provided to Contractor.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner's Agent as to their reasonableness and, when so approved by Owner's Agent, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 Owner May Terminate For Convenience

A. Upon ~~seven~~ three business days written notice to Contractor and Owner's Agent, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. Such termination shall be effective as of the date stated in the written notice. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

~~2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;~~

~~3. all claims, costs, losses, and damages (including but not limited to all fees and charges of Owner's Agents, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and~~

~~4. reasonable expenses directly attributable to termination.~~

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. Contractor shall require similar provisions contained in Paragraph 15.03 in each of its subcontracts to protect Contractor from claims by Subcontractors arising from the Owner's termination for convenience, or to minimize claims by such subcontractors. The remedy provided to Contractor under this Paragraph 15.03 shall be the Contractor's sole remedy in the event of termination for convenience by Owner.

15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Owner's Agent fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Owner's Agent, and provided Owner or Owner's Agent do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Owner's Agent has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Owner's Agent, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

~~A. Either Owner or Contractor may request mediation of any Claim submitted to Owner's Agent for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.~~

A. Settlement, Methods and Procedures

1. In the event that Contractor files a

Claim or files an action against Owner, Owner shall be entitled to make an offer of settlement of the Claim to Contractor at any time up to the date of trial. Such offer of settlement shall not be admissible into evidence at the litigation except on the issue of entitlement to recovery of attorneys' fees, costs and expenses. If at any stage of the litigation, including any appeals, Contractor's claim is dismissed or found to be without merit, or if the damages awarded to Contractor on its claim do not exceed Owner's offer of settlement, Contractor shall be liable to Owner and shall reimburse Owner for all attorneys fees, costs and expenses incurred by Owner from the date of the offer of settlement until the date of the final adjudication and resolution of Contractor's claim.

2. Any dispute, claim or other matter not settled by negotiation or other means as mutually agreed upon by Owner, Contractor, and surety where applicable, shall be determined by the Court of Common Pleas for the County where the project is located, which shall have exclusive venue and jurisdiction over such matters and claims.

~~B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.~~

~~C. If the Claim is not resolved by mediation, Owner's Agent's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:~~

~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or~~

~~2. agrees with the other party to submit the Claim to another dispute resolution process, or~~

~~3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.~~

ARTICLE 17 - MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and

acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Controlling Law

A. ~~This Contract is to be governed by the law of the state in which the Project is located.~~ This Contract shall be governed by the law of the State of Ohio.

17.06 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

17.07 *Equal Employment Opportunity and Non-Discrimination.* The Contractor shall comply with, and shall require all Subcontractors of any tier to comply with, the applicable equal employment opportunity and non-discrimination statutes and regulations of the State of Ohio.

17.08 *Contract Work Hours and Safety Standard Act.* All Contractors and Subcontractors, of any tier, shall comply with the applicable federal regulations for contract work hours and safety standards.

17.09 *Clean Air Act.* All Contractors and Subcontractors, of any tier, shall comply with the applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1857, et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.), as amended.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable

CONTRACTOR (Name and Address): SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond Form:

CONTRACTOR AS PRINCIPAL

Company:
(Corp. Seal)

SURETY

Company:
(Corp. Seal)

Signature: _____ Signature: _____
Name and Title: Name and Title:

CONTRACTOR AS PRINCIPAL

Company:
(Corp. Seal)

SURETY

Company:
(Corp. Seal)

Signature: _____ Signature: _____
Name and Title: Name and Title: