

CITY OF ELYRIA, OHIO

**DEPARTMENT OF PUBLIC SERVICE
ENGINEERING DIVISION**

PROJECT SPECIFICATIONS

FOR

LOR-ELYRIA VAR TLCI PHASE 6

ODOT LPA PROJECT

**ODOT PID NO. – 122081
SAM UNIQUE ID NO. - NENJAACUWR85**

Chris Pyanowski
Safety Service Director

John Schneider, P.E.
City Engineer

Signature: _____

Date: _____

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INVITATION TO BID

Sealed bids for a unit price contract will be received by the **City of Elyria, Ohio**, until **2:00 PM** local time on **Tuesday, March 10, 2026** for the project known as:

LOR – ELYRIA TLCI PHASE 6 ODOT LPA PROJECT

The bids are to be delivered to the **Office of the Engineer, Elyria City Hall, 131 Court Street, Elyria, Suite 303, Ohio 44035**. All bids received will then be opened and read at a public bid-opening meeting.

DESCRIPTION OF WORK: The Contractor shall furnish all labor, equipment, supplies, and supervision of labors necessary, to complete the project in all respect. The Contractor shall furnish all labor, equipment, supplies, and supervision of labors necessary, to complete the project in all respect. The project will consist of wayfinding signage, bike rack, installing new pavement markings, replacing approximately 2400 sf of concrete sidewalks, and installing new wallpack lighting.

All bidders shall be ODOT pre-qualified. All bidders shall submit bid security with their bid in accordance with ORC 153.54 as detailed in the Instructions to Bidders in the bid specifications.

BIDDING DOCUMENTS: The plans, specifications, and all bidding forms may be examined at the Office of the City Engineer, Elyria City Hall, 131 Court Street, Elyria, Ohio 44035. Plans may also be reviewed on the City's website at <https://www.cityofelyria.org/bids-requests/>. To be added to the planholders list, prospective bidders are required to request the electronic bid documents by email to engineer@cityofelyria.org. Questions regarding the project should be emailed to engineer@cityofelyria.org no later than Monday, March 2, 2026.

PRE-BID MEETING: No pre-bid meeting will be held. Questions regarding the project should be emailed to engineer@cityofelyria.org.

BID SECURITY: The bid must be accompanied by a bid guaranty. The bid guaranty must meet all requirements of Section 153.54 of the ORC and the Instructions to Bidders.

COMPLETION TIME: The contractor will have until July 31, 2026 to complete all work.

PREVAILING WAGES: The contractor and any subcontractor must comply with the prevailing wage rate requirements on public improvements as determined by the Secretary of Labor in accordance with Federal-Aid requirements. Wage rates are set forth in the U.S. Department of Labor wage decision No. OH20260001, 01/02/2026 and can be found at website <https://sam.gov>.

COMPLIANCE WITH ALL LAWS: All work shall be carried out in compliance with all federal, state and local laws, rules and regulations that apply to the work. Any project specification item in conflict with a federal, state, or local law, rule or regulation, shall be void.

BIDDER'S QUALIFICATION: The Bidder (Prime Contractor) shall be certified by State of Ohio, Department of Transportation for similar Highway Construction Projects. A Copy of Certificate of Qualification should be attached with the sealed Bid.

AFFIRMATIVE ACTION: All bidders must comply with the provisions of Chapter 167 of the Elyria Codified Ordinances as amended. Bidders must be pre-certified or submit an acceptable Affirmative Action Plan with the bid submission. No contract will be awarded unless an acceptable Affirmative Action Plan is reviewed by the EEO Office, approved and incorporated into the contract. Each bidder must complete and sign the Elyria Equal Employment Opportunity Clause, which is included with the specifications.

BID FORMS: No Bid will be considered unless it is made on the blanks furnished by the City. No bidder shall take any exception to any requirement of the specifications. Each Bid must contain the full name of the party or parties submitting the Bid and all persons interested therein.

AWARD OF CONTRACT: The City reserves the right to waive any technicalities or informalities, to reject any or all bids received, and to accept any bid with any combination of alternates which is deemed most favorable to the City of Elyria, Ohio at the time and under the conditions stipulated in the project documents.

Kevin A. Brubaker
Mayor, City of Elyria

Chronicle Telegram: 2/13/2026, 2/20/2026, proof

INSTRUCTIONS TO BIDDERS

1. ORDINANCE

1.1 The bids for this project are being taken in accordance with Ordinance No. 2025-120 passed by the Elyria City Council on August 4, 2025.

2. DEFINED TERMS

2.1 Except as given in Section 2.2 herein, the terms used in these Instructions to Bidders which are defined in the General Conditions, and have the meanings assigned to them in Section 1.01 of the noted General Conditions.

2.2 Additional terms used in these Instructions to Bidders are defined as follows:

SUCCESSFUL BIDDER - the lowest and best, responsible, and responsive bidder to whom the City (on the basis of the City's evaluation as hereinafter provided) makes an award.

UNDERGROUND FACILITIES - All pipes, conduits, ducts, cables, fiber optic cables, wires, service connections, manholes, closeouts, valves, vaults, pull boxes, tanks, tunnels, culverts or other such facilities or attachments, and encasements containing such facilities privately or publicly owned which have been installed underground to furnish any of the following services or materials: electricity, gas, steam, liquid petroleum products, street lighting, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.

WORK - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the contract documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the contact documents.

3. COPIES OF BIDDING DOCUMENTS

3.1 Complete sets of the bidding documents may be purchased as stated in the Invitation to Bid. No refund will be made for returned documents.

3.2 Complete sets of bidding documents must be used in preparing bids; the City does not assume any responsibility for errors or misinterpretations resulting from the use of incomplete set of bidding documents.

3.3 The City in making copies of the bidding documents available on the above terms does so only for the purpose of obtaining bids for the work and does not confer a license or grant permission for any other use of the bidding documents.

4. QUALIFICATIONS OF BIDDERS

- 4.1.1 The Bidder (Prime Contractor) shall be certified by State of Ohio, Department of Transportation for similar Highway Construction Projects. A Copy of Certificate of Qualification should be attached with the sealed Bid.
- 4.1.2 To demonstrate qualifications to perform the work, each bidder must be prepared to submit within five (5) days after the bid opening, upon the City's request, detailed written evidence such as financial data, previous experience, present commitments and other such data as may be needed to demonstrate the bidder's qualifications.
- 4.1.3 Each bidder must be qualified to do business in the State of Ohio, or must obtain such qualification prior to award of the contract by the City.

5. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- 5.1 It is the responsibility of each bidder before submitting a bid:
 - 5.1.1 To examine thoroughly the contract documents and other related data identified in the bidding documents;
 - 5.1.2 To visit the site to become familiar with and satisfy bidder as to the general, local and site conditions that may affect cost, progress, performance or the furnishing of the work;
 - 5.1.3 To consider federal, state and local laws and regulations that may affect cost, progress, performance, or the furnishing of the work;
 - 5.1.4 To study and carefully correlate bidders knowledge and observations with the contract documents, and other related data; and
 - 5.1.5 To promptly notify the Engineer of all conflicts, errors, ambiguities or discrepancies which bidder has discovered in or between the contract documents and other related documents or observations.
 - 5.1.6 To evaluate the condition, layout and nature of the project site and surrounding area;
 - 5.1.7 To consider the availability and cost of labor;
 - 5.1.8 To consider the availability and cost of materials, supplies and equipment;
 - 5.1.9 To consider the cost of temporary utilities required in the bid;
 - 5.1.10 To consider the cost of any permit or license required by a local or regional authority having jurisdiction over the project;
 - 5.1.11 To consider the generally prevailing climatic conditions; and
 - 5.1.12 To evaluate conditions bearing upon transportation, disposal, handling, and storage of

materials.

- 5.2 All notices of conflicts, errors, ambiguities or discrepancies submitted by a bidder to the Engineer must be in writing by mail or by fax at 440-326-1441 or by email at engineer@cityofelyria.org. The Engineer will respond to such notices received through ARC by sending an addendum to all plan holders by email, fax or mail.
- 5.3 Any reports of exploration and tests of subsurface conditions at or contiguous to the site which have been utilized by the Engineer in preparation of the contract documents are identified in the Supplementary Conditions. The bidder may rely upon the general accuracy of the "technical data" contained in such report but not upon other data, interpretations, opinions or information contained in such reports or otherwise related to the subsurface conditions at the site, nor upon the completeness thereof for the purpose of bidding or constructing the project.
- 5.4 The City may have record drawings of previous projects constructed in the past, in part or all of the site where this project is to be constructed. The bidder may examine these drawings.
- 5.5 The bidder may purchase copies of the reports noted in Section 5.3 and of the drawings noted in Section 5.4 for the cost of reproduction as established by City Ordinance. Those reports and drawings are not part of the contract documents. The bidder is responsible for any interpretation or conclusion drawn from any technical data, opinions or other information contained in or developed from such reports or drawings.
- 5.6 Before submitting a bid each bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing the work, or which relates to any aspect of the means, methods, techniques, sequences, or procedure of construction to be selected and employed by bidder and all safety precautions and programs incidental thereto or which bidder deems necessary to determine its bid for the performing and furnishing the work in accordance with time, price, and other terms and conditions of the contract documents.
- 5.7 On request, the City will grant permission to each potential bidder, access to the site (by issuing a no fee excavation permit, except a fee will be required if pavement is to be cut) to conduct such examination, investigation, exploration, tests and studies as each bidder deems necessary for submission of a bid. Bidders must fill all test holes and clean up and restore the site to its former condition upon completion of such explorations, investigation, tests and studies.
- 5.8 The general nature of any work scheduled to be performed at the project site by the City, or by another prime contractor working for the City, and by any utility (if known by the City) that relates to the work for which a bid is to be submitted, is included as information in the Supplementary Conditions.
- 5.9.1 The submission of a bid will constitute an incontrovertible representation by bidder that bidder has complied with every requirement of the Article 5, and that without exception the bid is premised upon performing and furnishing the work required by the contract documents and applying the specific means, methods, techniques, sequences or procedures of construction

selected by the bidder to complete the project as expressly required by the contract documents, that the bidder has given the Engineer written notice of all conflicts, errors, ambiguities and discrepancies that bidder has discovered (if any) in the contract documents in time for an addendum to be issued to all plan holders, and that the written resolutions thereof issued by the Engineer as an addendum is acceptable to the bidder, and that the contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work.

6. TECHNICAL SPECIFICATIONS:

6.1 Work to be done under contract and under this Bid shall be governed by all provisions set forth in the State of Ohio Department of Transportation, January 1, 2023, Construction and Specifications, including all changes, specifications listed in the special provisions and supplemental specifications all additional addenda particular to this project.

7. AVAILABILITY OF LAND FOR WORK

7.1 The lands upon which the work is to be performed, the right-of-way and easements, and access thereto and other lands designated for use by the contractor in performing the work are identified in the contract documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the work are to be obtained and paid for by the contractor.

7.2 All easements and/or right-of-way for permanent structures or permanent changes in existing facilities have been obtained and paid for by the City unless otherwise provided in the Supplementary Conditions.

7.3 Any special condition set forth in easements obtained by the City which may affect the performance or furnishing the work, if any, are identified in the Supplementary Conditions.

8. INTERPRETATIONS AND ADDENDA

8.1 All questions about the true meaning or intent of the bidding documents are to be directed to the Engineer in writing. Interpretations or clarifications considered necessary by the Engineer in response to such questions will be issued by addenda, either mailed, faxed, emailed or hand delivered to all parties recorded by the Engineer as having received the bidding documents.

8.2 An addendum may also be issued by the Engineer to modify the bidding documents as deemed advisable by the City.

8.3 Any bidder may not rely upon any interpretation of the bidding documents by any means other than a written addendum.

9. BID SECURITY

- 9.1 Each bid must be accompanied by a bid guarantee. The bid guarantee may be either a **Bid/Contract Bond, Certified Check, Cashiers Check** or a **Letter of Credit**. The bid guarantee shall meet all requirements of Section 153.54 of the Ohio Revised Code and any additional requirements stated herein.
- 9.2 Any bond shall be furnished by a surety company licensed to conduct business in the State of Ohio. Any check used as bid security shall be drawn on a solvent bank.
- 9.3 Any **Bid/Contract Bond** submitted shall be for the full amount of the base bid plus the highest combination of additive alternates, if any. The form of the **Bid/Contract Bond** shall be of substantially the same form as provided in Section 153.571 of the Ohio Revised Code and it shall serve as both a bid bond and a contract bond. If stated, the amount of the **Bid/Contract Bond** shall be specified in figures. Specifying the amount of the bond as a percentage or one hundred percent (100%) is not acceptable.
- 9.4 Section 3905.41, Ohio Revised Code, may require that a **Bid/Contract Bond** be countersigned by an Ohio resident agent. It is the bidder's responsibility to determine the applicability of Section 3905.41, Ohio Revised Code.
- 9.5 Any **Certified Check, Cashiers Check** or a **Letter of Credit** submitted shall be made payable to the City of Elyria Ohio, and shall be for an amount of not less than ten percent (10%) of the base bid plus the highest combination of additive alternates, if any. The amount shall be stated in figures. Any **Certified Check, Cashiers Check** or a **Letter of Credit** submitted shall be accompanied by an executed Consent of Surety form. Any letter of credit shall be revocable only by the City. If the successful bidder used a certified check, cashier's check or letter of credit, it will be returned upon provision of the **Contract Bond** required by Section 153.54, Ohio Revised Code.
- 9.6 In case a bidder, to whom a contract is awarded, fails to execute the contract within ten (10) days after notice of award is delivered in writing to the bidder, or in case a bidder fails to secure the contract with an acceptable performance bond and payment bond (each in the full amount of the contract) and execute the contract within ten (10) days after notice of the award is delivered in writing to the bidder, the bidder shall be considered as refusing the contract and shall forfeit their bid security in accordance with provisions of Section 153.54 of the Ohio Revised Code.
- 9.7 The bid security from each bidder may be held by the City for up to sixty (60) days. The bid security will be returned to the unsuccessful bidders after the contract has been signed and secured as provided herein above by the successful bidder.

10. CONTRACT TIME

10.1 The number of days within which, or the date by which, the work is to be substantially completed and also completed and ready for a pre-final payment, are set forth in the Invitation to Bidders and will be set forth in the Agreement Form.

11. LIQUIDATED DAMAGES

11.1 Provisions for liquidated damages will be as set forth in Plans and Specifications and as in the Agreement form.

12. SUBSTITUTE AND "OR-EQUAL" ITEMS

12.1 The drawings or specifications may make a reference to a specific manufacturer's make or model identification for a material or item of equipment. The materials and equipment described in this way, by a manufacturer's brand name, establishes a standard of required type, function, quality, expected life to be met by any proposed substitute or "or-equal" item. Such reference to a name shall be considered as requiring the contractor to furnish either that product or a substitute proposed by the contractor and approved by the Engineer as an approved equal.

12.2 An application for acceptance will not be considered by the Engineer until after the effective date of the Agreement.

12.3 Each submission by the contractor for review of a substitute shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed item including drawings, cuts, performance and test data, and any other information necessary for an evaluation.

12.4 The Engineer's review of the substitution will consider the City's normal inventory of repair parts for the specified equipment and the possibility of increased down time for repairs to equipment of a type that repair parts are not in the City's inventory.

13. BID FORM

13.1 The Bid Form is included with the bidding documents. This form shall be used by the bidder to submit its bid.

13.2 All blanks on the Bid Form must be completed by printing in ink or by typewriter on the hard copy provided or filled in electronically prior to printing a hard copy of the electronic form provided. All signatures on all bid documents shall be original signatures. No white-out may be used on the Bid Form.

13.3 Discrepancies between the sum of the labor unit price in the bid and/or the material unit price in the bid for an item will be resolved by using the total unit price in the bid stated by the

bidder. Discrepancies between the amount in figures and the amount in words for the total unit bid price for an item will be resolved by using the amount stated in words. The Bid Price for each item shall be the sum of the total unit prices times the estimated quantity. Discrepancies between the multiplication of the estimated quantity of an item on the proposal and the total unit price stated by the bidder will be resolved by using the total unit price stated by the bidder and the estimated quantity.

- 13.4 Bids by corporations must be executed by a corporate officer accompanied by evidence of authority to sign. The corporate seal must be affixed and attested by the secretary or an assistant secretary.
- 13.5 Bids by a partnership must be executed in the partnership name and signed by a partner, whose title must be shown below the signature.
- 13.6 The bid shall contain an acknowledgment of receipt of all addenda.
- 13.7 The address and telephone number for communication regarding the bid must be shown.
- 13.8 An out-of-state corporation must provide evidence of authority to conduct business in the State of Ohio.
- 13.9 The bid price stated in the bid form shall be the full price for completion of the work which price shall include all payments by the City to the contractor for all labor, material, equipment, supervision, and overhead required to complete the work.
- 13.10 The cost of completing all work specified in the drawings and in the specifications, in accordance with the contract documents, shall be included by the bidder in the pay items listed on the Bid Form.

14. SUBMISSION OF BIDS

- 14.1 Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be bound with the other bidding documents, and enclosed in an opaque sealed envelope marked "**BID ENCLOSED**" for project (by name) plus the name and address of the bidder.
- 14.2 If the bid is sent through the mail or delivered by another delivery system, the sealed bid envelope shall be enclosed in a separate envelope with the notation "**BID ENCLOSED**" on the face of the delivery envelope. Bids received, if any, after the deadline for delivery of bids, will be returned unopened.

15. NO MODIFICATION OF BIDS

- 15.1 After submission of a bid to the City, no modification of the bid may be made by the bidder.

16. WITHDRAWAL OF BIDS

16.1 After submission of a bid to the City, and at any time before the deadline for bid submission, the bidder may withdraw its bid by giving a duly signed written notice requesting to withdraw the bid to the City. Thereafter, that bidder will be disqualified from further bidding on the work, including any re-bid held by the City.

17. OPENING OF BIDS

17.1 All bids received will be opened and (unless obviously non-responsive) read aloud publicly at the place where the bids are to be submitted. A summary of the prices bid will be mailed to all bidders after a tabulation of the bids is completed by the Engineer.

18. BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.1 All bids will remain subject to acceptance for sixty (60) days after the day of the bid opening, but the City may, in its sole discretion, release the bid and return the bid security prior to the end of the sixty (60) day period.

19. AWARD OF CONTRACT

19.1 The City reserves the right to reject any or all bids, including without limitation, the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional bids, and to reject the bid of any bidder if the City believes that it would not be in the best interest of the City to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fail to meet any other pertinent standard or criteria established by the City.

19.2 In evaluating the bids to determine the lowest and best bid, the City will consider the qualification of the bidders, whether or not the bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may have been submitted with the bid or as may be requested per the contract documents before the award is made by the City.

19.3 The City may consider the qualifications and experience of the subcontractors, suppliers, and other persons and organizations proposed for those portions of the work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. The City may consider also the operating cost, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the work when such data is required to be submitted prior to the award of the work.

19.4 The City may conduct such investigations as the City deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of

the bidders, proposed subcontractors, suppliers, and other persons and organizations to perform and furnish the work in accordance with the contract documents to the City's satisfaction within the prescribed time.

- 19.5 If the contract is to be awarded, it will be awarded to the bidder whose evaluation by the City indicates to the City that the award will be in the best interest of the City.
- 19.6 If the contract is to be awarded, the City will give the successful bidder a Notice of Award within sixty (60) days after the day of the bid opening, unless the bidder grants a time extension to the City.

20. SIGNING OF AGREEMENT

- 20.1 When the City gives a written Notice of Award to the successful bidder, it will be accompanied by the required number of the unsigned counterparts of the Agreement. Within ten (10) days thereafter the contractor shall sign the Agreement and deliver all copies to the City Engineer. The City will then execute the Agreement, and the City Finance Director's Certification of Funds, and will deliver one (1) fully executed Agreement to the contractor with the Notice to Commence Work. One copy of the Agreement and attached documents will be sent to the local agent of the contractor's surety.

21. CONTRACT SECURITY

- 21.1 When the successful bidder delivers the executed Agreement to the City, it must be accompanied by the required performance and payment bonds, unless the bond submitted with the bid was a **Bid/Contract Bond** which will serve as the required contract security.

22. SALES TAXES

- 22.1 The City is exempt from Ohio State sales and use taxes on the materials and equipment to be incorporated into the work. Said taxes shall not be included in the bid price. The contractor shall contact the City Auditor's Office for completion of the tax-exempt forms required for the project.

23. PRICE ADJUSTMENT:

- 23.1 ODOT Proposal Notes 520, 525, 530 and 535 regarding Fuel Price Adjustment, Asphalt Binder Price Adjustment and Steel Price Adjustment shall not be applicable for this Bid. There shall be no compensation paid for by the City for fuel price variation during the period of this project.
Asphalt Binder Price Adjustment as per ODOT Specification 401.20 shall not be applicable for this Bid. There shall be no compensation paid for by the City for Asphalt price variation

during the period of this project.

24. PREVAILING WAGES:

24.1 The contractor and any subcontractor must comply with the prevailing wage rate requirements on public improvements as determined by the Secretary of Labor in accordance with Federal-Aid requirements. Wage rates are set forth in the U.S. Department of Labor wage decision No. OH20260001, 01/02/2026 and can be found at website <https://sam.gov>.

25. CONTRACTOR LICENSES

25.1 The Contractor and all Subcontractors shall obtain, maintain and renew the necessary licenses as required by the City of Elyria Building Department to complete the Work. The Contractor shall secure all credentials and pay for all necessary fees associated with obtaining these licenses. Fees shall be included in the price of the contract and no additional payment will be made to the Contractor for reimbursement of fees. Licenses shall be obtained prior to initiating any construction activity associated with that particular license.

26. STORMWATER BEST MANAGEMENT PRACTICES

26.1 The Contractor and all Subcontractors shall consider and implement any and all storm water best management practices (BMPs) as per City of Elyria Codified Ordinance Chapter 960 "Storm Water Management" and as per the Ohio Department of Natural Resources in the most recent version of the Rainwater and Land Development manual for construction site runoff and post-construction site runoff as required to minimize, reduce and/or eliminate the discharge of contaminated or sediment-laden storm water from the construction site. All existing and proposed outlets and drainage courses shall be protected.

26.2 The Contractor shall develop and submit a plan for approval to the City Engineer's office. Weekly site inspections, including all inspections within 24 hours after a rain event, shall be the responsibility of the contractor. Completed and signed inspection forms shall be submitted to the Engineer within 48 working hours after the completion of the inspection. Maintenance of all BMPs shall be the responsibility of the contractor. The contractor and all of its subcontractors shall comply with all other storm water best management practices. Cost for this work shall be included in pertinent unit price bid items. No separate payment will be made.

CITY OF ELYRIA CLAIM MANAGEMENT PROCESS

City of Elyria will utilize following procedure that is fair to all parties, to resolve the disputes administratively, and expedites dispute resolution.

- a. Contractor's claims involving minor quantity adjustments can be approved by the Chief Construction Inspector in the field. Any necessary quantity adjustments that are agreed upon are noted by the Chief Construction Inspector and addressed in a future Change Order. These claims typically result from minor plan calculations errors, actual field measurements and/or proof of material deliveries. Contractor shall provide necessary documents to in support.
- b. If the Contractor's claim cannot be resolved by the Chief Construction Inspector, then the claim and all supporting documentation will be forwarded to the Construction Project Engineer (CPE) for review. This review typically takes three (3) business days complete.
- c. If the Contractor's claim cannot be resolved by the Construction Project Engineer, then the claim and all supporting documentation will be forwarded to the City Engineer for review. This review takes typically seven (7) business days to complete.
- d. If the Contractor's claim cannot be resolved by the City Engineer, then the claim and all supporting documentation will be forwarded to the City Law Director for resolution through remediation or through Court action.

1. The Claim Management process for this project will follow the guidelines shown below:

Please note that any claim resolution that is achieved during this process that either increases or decreases the total contract amount, or modifies the Contractor's contractual completion date must be approved by the City Engineer through Change Order process to be valid. The Change Order is approved and signed by the Mayor, City of Elyria.

2. When analyzing a Contractor's claim, the following items will be considered:

- a. Was the claim filed in a timely manner and was the City given proper notice of the claim by the contractor?
- b. The Contractor's justification of the claim.
- c. Do the project plans and specifications address the elements of the claim?
- d. Do the contract documents address the elements of the Contractor's claim?
- e. Determination of actual field conditions giving rise to the claim.
- f. Identify each specific claim issue. Identify the position of both sides on each issue.
- g. Identify responsibility. If the claim is delay related, is it excusable vs. non-excusable, compensable or is there an issue of concurrent delay?
- h. The actual impact of the delay on the contractor.
- i. Did the contractor inspect the project site and become familiar with all conditions prior to submitting his bid?

AGREEMENT FORM

AGREEMENT
BY AND BETWEEN
THE CITY OF ELYRIA
AND

CONTRACT NO. ____ - ____

This Agreement is made and entered into, effective upon full execution by all parties, by and between the City of Elyria, Ohio, an Ohio municipal corporation with offices located at 131 Court St., Elyria, Ohio 44035 (the "City") and _____, an Ohio entity with offices located at _____, Ohio 44____ (the "Contractor"). The Contractor and the City shall be collectively referred to as the "Parties" and individually as the "Party."

WHEREAS, this Agreement was authorized by Ordinance No. 20 ____ - ___, which was passed by the Elyria City Council on _____; and

WHEREAS, the City desires to enter into an agreement for _____ services (the "Agreement" or "Contract"); and

WHEREAS, the Contractor has submitted a bid in response to the City's request for bid proposals; and

WHEREAS, the City has determined that the Contractor has the experience and resources to complete the work as contemplated by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1 – WORK

The Contractor shall furnish all labor, equipment, supplies, and supervision of labors necessary to complete the work, which is the subject of this Agreement (the "Work"). The Work will involve the construction of _____. The project location is _____. Construction documents were prepared by _____ and _____ the Office of the Elyria City Engineer.

The City's request for bid proposals (attached as Exhibit "A") and Contractor's proposal (attached as Exhibit "B") are incorporated by reference as if fully rewritten herein. In the event that a discrepancy exists between the terms of Exhibits A and B, the terms of Exhibit A will be controlling and binding. In the event that a discrepancy exists between the terms of the Exhibits and this Agreement, the terms of this Agreement will be controlling and binding.

ARTICLE 2 - ENGINEER TO BE CITY'S REPRESENTATIVE

The services of the Contractor shall be carried out under the authority for contract administration of the Mayor and Safety-Service Director of the City, who is designating the City Engineer as the person who, as the City's representative, will administer the contract, undertake and assume all duties and responsibilities, and will have the authority and rights assigned to the Engineer under the specifications for this work.

ARTICLE 3 - CONTRACT PERFORMANCE

COMPLETION TIME: Construction of this project shall begin at the discretion of the contractor but must be completed no later than _____, 20____.

ARTICLE 4 - LIQUIDATED DAMAGES

The City and the Contractor recognize that time is of the essence in this agreement, and that the City will suffer financial loss (including but not limited to incidental and consequential damages) if the Work is not carried out within the time specified in Article 3 herein. Both the City and the Contractor recognize the impossibility of calculating the actual loss suffered by the City if the Work is not substantially completed within the specified time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay the City the sum of five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Article 3 herein for completing the work assigned, unless the City grants a time extension for good reason not under the control of the Contractor. In addition to the foregoing, Contractor agrees to pay for the cost of any additional inspection services that the City requires as a result of delays.

ARTICLE 5 - CONTRACT AMOUNT

The City shall pay the Contractor for performance of the Work, in accordance with the contract documents, a total amount of, which shall not exceed, _____
Dollars and _____ Cents (\$_____).

The Contractor agrees that no extra work will require any extra or additional payments by the City, unless the extra work is authorized in writing by the City's Mayor before the extra work is performed.

ARTICLE 6 - PAYMENT PROCEDURES

The Contractor agrees to promptly (by the 5th of each month), but not more frequently than once every thirty (30) days, submit an original invoice with one (1) copy and the required estimate computations with required certifications to the Engineer. The City will make progress payments on or about the 26th day of each month.

Prior to substantial completion, progress payments will be in an amount equal to ninety percent (90%) of the Work completed and ninety percent (90%) of the materials and equipment delivered to the project site, but not yet incorporated into the Work, less in each case, the aggregate of all payments previously made. No retainer shall be subject to interest payments to the Contractor nor required to be deposited with an escrow agent who will pay interest to the Contractor.

Acceptance of the Work, Pre-Final Payment and Final Payment: Upon final completion and acceptance of the work by the City in accordance with E.C.O. 143.06, the City shall pay the Contractor all funds due the Contractor, except for the five percent (5%) retainer per Section 22 of the Instructions to Bidders. The five percent (5%) retainer shall be paid by the City to the Contractor, after completion of all work and all punch list items. If defects in the Work are found during the one (1) year period after final completion, the defects are to be corrected by the Contractor. The corrected work shall be guaranteed for a period of one (1) year by the Contractor. After satisfactory completion of all work and all punch list items, the five percent (5%) retainer or any payment withheld for other purpose may be released.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

The Contractor acknowledges that it has taken the steps reasonably necessary to ascertain the nature and the location of the Work to be performed, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work, its cost, including but not limited to (1) the cost of purchasing, transportation, handling and storage of materials and supplies, (2) the availability of labor and cost, (3) the uncertainties of weather or similar physical conditions, including the time of year the project is to be constructed, (4) all other physical conditions which can impact the cost of doing Work, (5) the character of the equipment and facilities needed to prepare to do the work and to carry out the work to be performed, considering the limited work area, and the access to the site, (6) the cost of the Contractor's overhead, (7) the cost of providing worker supervision and management, (8) the cost of providing insurance, bonds, and related expenses.

The Contractor also acknowledges that it has had sufficient time during the bidding of the project to review all contract documents, and to make all investigations necessary to reasonably ascertain the cost of doing the Work. Further, the Contractor has correlated the results of observations, examination, investigations, and review of local labor conditions with the terms and conditions of all of the contract documents, including the addenda listed on the Contractor's Bid Form, in determining the price bid for the Work. The Contractor acknowledges that the City assumes no responsibility for any understanding reached or representations made concerning conditions which can affect the Work, by any of its officers, employees, or agents before execution of this Agreement, unless that understanding or representation is expressly stated in the contract documents which are a part of the Agreement.

ARTICLE 8 – INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the City, its elected officials, employees, representatives and agents (the "Indemnified Parties") from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action (including attorneys' fees) directly or indirectly arising out of, resulting from or related to (in whole or in part), (1) the Work performed hereunder, (2) the contract or (3) an act or omission of Contractor, a Subcontractor or any individual partnership or joint venture or corporation (a) directly or indirectly employed by Contractor or a Subcontractor or (b) for whose acts or omissions Contractor or a Subcontractor may be liable. Contractor shall promptly advise the City in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense shall assume on behalf of the City, and conduct with due diligence and in good faith, the defense with counsel satisfactory to the City, provided, that the City shall have the right to be represented therein by advisory counsel of its own selection and at

its own expense; and provided further, that if the defendants in any such action include both Contractor and the City, and the City shall have reasonably concluded that there may be legal defenses available to the City which are different from or additional to, or inconsistent with those available to Contractor, the City shall have the right to select separate counsel to participate in a defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification, the City, at its option, and without relieving Contractor of its obligations hereunder may so perform, but all costs and expenses so incurred by the City in that event shall be reimbursed by Contractor to the City, together with interest on the same from the day any such expense was paid by the City until reimbursed by Contractor at the rate of interest provided to be paid on judgments, by the law of the State of Ohio. The obligations of Contractor under this Section shall survive the expiration of the Contract.

In claims against any of the Indemnified Parties by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensations acts, disability benefits acts, or other employee benefit acts.

The Contractor acknowledges that, as a political subdivision of the State of Ohio, the City does not indemnify any person or entity. The Contractor agrees that no provision of this Agreement or any other agreement between the Contractor and the City may be interpreted to obligate the City to indemnify or defend the Contractor or any other party.

ARTICLE 9 - CONTRACT DOCUMENTS

This Agreement and accompanying documents, including the Bid Form, Unit Price Schedule, Instructions to Bidders, Invitation to Bid, all Addenda listed on the Contractors Bid Form, the General Conditions, State Prevailing Wages and Technical Specifications as prepared by the City Engineer's Office, and all attachments submitted by the Contractor with its Bid Form, are made a part of the Agreement hereto as if the contents of those contract documents were fully rewritten herein. The City and the Contractor agree that there are no oral or written representations, understandings or agreements relating to this Agreement which are not fully expressed herein. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

ARTICLE 10 - INSURANCE

10.1 Insurance Coverage Requirements. Contractor agrees to procure and maintain during the term of this Agreement insurance in the types and amounts shown below.

- a) Worker's Compensation in full compliance with the requirements of the State of Ohio.
- b) SEE REQUEST FOR BID PROPOSALS FOR SPECIFIC INSURANCE REQUIREMENTS.

All insurance shall be exclusive of defense costs whenever possible.

10.2 Insurance Coverage Terms and Conditions.

- a) The insurance policies of the Contractor, required for this Agreement, shall:
 - (i) Name the "City of Elyria, Ohio" as an Additional Insured. This does not apply to Worker's Compensation and Professional Liability.
 - (ii) Contain a waiver of subrogation provision wherein the insurer(s) waives all rights of recovery against the City; and
 - (iii) Be primary and not in excess or contingent on any other basis; and
- b) The insurance required for this Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A- VII or above.
- c) The terms of this Agreement shall be controlling and shall not be limited by any insurance policy provision.
- d) High-risk activities may require higher insurance limits.
- e) These insurance provisions shall not affect or limit the liability of the Contractor stated elsewhere in this Agreement or as provided by law.
- f) The Contractor shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Agreement.
- g) The City reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the City.
- h) If the Bid/Proposal specifies the need for higher limits of liability for any applicable insurance provision, the Bid/Proposal specifications shall govern.
 - i) Where coverages are made on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of professional activity related to this Agreement.
 - j) The Contractor shall furnish a Worker's Compensation Certificate and Certificate of Insurance evidencing that the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the City shall not constitute a waiver of any rights of the parties under this Agreement.
 - k) The Certificate(s) of Insurance evidencing these coverages shall contain the following additional insured and waiver of subrogation language where applicable:
 - (i) "City of Elyria, Ohio is an additional insured for purposes of commercial

general liability and automobile liability": and/or

(ii) "Waiver of subrogation in favor of the City of Elyria."

l) Any additional insured shall receive at least thirty (30) days' notice of any cancellation, change reducing the coverage, or refusal to renew, which is adverse to the interest of any additional insured to be affected. The City shall be provided with any notice of non-renewal, regardless of the cost. The same terms apply to any subcontractors to the extent practical.

10.3 Certificate of Insurance. This Agreement is contingent upon, and not valid or binding upon City, until such times as City receives said Certificate of Insurance.

ARTICLE 11 - TERMINATION

11.1 Termination for Default. Either party may terminate this Agreement, in whole or in part, whenever such party determines that the other has failed to satisfactorily fulfill its material obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days. Such termination shall be referred to as "Termination for Default." If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Agreement, in full or in part, as of the date specified in the notice of termination. The Contractor, however, shall be paid for all services and/or materials provided on or prior to the date of termination. Any fees paid in advance shall be returned to the City at a prorated amount.

11.2 Termination for Financial Instability. In the event that the Contractor becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against the Contractor of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the City may, at its option, terminate this Agreement under Section 11.1, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE 12 – ASSIGNMENT

No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment. No assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

ARTICLE 13 – SAFETY

The Contractor agrees to comply with Chapter 4121:1-3 of the Ohio Administrative Code entitled "Specific Safety Requirements of the Industrial Commission of Ohio relating to Construction," effective November 1, 1979 and with the "Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulation, Title 29, Chapter XVII, Part 1926," and to also comply with all

other requirements of law.

ARTICLE 14 – WARRANTY

THE CONTRACTOR HEREBY WARRANTS THAT THE SERVICES WILL NOT INFRINGE, MISAPPROPRIATE OR VIOLATE ANY INTELLECTUAL PROPERTY OR ANY OTHER RIGHT OF ANY PERSON OR ENTITY. THE SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER, CONSISTENT WITH INDUSTRY STANDARDS. THE SERVICES WILL BE PERFORMED IN STRICT ACCORDANCE WITH THE HIGHEST STANDARDS OF CARE, SKILL, DILIGENCE AND PROFESSIONAL COMPETENCE APPLICABLE TO SUPPLIERS/CONTRACTORS ENGAGED IN PROVIDING SIMILAR SERVICES IN THE LORAIN COUNTY AREA. THE CONTRACTOR HAS THE REQUISITE SKILL AND STAFF TO PERFORM THE SERVICES REQUIRED HEREUNDER FULLY, IN A TIMELY AND EFFICIENT MANNER. THE CONTRACTOR WILL PERFORM THE SERVICES IN ACCORDANCE WITH ALL APPLICABLE LAWS.

ARTICLE 15 - PREVAILING WAGE RATES

The Contractor agrees to pay wages equal to or exceeding the minimum wage rates as determined by the Ohio Department of Commerce (“ODOC”). The Contractor agrees to require all subcontractors, if any, to pay wages equal to or exceeding the minimum wage rates as determined by the ODOC.

ARTICLE 16 – SUCCESSORS

The City and the Contractor each bind themselves, their partners, successors, assigns and legal representatives in respect to all conveniences, agreements and obligations contained in the contract documents.

ARTICLE 17 - OTHER PROVISIONS

The Contractor agrees to comply with the requirements of Chapter 167 of the Elyria Codified Ordinances as amended, regarding Affirmative Action and Equal Employment Opportunity. All sections of Chapter 167 as amended on the first date of advertising this project, which are to be a part of any construction or service agreement executed by the City, are included in this Agreement by reference, as if repeated in full herein.

ARTICLE 18 – REVIEW BY COUNSEL

Each party and its counsel have reviewed and approved this Agreement and any ambiguities will not be resolved against the drafting party.

ARTICLE 19 – ENTIRE AGREEMENT

This Agreement sets forth the entire agreement between the parties and supersedes any prior agreements, negotiations or understandings of the parties.

ARTICLE 20 – GOVERNING LAW

This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that any actions regarding this Agreement or the Work performed hereunder shall be brought in the Court of Common Pleas of Lorain County, Ohio. Each party consents to the exclusive jurisdiction of the Court of Common Pleas of Lorain County, Ohio, and hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Lorain County for any reason.

ARTICLE 21 – SEVERABILITY

If any term or provision of this Agreement is deemed by a court of law to be invalid or enforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 22 – SURVIVAL OF TERMS

Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

ARTICLE 23 – WAIVER

No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

ARTICLE 24 – FORCE MAJEURE

Neither Party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.

ARTICLE 25 – INDEPENDENT CONTRACTOR

It is fully understood and agreed that the Contractor is an independent contractor and is not an agent, servant, or employee of the City. The Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities.

ARTICLE 26 - ANTI-DISCRIMINATION

Contractor agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex,

gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and a violation of this term shall be deemed a material breach of this Contract.

ARTICLE 27 – HEADINGS

The section headings appearing in this Contract are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.

ARTICLE 28 - COUNTERPARTS

This Contract may be executed in separate original or facsimile counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

ARTICLE 29 – OHIO REVISED CODE

Contractor shall comply with all applicable provisions of Sections 2909.21 to 2909.34 Ohio Revised Code (Ohio Patriot Act) and Sections 3517.13 Ohio Revised Code.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the City and the Contractor on the dates below.

CONTRACTOR NAME

Signature

Print Name

Date

THE CITY OF ELYRIA, OHIO

Kevin A. Brubaker – Mayor Date

APPROVED AS TO FORM:

Amanda R. Deery, Law Director

Date

**NOTICE TO COMMENCE WORK and NOTICE TO COMMENCEMENT OF A
PUBLIC IMPROVEMENT PURSUANT TO REVISED CODE SECTION 1311.252**

State of Ohio)

) SS:

County of Lorain)

I, Kevin A. Brubaker, being first duly sworn, says that:

- 1) Affiant is the Mayor of the City of Elyria, Ohio.
- 2) The City of Elyria, Ohio gives this Notice to Commence Work to the Contractor, for the public improvement of the **LOR-ELYRIA TLCI PHASE 6**.
- 3) The following is the name, address and trade of the principal contractor working on this public improvement:

NAME: .

ADDRESS:

TRADE: **GENERAL**

DATE OF FIRST EXECUTED CONTRACT:

- 4) The following is the name and address of the surety for the principal contractor:

NAME OF SURETY:

ADDRESS OF SURETY:

- 5) For the purpose of serving an affidavit pursuant to Revised Code Section 1311.26, service may be made upon the following representative of the Public Authority:

Kevin A. Brubaker, Mayor CITY OF ELYRIA, OHIO 131 Court Street Elyria, Ohio 44035

FURTHER AFFIANT SAYETH NAUGHT.

Signature: _____

SWORN TO BEFORE ME and subscribed in my presence this _____ day of _____, 2026.

(SEAL) Notary Public: _____

FINANCE DIRECTOR'S CERTIFICATION OF FUNDS

I hereby certify that there is in the Treasury of the City of Elyria, State of Ohio, to the credit of the LOR –ELYRIA TLCI Phase 6, ODOT LPA, and the Muni Motor Vehicle Tax , Capital funds, and not appropriated for any other purpose and/or in the process of collection, as required by law, the sum of _____ to pay the cost of the attached contract for the LOR-ELYRIA TLCI PHASE 6 in Elyria, Ohio.

Executed this _____ day of _____ in the year of 2026.

Finance Director

Ordinance No.: 2025-120

Passed On: August 4, 2025

Account No.:

RESOLUTION OF DIRECTORS

Date _____

The Board of Directors of: _____ (Firm Name)

met on the _____ day of _____ of _____.

A motion was made, seconded and passed authorizing _____ (Name),
_____ (Title) to sign and submit a bid to the City of Elyria,
Ohio, for the **LOR-ELYRIA TLCI PHASE 6** and authorizing the same person to
enter into a contract with the City of Elyria, Ohio, if the City awards the work to
the firm.

By: _____ Title: _____
(Signature)

ATTEST:

By: _____ Title: _____
(Signature)

(CORPORATION SEAL)

NOTE: A similar form with an original signature and a current date (within 12 months) may be used in place of this form. If the form submitted with the bid has photocopy signatures, the form must be replaced with one having original signatures, before the contract is signed.

BID FORM

PROJECT: LOR-ELYRIA TLCI PHASE 6

THIS BID IS SUBMITTED TO: Mayor Kevin A. Brubaker
Office of the Safety-Service Director
City of Elyria, Ohio
131 Court Street
Elyria, Ohio 44035

1. The undersigned **Bidder** proposes and agrees, if this **Bid** is accepted, to enter into an **Agreement** with the **City** in the form included in the **Contract Documents** to complete all **Work** as specified or indicated in the **Contract Documents** for the **Contract Price** and within the **Contract Time** indicated in this bid, and all in accordance with the **Contract Documents**.
2. **Bidder** accepts all of the terms and conditions of the **Instructions to Bidders**, including without limitation those dealing with the disposal of the **Bid Security**. This **Bid** will remain open for sixty (60) days after the day of **Bid Opening**. **Bidder** will sign the **Agreement** and submit the documents required by the **Contract Documents** within ten (10) days after the date of the **City's Notice of Award**.
3. In submitting this **Bid**, the **Bidder** represents, as more fully set forth in the **Agreement**, that:

- (a) The **Bidder** has examined copies of the **Invitation to Bid**, the **Instructions to Bidders**, the **Specifications**, the **Supplementary Conditions** and all other **Contract Documents**, and also the following addenda:

Date	Number	Topics

the receipt of all of which is hereby acknowledged.

- (b) **Bidder** has examined the site and locality where the work is to be performed, the legal requirements (**Federal**, **State**, and **Local**, laws, ordinances, rules and regulations) and, conditions affecting cost, progress or performance of the **Work**, and has made such independent investigations as **Bidder** deems necessary.
- (c) This **Bid** is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation, 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 person, firm, or corporation to refrain from bidding; and **Bidder** has not sought by collusion to obtain for himself any advantage over any other bidder or over the **City**.

4. **Bidder** agrees that all **Work** on the project will be completed and all lanes open to traffic by July 31, 2026.
5. **Bidder** will complete the **Work** in accordance with the **Contract Documents** for the following unit price(s):

BID FORM
PROJECT: LOR-ELYRIA VAR TLCI PHASE 6
PID 122081

ITEM NO.	ODOT ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	LABOR PRICE (A)	MATERIAL PRICE (B)	UNIT PRICE (A+B) = C	TOTAL ESTIMATED COST (C) x (Est. Quantity)
<u>ROADWAY</u>								
1	202	WALK REMOVED	2400	SF	\$	\$	\$	\$
2	608	CONCRETE WALK, AS PER PLAN	2400	SF	\$	\$	\$	\$
<u>EROSION CONTROL</u>								
3	832	EROSION CONTROL	100	EACH	\$	\$	\$	\$
<u>LIGHTING</u>								
4	625	LUMINAIRE, UNDERPASS, SOLID STATE (LED), AS PER PLAN	10	EACH	\$	\$	\$	\$
5	625	CONNECTION, UNFUSED PERMANENT	1	EACH	\$	\$	\$	\$
6	625	NO.10 AWG POLE AND BRACKET CABLE	275	FT	\$	\$	\$	\$
7	625	NO. 6 AWG DISTRIBUTION CABLE	60	FT	\$	\$	\$	\$
8	625	PULL BOX, 725.12, 18" (LIGHTING)	1	EACH	\$	\$	\$	\$
9	625	CONDUIT, 1", 725.04	285	FT	\$	\$	\$	\$
10	625	TRENCH	120	FT	\$	\$	\$	\$
11	625	PLASTIC CAUTION TAPE	126	FT	\$	\$	\$	\$
<u>TRAFFIC CONTROL</u>								
12	630	GROUND MOUNTED SUPPORT, NO.3, INCL. SUPPORT ANCHOR	132	FT	\$	\$	\$	\$

BID FORM
PROJECT: LOR-ELYRIA VAR TLCI PHASE 6
PID 122081

ITEM NO.	ODOT ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	LABOR PRICE (A)	MATERIAL PRICE (B)	UNIT PRICE (A+B) = C	TOTAL ESTIMATED COST (C) x (Est. Quantity)
13	630	SIGN, FLAT SHEET, AS PER PLAN	36	SF	\$	\$	\$	\$
14	630	608	494	SF	\$	\$	\$	\$
15	630	SIGN POST, DECORATIVE	7	EACH	\$	\$	\$	\$
16	630	GROUND MOUNTED STRUCTURAL BEAM SUPPORT, S4X7.7, PER PLAN	84	FT	\$	\$	\$	\$
17	644	SHARED LANE SYMBOL	20	EACH	\$	\$	\$	\$
		<u>MAINTENANCE OF TRAFFIC</u>						
18	614	MAINTAINING TRAFFIC	1	LS	\$	\$	\$	\$
		<u>MISCELLANEOUS</u>						
19	624	MOBILIZATION	1	LS	\$	\$	\$	\$
20	690	SPECIAL- BICYCLE RACK, AS PER PLAN	2	EACH	\$	\$	\$	\$

CONSTRUCTION SUBTOTAL

UNOFFICIAL GRAND TOTAL FOR ALL BASE BID ITEMS (1 thru 20)

\$ _____

7. The following documents are attached to and made a condition of this bid:

- (a) Bid Guarantee in the form of _____.
- (b) City EEO Forms and City Affirmative Action Forms.
- (c) Resolution of Directors, if bid is by a corporation.
- (d) Bidder's Insurance Agent's Affidavit, signed by the agent.
- (e) DBE Data Sheets I through III

The bidder is _____ (Insert Individual, Partnership, Corporation or Joint Venture.)

This **Bid** is signed on this _____ day of _____, in the year of 2026.

BIDDER: _____
(SEAL) (Firm Name)

BY: _____ Title: _____
(Printed Name)

BY: _____ Attest: _____
(Authorized Signature)

BUSINESS ADDRESS: (Address to which all official notices are to be sent.)

Telephone Number: (____) ____ - ____ FAX Number: (____) ____ - ____

Email Address: _____

(NOTE: If Bid is by a partnership, a partner must sign; if the **Bid** is by a corporation, an authorized officer must sign, and seal is to be affixed; and if **Bid** is by a joint venture, all members of the joint venture must sign).

BID GUARANTY AND CONTRACT BOND

(OHIO REVISED CODE SECTION 153.571)

Bond Number _____

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

(Bidder's Name and Address)

as principal and _____ (Name of Sureties) as sureties, are hereby held and firmly bound unto the City of Elyria, Ohio, and the Ohio Department of Transportation as obligees in the penal sum of the dollar amount of the bid submitted by the principal to the obligees on _____ (Date) to undertake the project known as **LOR-ELYRIA TLCI PHASE 6.**

The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligees, incorporating any additive or deductive alternate Bids made by the principal on the date referred to above to the obligees, which are accepted by the obligees. In no case shall the penal sum exceed the amount of \$ _____ (Dollars in Figures) _____ (Dollars in Words). (If the amount in figures and the amount in words are different, the amount in words shall be used as the amount intended.) (If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, 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.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for the **LOR-ELYRIA TLCI PHASE 6.**

Now, therefore, if the obligees accept 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 obligees the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid and such larger amount for which the obligees may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligees do not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligees the difference not to exceed ten percent (10%) of the penalty hereof between the amount specified in the bid, or the costs, in connection, 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 obligees accept the bid of the principal and the principal within ten (10) days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bill of materials, which said contract is made a part of this bond the same as though set forth herein;

Now also, if the said principal shall well and faithfully do and perform the things agreed by obligees 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 obligees 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 the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on this bond.

Name of Bidder: _____ (SEAL)

By: _____
(Printed Name)

Title: _____

Attest: _____

Name of Surety: _____ (SEAL)

Surety Mailing Address: _____

By: _____
(Printed Name)

Title: _____

By: _____
(Signature)

(Attorney-in-Fact)

Surety Agent Mailing Address: _____

CONSENT OF SURETY

KNOW ALL MEN BY THESE PRESENTS, that we _____

(Name of Bidder) as principal and _____ (Name of Surety Company)

a corporation created and existing under the laws of the State of _____ and having its principal office at _____

(Complete mailing address of Surety Company) are held firmly bound unto the **City of Elyria, Ohio**, AND THE Ohio Department of Transportation, hereby jointly and severally and binding our heirs, successors, administrators, executors, legal representatives and assigns by these presents.

THE CONDITION OF THIS OBLIGATION are such that whereas, the above named principal submits the herewith Bid for the **LOR-ELYRIA TLCI PHASE 6** to the **City of Elyria, Ohio**, in conformance with the **Invitation to Bid**, and with the **Instructions to Bidders**. We, the above named surety, will meet all stipulations and will execute the Surety Bond as hereinafter, to the above named principal in event he should be awarded a contract and in an amount of

(Amount in Words) which is an amount equaling or exceeding the amount of said principal's bid plus all additive alternates, and guaranteeing its performance in conformity with the plans and specifications and payment of all laborers and suppliers of materials for the project, to the City of Elyria, Ohio and the Ohio Department of Transportation.

WITNESS OUR SIGNATURES this _____ day of _____, 2026.

Name of Bidder: _____ (SEAL)

By: _____ Title: _____
(Printed Name)

By: _____ Attest: _____
(Signature) (Signature)

Name of Surety: _____ (SEAL)

By: _____ Title: _____
(Printed Name)

By: _____ Attest: _____
(Signature) (Signature)

Surety Agent Mailing Address: _____

BIDDER'S INSURANCE AGENT'S AFFIDAVIT

Project: **LOR-ELYRIA TLCI PHASE 6**

I, _____, _____, first being duly sworn do state the following:
(Name) (Title)

- (a) that I am an Insurance Agent.
- (b) that I have reviewed the insurance requirements in the General Conditions, and have noted therein the requirements on insurance including the cancellation, and non-renewal provisions.
- (c) that I am familiar with the insurance that _____

(Bidder's Name)
has in force, and that its insurance meets the City requirements, or that it can be amended to meet the City requirements.

- (d) that if an award of contract is made by the City to the Bidder an insurance certificate will be issued within ten (10) days, which will include the **City of Elyria, Ohio, and The Ohio Department of Transportation (ODOT) as Additional Insured.**

Further, Affiant sayeth naught.

(Agent's Signature)

Sworn to and subscribed in my presence this _____ day of _____, 2026.

(Notary Public)

(SEAL)

(Attach Bidders Insurance Certificate to this page)

(The insurance certificate may be submitted after the bid opening date.)

BIDDER'S AFFIDAVIT

This affidavit is to be filled out and executed by the **Bidder**; if the bid is made by a corporation, then by its properly authorized agent.

STATE OF _____

SS

COUNTY OF _____

I, _____ being first duly sworn, deposes and says that he/she is _____ (sole owner, a partner, officer of, etc.) of the _____ (Name of Business) the party making the enclosed bid; and says further that: (Give the names of all persons, firms or corporations interested in the enclosed bid) _____ and that those listed are the only party or parties interested with the profits of any contract which may result from the herein contained bid; that the said Bid is made without any connection or interest in the profits thereof with any other person making any other bid or Bid for said work; that no member of the City Council, the head of any department, division, or bureau or employee therein or any officer of the City of Elyria, Ohio is directly or indirectly interested therein; that said bid is genuine and not collusion, or communication or conference, with any person, to fix the bid price of Affiant or any other bidder, or to fix any overhead, profit or cost element of said bid price, or that of any other bidder, or to secure any advantage against the City of Elyria, Ohio, or any person interested in the proposed contract; and that all statements contained in said bid are true; that such bidder has not, directly or indirectly submitted this bid, or contents thereof, or divulged information or data relative thereto to any association, or to any member or agent thereof; and further says that all the statements made by him in said Bid are true.

AFFIANT

Sworn to and subscribed before me this _____ day of _____, 2026.

Notary Public in and for,

County, Ohio My
Commission Expires: _____

PENALTY FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than \$10,000.00 or imprisonment of not more than ten years, or both, for knowingly and willfully making or causing to be made, "any false or fraudulent statements ---or use or cause to be made or used and false ---account, claim, certification, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement--"relating to any matter within the jurisdiction of any Governmental Department or Agency.

SUPPLEMENTARY CONDITIONS

I. INSURANCE LIMITS:

LIABILITY, PROPERTY DAMAGE, VEHICLE AND BUILDER'S RISK INSURANCE: **Contractor** shall purchase and maintain such comprehensive general liability and other types of insurance as will provide protection from claims as set forth herein which may arise out of or result from **Contractor's** performance of the work and **Contractor's** other obligations under all contract documents, whether such performance is by **Contractor**, by any lower subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

The claims types for which insurance shall be provided shall include:

- a) Claims under workers compensation, disability benefits and others similar employee benefit acts;
- b) Claims for damage because of bodily injury, occupational sickness, sickness, disease, or death of any person;
- c) Claims for damages sustained by any person as a result of an employment practices offense directly or indirectly related to the employment of such person by the contractor or a subcontractor or by any other person for any other reason;
- d) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of the use resulting there from;
- e) Claims for damages because of bodily injury or death of any person or for property damage arising out of the ownership, leasing, renting, hires, loaned, or otherwise using, and the maintenance of any item of construction or equipment of any power tools by **Contractor** or a subcontractor;
- f) Claims for damages because of bodily injury or death of any person or for property damage arising out of the ownership, leasing, renting or using maintenance of any motor vehicle, by **Contractor** or a subcontractor;
- g) Claims for damages to the work itself, and/or all existing **City** property located in the proximate area of the work, because of injury or destruction of the tangible property, including the loss of use resulting there from; and
- h) Claims for damages because of bodily injury or death of any person or property damage arising out of the use, transportation or storage of any type of explosives, explosive devices or dangerous ordnance use in doing work included in the Contract.

The insurance limits required by this section shall include the specific coverage as are applicable to the work, and shall be written for the specified limits stated herein, or for the specific limits as provided in any applicable supplementary specification, or as may be required by law, wherever is greater.

The Contractor shall have and maintain the type of insurance that provides the limits of coverage for each occurrence. If the Contractor's policy is not of the form providing coverage limits for each occurrence, then he shall obtain a rider providing coverage by occurrence for the work under this specification.

The insurance shall be written by a solvent and otherwise acceptable company(s) authorized to do business in the State of Ohio,

Evidence of insurance shall be provided by the Contractor to the City for review and acceptance by the City, before the issuance of the Notice to Commence.

Such evidence shall consist of the Contractors insurance agents "insurance affidavit" (when requested, on a form that is on file at the City Engineer's office) the Certificate of Insurance plus the Certificate of Compliance provided by the Ohio Department of Insurance for the Company(s) in question.

Failure to provide evidence of the maintenance of all of the required insurance shall suspend the City's obligation to pay for any and all work performed after the cessation of the required coverage for which evidence has previously been provided, and can be the basis of a non-compensable order to suspend work

or for the termination of the contract for cause.

The Contractor's policy shall provide and the Certificate of Insurance shall reflect the fact that the City is an additional insured and all (if any) other additional insured shall receive at least thirty (30) days notice of any cancellation, change reducing the coverage, or refusal to renew, which is adverse to the interests of the City and/or other additional insured to be effected. The City and other additional insured shall be provided with any notice on non-renewal, regardless of the cause. The liability limits for the required coverage notes above shall be at least:

EACH OCCURRENCE AGGREGATE

Bodily Injury & Property Damage Combined \$ 2,000,000.00 \$ 2,000,000.00 Vehicle Liability
\$ 1,000,000.00 \$ 1,000,000.00 Builders Risk/Installation Floater (The amount of the contract)

ANY AND ALL LIABILITY LIMITS SHALL BE EXCLUSIVE OF DEFENSE COSTS.

II. CONTROLLING LAW AND JURISDICTION:

This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Ohio. This Agreement shall be subject to the jurisdiction of the Court of Common Pleas Lorain County, Ohio.

III. ENGINEER: Unless otherwise provided, the **Engineer** shall be the City of Elyria Engineer.

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

During the performance of this contract, the contractor agrees as follows:

1. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex, national origin or handicap. The contractor shall take affirmative action to insure that applicants are employed and that employees are treated without regard to race, religion, color, sex, national origin or handicap during employment.

As used herein, the word "treated" shall mean and include without limitation, the following:

recruited: whether in the form of rates of pay or other forms of compensation

selected for training: including apprenticeship, promoted, upgraded, transferred, laid off and terminated

The contractor agrees to and shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the non-discrimination clause.

1 The contractor shall, in all solicitations or advertisement for employees placed by or on the behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or handicap.

2 The contractor shall submit to the City, in writing, an affirmative action plan and shall furnish all information and reports required by the City or its representatives pursuant to this chapter and permit access to the contractor's books, records, and accounts by the contracting agency and affirmative action officials for purposes of investigation to ascertain compliance with the Affirmative Action Program. The contractor may comply with the provisions of this section by doing one of the following:

- (a) The contractor may submit its Affirmative Action Program in writing at the time of its submission of bid; or
- (b) The contractor may submit its Affirmative Action Program in writing prior to its submission of bid for pre-certification.

The contractor's Affirmative Action Program may be pre-certified upon the filing and approval of its Affirmative Action Program with the City's OEO office not more than six months prior to its bid submission. Upon pre-certification, the contractor will be issued a pre-certification compliance number for its Affirmative Action Program, which may be used and referred to in any bid submission in the place of any other written requirement for Affirmative Action Program submission. It shall be the sole responsibility of the contractor to be re-certified upon the expiration of its pre-certification. Approved programs may be reviewed before any pre-certification expiration date.

4. The contractor shall send to each labor union or representatives of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitments under the Equal Employment Opportunity Clause of the City of Elyria and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

1 The contractor shall take such action with respect to any subcontractor as the City of Elyria may direct as a means of enforcing the provisions of the EEO Clause including penalties and sanctions for noncompliance. Provided, however; that in the event the contractor becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the City's Equal Opportunity Program and in the case of contracts receiving federal assistance, the contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.

2 The contractor shall file and shall cause his/her subcontractors, if any, to file compliance reports with the City in the form and to the extent prescribed by the City or its representative. Compliance reports shall contain information as to the employment practices, policies, programs and statistics of the contract and subcontractor(s).

3 The contractor shall include the provisions of the Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor and/or vendor.

4 Refusal by the contractor or subcontractor to comply with any provision of this program as herein stated and described will subject the offending party to any or all of the following penalties:

(a) Withholding of all future payments under the involved public contracts to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provision of this contract.

(b) Refusal of all future bids for any public contract with the City or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he/she has established and shall carry out the policies of the programs as herein outlined.

(c) Cancellation of the public contract and declaration of forfeiture of the performance bond.

(d) In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided by contract, appropriate proceedings may be brought to enforce these provisions, including the enjoining within applicable laws of contractors, subcontractors or other organizations, individuals, or groups who prevent directly or indirectly or seek to prevent directly or indirectly compliance with the policy as herein outlined.

Name of Company Official Title

Name of Company Area Code/Telephone Number

Signature of Company Official Date Signed

CONTRACTOR'S/VENDOR'S AFFIRMATIVE ACTION INFORMATION SHEET

This Affirmative Action Information Sheet is to be completed and returned with the Bid.

Bidder's EEO Officer's Name: _____

Bidder's EEO Officer's Title: _____

Bidder's Firm Name: _____

Address: _____

City/State/Zip Code _____

Telephone Number: (____) ____ - _____ Fax Number: (____) ____ -

Note: The bidder must comply with either #1 or #2 below. (Place a check mark in the correct item.)

#1 _____ Our firm has been pre-certified, by Elyria's EEO Officer.

Our pre-certification number is: _____

Our pre-certification expires on: _____

_____ A copy of our pre-certification letter from Elyria is attached.

#2 _____ We are enclosing our own Affirmative Action Plan (number of page(s) ____) with
this bid.

(For City Office Use Only)

CITY OF ELYRIA SIGN-OFF:

Affirmative Action/Equal Opportunity Officer: _____

Comments:

CONTRACTOR/SUPPLIER AFFIRMATIVE ACTION PROGRAM
TOTAL PRESENT WORKFORCE BREAKDOWN
TABLE 1

JOB CATALOG	TOTAL MALES	MALE EMPLOYEES MINORITY GROUPS			TOTAL FEMALE S	FEMALE EMPLOYEES MINORITY GROUPS			TOTAL ALL EMPLOYEE S
		WHITE	BLACK			SPANISH			
OFFICIALS/ ADMINISTRATORS									
PROFESSIONALS									
TECHNICIANS									
PROTECTIVE SERVICE									
SALES									
PARAPROFESSIONALS									
OFFICE-CLERICAL									
SKILLED CRAFT SPECIFY									
JOURNEYMEN									
HELPERS									
APPRENTICES									
TRAINEES									
LABORERS									
SERVICE/CUSTODIAL									
OTHERS (SPECIFY)									
TOTALS									

PID:

Agreement Number:

SAM Unique Entity Number:

DIRECT PAYMENT TO CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We _____ **(INSERT NAME OF LPA)** _____ request that all payments for the Federal/State share of the construction costs of this Agreement performed by _____ **(CONTRACTOR'S NAME)** _____ be paid directly to _____ **(CONTRACTOR'S NAME)** _____.

VENDOR Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
LPA signature:	

LPA Name:	Error! Reference source not found.
Oaks Vendor ID:	0000000000
Mailing Address:	Error! Reference source not found.
	Error! Reference source not found.
ODOT Approval signature:	

ODOT PREQUALIFICATION DATA SHEET

The Prime Contractor shall list those items of work which he will perform (not subcontract) for which he is prequalified by ODOT to perform. Minimum percentage to be performed by the Prime Contractor is 30%.

AWARDED CONTRACT AMOUNT | \$

**PERCENTAGE OF ODOT PREQUALIFIED WORK TO BE PERFORMED BY
THE PRIME CONTRACTOR**

PQ.1

**THE CONTRACTOR SHALL FURNISH THE FOLLOWING ITEM
WITHIN 14 DAYS OF NOTIFICATION OF AWARD:
DRUG-FREE WORKPLACE PROGRAM ENROLLMENT
CERTIFICATE**

Utility Note

LOR-ELYRIA VAR TLCI PHASE 6
Fed No. XXXXXX PID No. 122081
City of Elyria
LORAIN COUNTY, OHIO

GENERAL

There are utilities within the construction limits of the project. The status of these arrangements for the completion of the work prior to or in coordination with the physical construction is shown on the Utility Note below. The Contractor shall appropriately coordinate and give adequate notification to the utility owners whose castings require adjustment or whose facilities require relocation during construction so as not to conflict with the Contractor's schedule of operations. Utility contact information is included in the General Notes of the project plans.

The Contractor must exercise caution when working in proximity to the existing and/or relocated facilities.

The Contractor shall cooperate with all utilities located within the limits of this construction project and take responsibility for the protection of the utility property and services.

If the Contractor is directed by a utility company to perform any work not specifically contained in the Plans or Proposal, the City will not compensate the Contractor for this work unless the City approves the request in writing before the work begins. If the work is not pre-approved by the City, the Contractor will be responsible for obtaining reimbursement for its work from the utility company which directed the Contractor to perform the work.

In the event that the Contractor requests additional work, not specifically contained in the Plans or Proposal, be performed by a utility company, the Contractor will be responsible for reimbursing the utility company for the additional work unless the City has agreed in writing to pay for the additional work before the work begins.

SPECIFICALLY

Bidders are advised that the following utility facilities will not be cleared from the construction area at the time of award of the contract. These utility facilities shall remain in place or be relocated within the construction limits of the project as set out below.

City of Elyria

The City of Elyria has underground electric conduits on Kerstetter Way between Sta. 60+00 and 62+50 under the brick pavers to be removed. Contractor shall remove concrete sidewalk and pavers with caution. Conduits will remain in place. No conflicts have been identified.

Various water and sewer mains are located underground on Kerstetter Way. Conflicts have not been identified; however, if a conflict arises, the City will pothole and verify location and depths for sign foundations (auger type base).

Contact Engineering, Kathy McKillips (440) 326-1444, engineer@cityofelyria.org

Ohio Edison (First Energy)

The Company has aerial and underground facilities on Kerstetter Way, Broad Street, E Broad Street, Lake Avenue, Furnace Street and 3rd Street. No conflicts have been identified. If a conflict should arise, the Contractor shall immediately contact Ohio Edison so the proper actions can be taken to prevent delay of construction.

Ohio Edison Contact is Natalie Camp (440) 326-3319, ncamp@firstenergycorp.com

Columbia Gas of Ohio

Columbia Gas of Ohio has existing gas lines throughout the project area that will remain in place and in service during the project construction. No conflicts have been identified based on information received from Columbia Gas; however, the contractor is reminded to use caution when performing any underground activities.

Columbia Gas of Ohio Contact is Dan Suren (440) 336-2714, DSuren@nisource.com

ODOT Local-let Federal Bid Doc Template

ODOT's LPA Template (ODOT Specification Book and LPA Specification Book)

Required Contract Provisions

1 ODOT'S 2023 CONSTRUCTION AND MATERIAL SPECIFICATIONS (C&MS) AND ITS SUPPLEMENTS

ODOT's Construction and Material Specifications (C&MS) and its supplements are fully incorporated by reference, as if they were rewritten here. This incorporation does not affect the order of precedence outlined in Section 105.04 of the C&MS Manual.

When bidding on this project, the Prime Contractor should replace the terms "the department," "the engineer," "the DCE," and "the DCA" with "the Local Public Agency (LPA)." Additionally, this document does not change the LPA's duty to comply with the Ohio Revised Code (O.R.C.), local ordinances, and/or other applicable requirements.

2 PN (PROPOSAL NOTE) 100 FOR LPA PROJECTS

LPAs have the option to incorporate PN 100 into their contracts to include specific preferences.

PN 100 Inclusion Options (Check One):

- **PN 100 is included in the contract**
- **PN 100 is not included in the contract**

If PN 100 is included, it must be edited and added to the contract.

3 PN 133 – 07/18/2025 – PRODUCTS PRODUCED IN THE UNITED STATES

The requirements of this note replace the domestic material requirements in 106.09 of the C&S.

Furnish products that are produced in the United States according to the applicable provisions of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA) Pub. L. 117-58, §§ 70901-27, and 23 CFR 635.410.

A. Federal Requirements. All steel or iron products incorporated permanently into the work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. "Manufacturing" is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing as it relates to steel or iron products begins with the initial melting and mixing and continues through the bending and coating stages.

"Manufactured products" means articles, materials, or supplies that have been processed into a specific form and shape, or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

All manufactured products used in the project must be manufactured in the United States ("final assembly requirement") and have greater than 55 percent of the manufactured product's

components, by cost, be mined, produced, or manufactured in the United States (“55 percent requirement”). “Component” means an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product or, where applicable, an iron or steel product. If a manufactured product is predominately iron, steel or a combination of both it must meet the above requirements for steel or iron products. Predominately iron or steel or a combination of both means the total cost of the iron and steel content exceeds 50 percent of the total cost of all its components. Manufactured products on projects that receive Federal authorization on or after October 1, 2025 must meet the final assembly requirement. Manufactured products on projects that receive Federal authorization on or after October 1, 2026 must meet the final assembly requirement and the 55 percent requirement.

All construction materials must be manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

“Construction materials” includes an article, material, or supply—other than an item of primarily iron or steel; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

Construction materials brought on site and combined with other materials are not considered manufactured products.

Precast concrete products that are classified as manufactured products must have their predominately iron or steel components meet the above requirements for iron and steel. The cabinets or other enclosures of intelligent transportation systems and other electronic hardware systems that are installed in the highway right of way and classified as manufactured products must comply with the above requirements for iron and steel if the cabinet or enclosure is predominately iron or steel.

B. Exceptions. The Director may grant specific written permission to use non-domestic steel or iron products in any type of construction in accordance with 23 CFR 635.410(b)(4). The Director may grant such exceptions under the following condition:

- The cost of products to be used does not exceed 0.1 percent of the total contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.

The Director may grant specific written permission to use non-domestic construction materials or manufactured products in any type of construction in accordance with 2 CFR Part 184. The Director may grant such exceptions under the following conditions:

- The total value of the non-compliant products is no more than the lesser of \$1,000,000 or 5% of total applicable costs for the project; or
 - applicable costs are defined as the cost of materials (including the cost of any manufactured products) used in the project that are subject to a domestic preference requirement
 - the actual cost of the materials, not the anticipated cost of those materials.
- The total amount of the federal financial applied to the project, through awards or subawards, is below \$500,000;

The Prime Contractor may request an exception on forms provided by the Department.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

C. Proof of Domestic Origin. Furnish certification to the engineer showing the domestic origin of all products covered by this section before they are incorporated into the work. The Daily Source Report form itself is not acceptable certification of domestic origin. Acceptable documentation could be a specification sheet or cut sheet with the country of origin identified on the sheet. Non-domestic product(s) incorporated into the work does not relieve the Prime Contractor of any responsibility to correct the work up to and including removal and replacement of the non-domestic product(s). Products without a traceable domestic origin will be treated as a non-domestic product.

4 PREQUALIFICATION

Only ODOT-prequalified contractors are eligible to submit bids for this project. Prequalification status must be in force at the time of bid, at the time of award, and through the life of the construction contract. For work types that ODOT does not prequalify, the LPA must still select a qualified contractor. Subcontractors are not subject to the prequalification requirement. **The Prime Contractor must perform no less than 30 percent of the total original contract price.**

5 FEDERALLY REQUIRED EQUAL EMPLOYEMENT OPPORTUNITY CERTIFICATION FORM

The bidder hereby certifies that he or she **has, has not**, participated in a previous contract or subcontract subject to the equal opportunity clause, and that he or she **has, has not**, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal

Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity ('EEO'), all reports due under the applicable filing requirements. **The bidder must circle the appropriate "has" or "has not" above.**

6 PN 017 - 10/15/2004 - FEDERALLY REQUIRED EEO CERTIFICATION CLAUSE

The EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)) and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause (41 CFR 60-1.4). Contracts and subcontracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5.

Currently, Standard Form 100 (EEO-1) is the only report required by the implementing regulations.

Proposed Prime Contractors and subcontractors who have participated in a previous contract or subcontract and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration (FHWA) or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

7 PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS

1. Has there been an initial decision in the matter? This can be:
 - a. An existing published wage determination
 - b. A survey underlying a wage determination
 - c. A Wage and Hour Division letter setting forth a position on a wage determination matter
 - d. A conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those regional offices have responsibility for the Davis-Bacon survey program. If the response for this initial contact is not satisfactory, the process described in Subsections 2. and 3. should be followed.

Regarding any other matter not yet ready for the formal process described within this section, initial contact should be made with the Branch of Construction Wage Determinations by writing to:

Branch of Construction Wage Determinations
Wage and Hour Division
U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

2. If the answer to the question in Subsection 1. is yes, an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (see 29 CFR 1.8 and 29 CFR Part 7) by writing to:

Wage and Hour Administrator
U. S Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requester considers relevant to the issue.

3. If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board) by writing to:

Administrative Review Board
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20210

4. All decisions by the Administrative Review Board are final.

8 PN 061 – 01/20/2016 -WAGE SCALE ON ALL FEDERAL-AID PROJECTS

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements.

Contractors shall use only the classifications and wage rates set forth in the United States Department of Labor (USDOL) wage decision found at the website noted below on payrolls submitted to the District Office. Additionally, please note that the wage modification in effect at the time of the project sale date, shall be used by all contractors.

This USDOL wage decision may be viewed at <https://sam.gov/wage-determinations>.

This contract requires the payment of the total of the basic hourly rates plus the fringe benefits payments for each classification in accordance with the following regulations, which by reference are made part of this contract:

- 1) The USDOL Regulations, 29 CFR 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls.

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 termination of the contract and debarment.

The Prime Contractor and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in Section 109.12 of the C&MS. The Prime Contractor's and all subcontractor's payroll records and canceled pay checks shall be made available for inspection by ODOT and USDOL, upon request, anytime during the life of the contract, and for three years thereafter by USDOL. Additionally, the Prime Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

The wage and fringe rates determined for this project shall be posted by the Prime Contractor in a prominent and accessible place on the project, field office, or equipment yard where they can be easily read by the workers.

The Prime Contractor and subcontractors shall submit certified payrolls each week beginning three weeks after the start of work. These payrolls shall include but not limited to the following:

1. Employee name, address, social security number, classification, and hours worked.
2. The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
3. The contract ID and pay week dates.
4. Signature of an authorized company representative.

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.

Please be aware that it is ultimately the responsibility of the Prime Contractor to ensure that all laws relating to prevailing wages in the USDOL Regulations, 29 CFR Parts 1 and 5, are strictly adhered to by all subcontractors on the project.

If the Prime Contractor or any subcontractor fails to comply with any of the provisions contained in this proposal note, ODOT may terminate the contract, debar the Prime Contractor or subcontractor and/or withhold or suspend pay estimates after written notice and a reasonable opportunity to comply has been provided.

9 LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

- A. The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief that:
 - i. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - ii. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any

federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require the language of this certification be included in all lower tier subcontracts which exceed \$100,000 and that all such subcontractors shall certify and disclose accordingly.

10 PN 045 - 10/15/2004 - NON -COLLUSION AFFIDAVIT

In accordance with 23 U.S.C. 112 and O.R.C. Chapter 1331 *et. seq.* and Sections 2921.11 and 2921.13, the bidder hereby states, under penalty of perjury and under other such penalties as the law provides, that he/she or his/her agents or employees have not entered, either directly or indirectly, into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal. Execution of this proposal on the signature portion thereof shall also constitute signature of this Non-Collusion Affidavit as permitted by 28 U.S.C. 1746.

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. Eastern Standard Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

Knowledge of possible bid rigging, bidder collusion, or other fraudulent activities can also be reported via e-mail (hotline@oig.dot.gov) or through their website [Report Fraud Hotline | DOT OIG](#)

11 DRUG FREE SAFETY PROGRAM

During the life of this project, the Prime 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 Safety Program (DFSP) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in the OBWC DFSP or a comparable program approved by the OBWC, ODOT requires each Prime Contractor and subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Prime Contractors and subcontractors. Upon request, the Prime Contractor and subcontractor shall provide evidence of required testing to ODOT.

Each subcontractor shall require all lower-tier subcontractors that provide labor on the project site with whom the subcontractor is in contract with for the work to be enrolled in and be in good standing in the OBWC DFSP or a comparable program approved by the OBWC prior to a lower-tier subcontractor providing labor at the site.

ODOT will declare a bid non-responsive and ineligible for award if the Prime Contractor is not enrolled and in good standing in the OBWC DFSP Discount Program or a similar program approved by OBWC within 8 days of the bid opening. Furthermore, ODOT will deny all requests to sublet when the subcontractor does not comply with the provisions of this section.

Failure of the Prime Contractor to require a subcontractor to be enrolled in and be in good standing in the OBWC DFSP or a comparable program approved by the OBWC prior to the time that the subcontractor provides labor at the site, shall result in the Prime Contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of that Prime Contractor, or the subcontractor who was not enrolled in a program, for future contracts with the state for five years after the date of the breach.

12 OHIO WORKERS' COMPENSATION COVERAGE

The Prime Contractor must secure and maintain valid Ohio workers' compensation coverage until the project has been finally accepted by ODOT. A certificate of coverage evidencing valid workers' compensation coverage must be submitted to the LPA before the contract is executed by the LPA.

The Prime Contractor must immediately notify the LPA in writing if it or any subcontractor fails or refuses to renew their workers' compensation coverage. Furthermore, the Prime Contractor must notify the LPA in writing if it's or any of its subcontractor's workers' compensation policies are canceled, terminated, or lapse.

The failure to maintain valid workers' compensation coverage shall be considered a breach of contract which may result in the Prime Contractor or subcontractor being removed from the project, withholding of pay estimates, and/or termination of the contract.

13 PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY

The Prime Contractor affirmatively represents to the LPA that it is not subject to a finding for recovery under O.R.C. 9.24, or that it has taken the appropriate remedial steps required under O.R.C. 9.24 or otherwise qualifies under that section. The Prime 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 LPA, or

an action for recovery may be immediately commenced by the LPA and/or for recovery of said funds.

14 PN 039 - 10/15/2004 - ASSIGNMENT OF ANTITRUST CLAIMS IN STATE CONTRACT LANGUAGE

The Prime Contractor should recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by ODOT and/or the LPA. As consideration for the award of the contract and intent to be legally bound, the Prime Contractor acting herein by and through the person signing this contract on behalf of the contractor as a duly authorized agent, hereby assigns, sells, conveys, and transfers to ODOT and/or the LPA any and all right, title, and interest to any and all claims and causes of action the Prime Contractor now has or hereafter requires under state or federal antitrust laws provided the claims or causes of action related to the goods or services are the subject to the contract. In addition, the Prime Contractor warrants and represents that it will require all of its subcontractors and first-tier suppliers to assign all federal and state antitrust claims and causes of action to ODOT and/or the LPA. The provisions of this article shall become effective at the time the LPA executes this contract without further acknowledgment by any of the parties.

All contracting entities shall assign their rights and responsibilities to ODOT and/or the LPA for all antitrust claims and causes of action regarding subcontractors.

15 PN 024 – 04/21/2006 – US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS

The above-referenced permits are incorporated and made a part of this contract as special provisions incorporated herein. Therefore, in the event the contractor or its agents refuse or fail to adhere to the requirements of the US Army Corps of Engineers 404 Permit and/or the Ohio Environmental Protection Agency's 401 Water Quality Certification and an assessment or fine is made or levied against ODOT and/or the LPA, the Prime Contractor shall reimburse ODOT and/or the LPA within 30 calendar days of the notice of assessment or fine, or ODOT may withhold the amount of the fine from the Prime Contractor's next pay estimate. All money collected or withheld from the Prime Contractor shall be delivered to the permitting agencies issuing the assessment or fine.

These fines are not to be construed as a penalty but are liquidated damages to recover costs assessed against ODOT due to the Prime Contractor's refusal or failure to comply with the permits.

16 PN 031 - 7/21/2023 – PROMPT PAYMENT - LOCAL-LET CONSTRUCTION PROJECTS

Prompt payment requirements apply to ODOT and, by extension, its Prime Contractors and subcontractors (including traditional subcontractors as well as material suppliers and trucking firms, collectively referred to herein as subcontractors). The state of Ohio's laws related to prompt payment are published in O.R.C. 4113.61. O.R.C. 4113.61 applies to all contracts. The Prime Contractor must comply with this Proposal Note, O.R.C. 4113.61, C&MS 107.21 and, for contracts with USDOT financial assistance (*i.e.*, federally-funded contracts), 49 CFR 26.29.

ODOT monitors the payments made by Prime Contractors and subcontractors for compliance with this Proposal Note, O.R.C. 4113.61, C&MS 107.21 and, for federally funded contracts, 49 CFR 26.29. To facilitate this monitoring, ODOT requires Prime Contractors to report their remitted payments to specified subcontractors, and subcontractors to report their remitted payments to specified lower-tier subcontractors, as follows.

- Prime Contractors must report remitted payments to subcontractors and suppliers .
- Subcontractors must report remitted payments to lower-tier subcontractors and suppliers.

The Prime Contractor must report remitted payments to subcontractors within ten (10) calendar days of each payment it receives from ODOT. Each subcontractor must report remitted payments to Lower-tier Subcontractors within ten (10) calendar days of receipt of each payment received from the Prime Contractor. Payers must report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee. Payment is defined as: issuing Electronic Funds Transfer (EFT) or putting a check in the mail to a subcontractor. The ten-calendar day requirement is met the date that the payment is issued to the subcontractor, not received.

However, as required in C&MS 107.21 and in accordance with O.R.C. 4113.61, Prime Contractors are required to make payment to each subcontractor and supplier within ten (10) calendar days after receipt of payment from ODOT for work performed or materials delivered or incorporated into the project. If a Prime Contractor does not comply with this requirement, penalties in accordance with O.R.C 4113.61 may apply.

SUGGESTED SUB AGREEMENT LANGUAGE – FEDERAL-AID CONTRACTS

Suggested language for the federal-aid Prime Contractor to include in its subcontractor agreements:

As a Subcontractor, supplier and/or trucking firm*, you (the payee) must verify receipt of payments from the Prime Contractor. You must verify each payment within 10 calendar days of the payment being reported by the Prime Contractor. This verification includes whether the payment was received, and if so, whether it was as expected or not. Furthermore, you must report payments to your lower-tier Subcontractors. The payment data reported must include any retainage (and/or other amounts) withheld and any previously withheld amounts released. You must report payments within 10 calendar days of receipt of each payment received from the Prime Contractor. You must also report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee. Your payees must then verify each payment reported by you (the payer) within 10 calendar days of the payment being reported. Your lower-tier Subcontractor sub agreements must include this prompt payment and reporting obligation.*

Suggested language for the subcontractor to include in its lower-tier sub agreements:

As a lower-tier subcontractor, you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). Payees must verify each payment reported by the payer within 10 days of the payment being reported. This verification includes whether the payment was received, and if so, whether it was as expected or not.

SUGGESTED SUB AGREEMENT LANGUAGE – NON-FEDERAL-AID CONTRACTS

Suggested language for the non-federal-aid Prime Contractor to include in its subcontractor agreements:

As a Subcontractor, supplier and/or trucking firm*, you (the payee) must verify receipt of payments from the Prime Contractor. You must verify each payment within 10 calendar days of the payment being reported by the Prime Contractor. This verification includes whether the payment was received, and if so, whether it was as expected or not. Furthermore, you must report payments to your lower-tier Subcontractors. The payment data reported must include any retainage (and/or other amounts withheld) and any previously withheld amounts released. You must report payments within 10 calendar days of receipt of each payment received from the Prime Contractor. You must also report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee. Your payees must then verify each payment reported by you (the payer) within 10 days of the payment being reported. Your lower-tier Subcontractor sub agreements must include this prompt payment and reporting obligation.*

Suggested language for the subcontractor to include in its lower-tier sub agreements:

As a lower-tier subcontractor, supplier and/or trucking firm, you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). Payees must verify each payment reported by the payer within 10 days of the payment being reported. This verification includes whether the payment was received, and if so, whether it was as expected or not.

SANCTIONS AND ADMINISTRATIVE REMEDIES PROMPT PAYMENT

Failure by the Prime Contractor to follow prompt payment requirements may result in the issuance of sanctions listed below. The Prime Contractor may also receive the following sanctions if any of their subcontractors fail to follow prompt payment requirements.

- 1st Level Occurrence: ODOT will issue a Letter of Reprimand to the Prime Contractor (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s));
- 2nd Level Occurrence: ODOT may withhold an estimate in the amount due to the subcontractor(s) that was not reported or paid (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s));
 - If a Prime Contractor receives a 1st Level Occurrence reprimand for a project, all subsequent prompt payment violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1st Level Occurrence reprimand letters will be sent.
- 3rd Level Occurrence: The Prime Contractor may be required to pay interest in the amount of 18% per annum of the payment due, beginning on the 11th day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest (applies if a pattern of not paying subcontractor(s) persists or the Prime Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation and/or debarment).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The Prime Contractor's past project practices;
- the magnitude and the type of offense;

- the degree of the Prime Contractor's culpability;
- any steps taken to rectify;
- the Prime Contractor's record of performance on other projects; and
- the number of times the Prime Contractor has been previously sanctioned by ODOT.

RETURN OF RETAINAGE

Failure by the Prime Contractor to follow return of retainage requirements may result in the issuance of sanctions listed below. The Prime Contractor may also receive the below sanctions if any of their subcontractors fail to follow return of retainage requirements.

- 1st Level Occurrence: ODOT will issue a Letter of Reprimand to the Prime Contractor (applies if there is a failure to report retainage and/or failure to timely return retainage);
- 2nd Level Occurrence: ODOT may withhold an estimate in the amount of retainage due to the subcontractor(s) (applies if there is a failure to report retainage and/or failure to timely return retainage);
 - If a Prime Contractor receives a 1st Level Occurrence reprimand for a project, all subsequent return of retainage violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1st Level Occurrence reprimand letters will be sent.
 - Repeat Occurrences: Continued non-compliance is a material breach of contract and will be treated as such. ODOT can pursue other remedies available by law including suspension, revocation and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the Prime Contractor's past project practices;
- the magnitude and the type of offense;
- the degree of the Prime Contractor's culpability;
- any steps taken to rectify;
- the Prime Contractor's record of performance on other projects; and
- the number of times the Prime Contractor has been previously sanctioned by ODOT.

17 ODOT AS OBLIGEE ON BOND

The Prime Contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of the estimate as security for the faithful performance of its contract. In addition to the project owner, ODOT shall be named as an obligee.

18 PN 015 - 04/17/2020 - CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS

The required contract provisions for federal-aid construction contracts are hereby incorporated by reference as if rewritten herein. The current version of Form FHWA-1273 (available at <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>) shall be physically incorporated in all contracts, subcontracts, and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The Prime Contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts.

SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the Prime Contractor to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

- 1st Tier: Letter of Reprimand
- 2nd Tier: Damages equivalent to the daily liquidated damages amount found in C&MS section 108.07 for each incident of non-compliance
- 3rd Tier: If a pattern of paying damages persists or the Prime Contractor has falsified, misrepresented, or withheld information, the LPA can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the magnitude and the type of offense
- the degree of the Prime Contractor's culpability
- any steps taken to rectify
- the Prime Contractor's record of performance on other projects; and
- the number of times the Prime Contractor has been previously sanctioned by the LPA.

19 PN 032 – 01/31/2021 – C92S REQUIRED ON LOCAL-LET CONSTRUCTION PROJECTS

State and federal law requires that all Prime Contractors and subcontractors participating on state or federally funded projects be evidenced in writing and in conformity with all applicable state and federal laws and regulations.

Effective immediately, all projects advertising after February 1, 2021 will require that a Request to Sublet (C92) form is completed for each subcontractor working on the project prior to the start of work.

A template for this form may be found at, and submitted via, the GoFormz website located at www.goformz.com.

**20 REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID
CONSTRUCTION CONTRACTS (ELECTRONIC FORM FHWA 1273 –
OCTOBER 23, 2023)**

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

- A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, promotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendices A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. MINIMUM WAGES (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

- (ii) The classification is used in the area by the construction industry; and
- (iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is used in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@doj.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@doj.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its reprocurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. Basic record requirements (1) Length of record retention. All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) Information required. Such records must contain the name, Social Security number, last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) Additional records relating to fringe benefits. Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) Additional records relating to apprenticeship. Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. Certified payroll requirements (1) Frequency and method of submission. The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) Information required. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) Statement of Compliance. Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

- (i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;
- (ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) Use of Optional Form WH-347. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access (1) Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices (1) Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or [§ 5.12\(a\)](#).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1 or 3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1 or 3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1 or 3](#); or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1 or 3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its reprocurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. **Anti-retaliation.** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
- b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;
- c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default, 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 Implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**
This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

STATE OF OHIO
DEPARTMENT OF
TRANSPORTATION
COLUMBUS, OHIO
LPA
CONSTRUCTION AND MATERIAL
SPECIFICATIONS

PROPOSAL NOTE 100
07/26/2023



An Equal Opportunity Employer

Modified By: kkm
Local Public Agency: City of Elyria
Date: ~~04/15/2024~~ 10/24/2025

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100 GENERAL PROVISIONS

101 DEFINITIONS AND TERMS

101.01 General. These Construction and Material Specifications are written to the Bidder before award of the Contract and to the Contractor after award of the Contract. The sentences that direct the Contractor to perform Work are written as commands. For example, a requirement to provide cold-weather protection would be expressed as, “Provide cold-weather protection for concrete,” rather than “The Contractor shall provide cold-weather protection for concrete.” In the imperative mood, the subject “the Bidder” or “the Contractor” is understood.

All requirements to be performed by others have been written in the active voice. Sentences written in the active voice identify the party responsible for performing the action. For example, “The Engineer will determine the density of the compacted material.” Certain requirements of the Contractor may also be written in the active voice, rather than the active voice and imperative mood, if the sentence includes requirements for others in addition to the Contractor. For example, “After the Contractor provides initial written notice, the Engineer will revise the Contract as specified in 104.02.”

Sentences that define terms, describe a product or desired result, or describe a condition that may exist are written in indicative mood. These types of sentences use verbs requiring no action. For example, “The characteristics of the soils actually encountered in the subgrade may affect the quality of the cement and depth of treatment necessary.”

101.02 Abbreviations. The following abbreviations, when used in the Contract Documents, represent the full text shown.

AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Officials
AC	Asphalt Cement (pavement), Alternating Current (traffic)
ACBFS	Air Cooled Blast Furnace Slag (aggregate)
ACI	American Concrete Institute
ACIA	Asynchronous Communications Interface Adapter (traffic controller)
ADT	Average Daily Traffic
ADTT	Average Daily Truck Traffic
AIC	Amps Interrupting Capacity
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANFO	Ammonium Nitrate and Fuel Oil
ANSI	American National Standards Institute
AOS	Apparent Opening Size (fabric)
AREA	American Railway Engineering Association
AMRL	AASHTO Material Reference Library
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers

ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BBR	Bending Beam Rheometer (asphalt binder test)
BMP	Best Management Practice (erosion)
BOF	Basic Oxygen Furnace (aggregate)
BSG	Bulk Specific Gravity
BTEX	Benzene, toluene, ethyl benzene, and xylene (a soil test)
BUSTR	Bureau of Underground Storage Tank Regulations (Division of Fire Marshal)
C&MS	Construction and Material Specifications
CAPWAP	Case Pile Wave Analysis Program
CBAE	Cut Back Asphalt Emulsion
CCRL	Cement and Concrete Reference Laboratory
CCS	Crushed Carbonate Stone
CECI	Contactors Erosion Control Inspector
CFR	Code of Federal Regulations
CIE	Commission Internationale d'Eclairage (illumination)
CPE	Construction Project Engineer (LPA Local-let Project specific)
CPESC	Certified Professional in Erosion and Sediment Control
CRS	Cationic Rapid Set (asphalt emulsion)
CRSI	Concrete Reinforcing Steel Institute
CSS	Cationic Slow Set (asphalt emulsion)
CVN	Charpy V-notch (steel test)
CWT	Hundred Weight (100 lbs)
DC	Direct Current
DCA	District Construction Administrator
DCE	District Construction Engineer
DDD	District Deputy Director
DET	District Engineer of Tests
DGE	District Geotechnical Engineer
DLS	Data Logging System (traffic markings)
DNR	Department of Natural Resources
DRC	Dry Rodded Condition (asphalt aggregate test)
DSR	Dynamic Shear Rheometer (asphalt binder test)
DZA	Deficient Zone Average (concrete test)
EAF	Electric Arc Furnace
EDA	Earth Disturbing Activity
EEI	Edison Electric Institute
EIA	Electronic Industries Alliance
EPA	Environmental Protection Agency
EQS	Exceptional Quality Solids (compost)
FAA	Fine Aggregate Angularity (asphalt aggregate)
FCM	Fracture Critical Member (steel test)
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration, Department of Transportation

FRP	Fiber Reinforced Polymer
FSS	Federal Specifications and Standards, General Services Administration
GGBFS	Ground Granulated Blast Furnace Slag
GS	Granulated Slag
HDPE	High Density Polyethylene
HMWM	High Molecular Weight Methacrylate
ICEA	Insulated Cable Engineers Association
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
IPS	International Pipe Standard
ISSA	International Slurry Seal Association
ITE	Institute of Transportation Engineers
ITS	Intelligent Transportation System
IZEU	Inorganic Zinc Epoxy Urethane
JMF	Job Mix Formula
LED	Light Emitting Diode
LPA	Local Public Agency
LWT	Loaded Wheel Test (asphalt test)
MBF	Thousand Board Feet (wood)
MC	Medium Cure (asphalt emulsion)
MCB	Microchannel Bus (traffic controller)
MOV	Metal Oxide Varistor (traffic controller)
MPI	Magnetic Particle Inspection (steel test)
MSG	Maximum Specific Gravity (asphalt)
MTD	Maximum Theoretical Density (asphalt)
NACE	National Association of Corrosion Engineers
NCHRP	National Cooperative Highway Research Program
NEMA	National Electrical Manufacturers Association
NHI	National Highway Institute
NIST	National Institute of Standards and Technology
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
OAC	Ohio Administrative Code
ODOT	Ohio Department of Transportation
OEPA	Ohio Environmental Protection Agency
OH	Open Hearth (aggregate)
OHWM	Ordinary High Water Mark
OMM	Office of Materials Management (the Central Office Laboratory)
OMUTCD	Ohio Manual of Uniform Traffic Control Devices
ORC	Ohio Revised Code
ORDC	Ohio Rail Development Commission
OSHA	Occupational Safety and Health Administration
OTO	Office of Traffic Operations
OWPCA	Ohio Water Pollution Control Act
OZEU	Organic Zinc Epoxy Urethane
PAT	Project Average Thickness (concrete test)
PAV	Pressure Aging Vessel (asphalt binder test)

PB	Polybutylene (conduit)
PCC	Portland Cement Concrete
PCS	Petroleum Contaminated Soil
PDA	Pile Dynamic Analysis (steel piling)
PE	Polyethylene (conduit)
PG	Performance Grade (asphalt binder grading system)
pH	Potential of Hydrogen
PLS	Pure Live Seed
PRC	Person in Responsible Charge (representation of the Local Public Agency)
PVC	Polyvinyl chloride
QA	Quality Assurance
QC	Quality Control
QCFS	Quality Control Fabricator Specialist (structures)
QCP	Quality Control Program, or Plan, or Points (steel test)
QPL	Qualified Products List
RAP	Reclaimed Asphalt Pavement
RAS	Reclaimed Asphalt Shingles
RC	Rapid Cure (asphalt emulsion)
REA	Rural Electrification Act
RFI	Radio Frequency Interference (traffic controller)
RH	Relative Humidity
RMS	Root Mean Square (traffic controller)
RPCC	Recycled Portland Cement Concrete
RPM	Raised Pavement Marker (traffic)
RS	Rapid Set (asphalt emulsion)
RTFO	Rolling Thin-Film Oven (asphalt binder test)
RUS	Rural Utilities Service
SAE	Society of Automotive Engineers
SBA	Styrene Butadiene Amine
SBR	Styrene Butadiene Rubber
SBS	Styrene Butadiene Styrene
SCD	Standard Construction Drawing
SDS	Safety Data Sheets
SF	Standard Fabricated members (structures)
SI	International System of Units (Metric)
SM	AASHTOWare Project Sitemanager™
SMA	Stone Matrix Asphalt
SPD	Surge Protection Device (traffic controller)
SPST	Single Pole / Single Throw (traffic controller)
SS	Slow Set (asphalt emulsion)
SSD	Saturated Surface Dry (aggregate)
SSPC	Society for Protective Coatings
SWPPP	Storm Water Pollution Prevention Plan
TAP	Traffic Authorized Product
TCE	Trichloroethylene
TMPTA	Tri-methylolpropane Tri-acrylate (paint)
TNP	Total Neutralizing Power

TODS	Tourist-Oriented Directional Signs
TSEC	Temporary Sediment and Erosion Control
TSR	Tensile Strength Ratio (asphalt mix test)
UF	Unique Fabricated members (structures)
UL	Underwriters' Laboratories, Inc.
USACE	United States Army Corps of Engineers
USC	United States Code
VA	Verification Acceptance
VAC	Volts Alternating Current
VCA	Volume of Coarse Aggregate (asphalt mix test)
VECP	Value Engineering Change Proposal
VMA	Voids in the Mineral Aggregate
VME	VersaModule Eurocard (traffic controller)
WDT	Watchdog Timer
WEAP	Wave Equation Analysis (steel piling)
WPS	Welding Procedure Specification (steel test)
WZRPBM	Work Zone Raised Pavement Marker (traffic)
XCU	Explosion, Collapse and Underground

101.03 Definitions. The following terms or pronouns, when used in the Contract Documents, are defined as follows:

Advertisement. The public announcement, as required by law, inviting Bids for Work to be performed or materials to be furnished.

Award. The written acceptance by the PRC and/or CPE of a Bid.

Bid. The offer of a Bidder, on the prescribed form properly signed and guaranteed, to perform the Work and to furnish the labor and materials at the prices quoted.

Bid Documents. The Bid Documents include the Invitation for Bids, Addenda, Proposal, Expedite file, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to Contractor, and any other document designated by the LPA as a Bid Document, all of which constitute one instrument.

Bidder. An individual, firm, or corporation submitting a Bid for the advertised Work, acting directly or through the duly authorized representative, and qualified as provided in ORC 5525.02 to 5525.09.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of 10 feet (3.048 m) or more between undercoppings of abutments or extreme limits of openings for multiple boxes.

A. Length. The length of a bridge structure is the over-all length measured along the centerline of the roadway surface.

B. Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot (0.3 m) or less, the roadway width is measured between parapets or railings.

Calendar Day or Day. Every day shown on the calendar.

Certified Test Data. A test report from a manufacturer's or an independent laboratory approved by the Director listing actual test results of samples tested for compliance with specified LPA requirements. The LPA will accept certified test data from manufacturers' laboratories if their products have been used satisfactorily on prior LPA contracts and their test data has been confirmed. Include a statement that the test data furnished is representative of the material furnished to a LPA project or to a supplier. The report is identified by number or date and identifies the LPA project or supplier to which the material is shipped. Submit reports signed by a person having legal authority to act for the manufacturer or independent laboratory.

Change Order. A written order issued by the PRC and/or CPE to the Contractor, covering changes to the terms and conditions, plans and/or quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Claims. Disputes that are not settled through Steps 1 and 2 of the Dispute Resolution and Administrative Claim Process. The Dispute becomes a Claim when the Contractor submits a Notice of Intent to File a Claim.

Completion Date. The date, as shown in the Contract Documents, on which the Work contemplated shall be completed.

Construction Limits. These limits must encompass all Work. This includes removals, room for construction equipment to complete work, site access, etc.

Construction Project Engineer. Designee by the LPA to serve as the main contact for the Contractor, ODOT, FHWA, and any other agencies having an interest in the Project. The CPE is someone who is tasked with managing a Local-let LPA contract who is either a Professional Engineer or is working under the purview of a Professional Engineer.

Contract. The written agreement between the LPA and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work and the basis of payment.

Contract Bond. The approved forms of security, executed by the Contractor and its Sureties, guaranteeing complete execution of the Work as required by the Contract Documents and the payment of all legal debts pertaining to the construction of the Project which security shall comply with and be subject to ORC 5525.16 and 5525.13, and related provisions.

Contract Documents. The Contract Documents include the Invitation for Bids, Addenda, Proposal, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to contractor, Change Orders, Supplemental Agreements, Extra Work Contracts, "Accepted" and "Accepted as Noted" Working Drawings, and any other document designated by the LPA as a Contract Document, all of which constitute one instrument.

Contract Item (Pay Item). A specifically described unit of Work for which a price is provided in the Contract.

Contract Price. The amount of compensation bid by the Contractor for a Contract Item in the Proposal or the amount of compensation established for a Contract Item added or modified pursuant to the Contract Documents.

Contract Time. The number of workdays or calendar days, including authorized adjustments, allowed for completion of the Project. When a specified Completion Date is shown in the Contract Documents instead of the number of workdays or calendar days, completion of the Project shall occur on or before that date. Specified Completion Date and Calendar Day Contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

Contractor. The individual, firm, or corporation contracting with the LPA for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the provisions of ORC 5525.02 to 5525.09 inclusive, and any amendments thereto.

County. The designated county in which the Work specified is to be done.

Culvert. Any structure not classified as a Bridge that provides an opening under the roadway.

Department. The Department of Transportation, State of Ohio.

Director. Administrative head of the Department appointed by the Governor.

Disputes. Disagreements, matters in question and differences of opinion between the Department's personnel and the Contractor.

District Testing. The Departments district testing laboratories.

Engineer. Duly authorized agent of the LPA acting within the scope of its authority for purposes of engineering and administration of the Contract. The Engineer can be either the Person in Responsible Charge (PRC) or the Construction Project Engineer (CPE). In managing the administration of the contract, the Engineer may confer with representatives of Industry including, but not limited to, the designer of record, landscape architects, environmental specialists, etc.

Engineered Drawings. A type of Working Drawing that requires the practice of engineering as defined in ORC 4733.01(E). Examples of Engineered Drawings include: Excavation Bracing Plans, Demolition Plans, Erection Plans, Falsework Plans, Cofferdam Plans, Causeway Plans, Jacking and Temporary Support Plans, Plans for Heavy Equipment on Structures, Plans for structures for Maintaining Traffic, and Corrective Work Plans.

Equipment. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Extra Work. An item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

Extra Work Contract. A Contract concerning the performance of Work or furnishing of materials involving Extra Work. Such Extra Work may be performed at agreed prices or on a force account basis as provided in ORC 5525.14.

Fabricator. The individual, firm, or corporation that fabricates structural metals or prestressed concrete members as an agent of the Contractor.

Final Inspector. An Engineer appointed by the DDD who inspects the completed Work and accepts it if it complies with the Contract Documents.

Inspector. The Engineer's authorized representative assigned to make detailed inspections of Contract performance.

Invitation for Bids. The invitation for Proposals for all Work on which Bids are required. Such Proposal will indicate with reasonable accuracy the quantity and location of the Work to be done or the character and quality of the material to be furnished and the time and place of the opening of Proposals.

Laboratory. The testing laboratories of the Department, including the Office of Materials Management (OMM) located at 1600 West Broad Street, Columbus, Ohio, and the District testing facilities.

Local. The LPA responsible for managing the construction contract and acting through its authorized representative.

Materials. Any materials or products specified for use in the construction of the Project and its appurtenances.

Partnering. A collaborative process for project cooperation and communication meant to achieve effective and efficient contract performance and completion of the Project within budget, on schedule, safely and with requisite quality in accordance with the contract.

Person in Responsible Charge (PRC). Serves as the agency contact for all issues or inquiries and ensures that all applicable state and federal regulations are followed on the project.

Plans. The drawings, standard construction drawings and supplemental drawings provided by the Department that show the location, character, dimensions, and details of the Work.

Prebid Question. A written inquiry submitted by a prospective bidder.

Professional Landscape Architect. A landscape architect registered with the Ohio Landscape Architects Board to practice landscape architecture in the State of Ohio.

Profile Grade. The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Project Limits. Project limits are points on the mainline centerline of construction where the proposed improvement, as described in the project description on the Title Sheet (excluding incidental construction), begins and ends

Project Right-of-Way. That portion of the Right-of-Way between the beginning and end of the Project.

Project. The specific section of the highway or route together with all appurtenances and Work to be performed thereon under the Contract.

Proposal. The approved form on which the LPA requires Bids to be prepared and submitted for the Work.

Proposal Guaranty. The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if its Bid is accepted.

Questionnaire. The specified forms on which the Contractor shall furnish required information as to its ability to perform and finance the Work required under ORC 5525.01.

Reasonably Close Conformity. Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the Department.

Registered Engineer. An engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional engineering in the State of Ohio

Registered Surveyor. A surveyor registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional surveying in the State of Ohio.

Right-of-Way. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

Road. A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way, as defined in ORC 5501.01.

Roadbed. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulder.

Roadside. The areas between the outside edges of the shoulders and the Right-of-Way boundaries. Unpaved median areas between inside shoulders of divided highways and infield areas of interchanges are included.

Roadside Development. Those items necessary to the highway that provide for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers; such suitable planting; and other improvements as may increase the effectiveness and enhance the appearance of the highway.

Roadway. The portion of a highway within limits of construction.

Shop Drawings. Drawings accepted by the Contractor and submitted to the LPA that describe portions of the Work fabricated off site that are incorporated permanently with the project. LPA acceptance is not required.

Shoulder. The portion of the roadway contiguous to the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Sidewalk. That portion of the roadway primarily constructed for the use of pedestrians.

Signatures on Contract Documents. All signatures on Contract Documents must meet the requirements of 102.06.

Special Provisions. Additions and revisions to the standard and Supplemental Specifications covering conditions peculiar to an individual Project.

Specifications. The directions, provisions, and requirements contained herein as supplemented by the Supplemental Specifications and Special Provisions.

State. The State of Ohio acting through its authorized representative.

Street. A general term denoting a public way for purpose of vehicular travel, including the entire area within the Right-of-Way.

Structures. Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and not otherwise classed herein.

Subcontractor. An individual, firm, or corporation to whom the Contractor sublets part of the Contract to be performed on the job site, who prior to such undertaking receives the written consent of the Director, and who is qualified under ORC 5525.02 through 5525.09 inclusive.

Subgrade. The portion of a Roadbed upon which the pavement structure and shoulders are constructed.

Substructure. All of that part of the structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with backwalls and wings.

Superintendent. The Contractor's authorized representative in responsible charge of the Work.

Superstructure. The entire structure except the Substructure.

Supplement. A list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file in the Office of the Director.

Supplemental Agreement. A written agreement executed by the Contractor and by the PRC and/or CPE covering necessary alterations.

Supplemental Specifications. Detailed specifications supplemental to or superseding these Specifications.

Surety. The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

Titles (or Headings). The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

Waters of the United States. Waters that are under the jurisdiction of the Corps of Engineers under the Clean Water Act as defined by 33 CFR Ch. II Part 328, which as applied to Ohio means: the Ohio River and Lake Erie and any other river, stream, creek, lake, pond, or wetland that drains directly or indirectly into the Ohio River or Lake Erie.

Work. All labor, materials, equipment, tools, transportation, supplies, and other incidentals and all tasks that comprise the project or any portion thereof, as described by the Contract Documents.

Work Limits. Work Limits are the extreme limits of the contractor's responsibility on a project, including all temporary and incidental construction, with the exception of work zone traffic control devices required for maintenance of traffic.

Workday. A calendar day that the Contractor normally works.

Working Drawings. Contractor submitted drawings for work, not otherwise defined in the Bid Documents, and require LPA acceptance. Examples of Working Drawings include: Engineered Drawings, installation plans, certified drawings, and any other supplementary plans or similar data that the Contractor is required to submit for acceptance.

101.04 Interpretations. In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where "contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned," it shall be understood as if the expression were followed by the words "by the Engineer" or "to the Engineer."

102 BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. A Bidder must be prequalified by the Department according to ORC Chapter 5525 and the rules and regulations governing prequalification in order to submit a Bid. Upon request, the Department will provide a prequalification application, applicable rules and regulations, and other relevant information. For prospective Bidders that are not yet prequalified, furnish the Department with a properly completed prequalification application at least 30 days before the date specified for the receipt of Bids. The prequalification certificate is the Bidder's license to Bid and perform construction for the Department.

Subcontractors are not subject to the prequalification requirement unless otherwise specified by the LPA. The Prime Contractor will perform no less than 30 percent of the total original contract price unless a greater percentage is specified.

For foreign Contractors, refer to ORC 5525.18 and Ohio Administrative Rule 5501:2-3-07.

102.02 Contents of Bid Documents. Use the Proposal to prepare and submit Bids for the Work. Upon request, the LPA will provide Bid Documents that include or reference the following:

- A. Location and description of the Project.
- B. Estimate of quantities and description of the Work.
- C. Time to complete the Work.
- D. Amount of the Proposal Guaranty.
- E. LPA's deadline for receiving a completed Bid.
- F. Schedule of contract items.
- G. Standard Specifications, Special Provisions, Supplemental Specifications, and the Plans.
- H. Proposal.

102.03 Issuance of Proposals.

A. General. Upon request, the LPA will provide applicable rates and other relevant information for obtaining bidding information and submitting a Bid.

B. LPA Will Not Issue. The LPA may refuse to sell or issue Bid Documents to a prospective Bidder for any of the following reasons:

- 1. The prospective Bidder owes the LPA for previously issued plans.
- 2. The prospective Bidder has defaulted on previous contracts.
- 3. The prospective Bidder is debarred from bidding on and receiving Department contracts.
- 4. The prospective Bidder is currently in the debarment process.

102.04 Interpretation of Quantities in Proposal. The quantities in the Bid Documents are approximate and the LPA uses them for the comparison of Bids only.

The LPA will only pay the Contractor for the actual quantities of Work performed and accepted according to the Contract Documents. The LPA may increase, decrease, or omit the scheduled quantities of Work as provided in 109.04 without invalidating the Bid prices.

102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions. Carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submitting a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities, and the conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling routes, and all other locations related to the performance of the Work.

When available, the LPA will include in the Contract Documents or provide for the Bidder's review at the LPA's offices or website, one or more of the following:

- A. Record drawings.

- B.** Available information relative to subsurface exploration, borings, soundings, water levels, elevations, or profiles.
- C.** The results of other preliminary investigations.

A reasonable site investigation includes a review of these documents.

Should a question arise at any time during the examination of Bid Documents or investigation of the site the Bidder may seek clarification by submitting a Prebid Question. Responses to Prebid Questions by the LPA are not revisions to the Bidding Documents and are not binding.

102.06 Preparation of Bids.

The Bid Form is included with the bidding documents. This form shall be used by the bidder to submit its bid.

- A.** All blanks on the Bid Form must be completed by printing in ink or by typewriter on the hard copy provided or filled in electronically prior to printing a hard copy of the electronic form provided. All signatures on all bid documents shall be original signatures. No white-out may be used on the Bid Form.
- B.** Discrepancies between the sum of the labor unit price in the bid and/or the material unit price in the bid for an item will be resolved by using the total unit price in the bid stated by the bidder. Discrepancies between the amount in figures and the amount in words for the total unit bid price for an item will be resolved by using the amount stated in words. The Bid Price for each item shall be the sum of the total unit prices times the estimated quantity. Discrepancies between the multiplication of the estimated quantity of an item on the proposal and the total unit price stated by the bidder will be resolved by using the total unit price stated by the bidder and the estimated quantity.
- C.** Bids by corporations must be executed by a corporate officer accompanied by evidence of authority to sign. The corporate seal must be affixed and attested by the secretary or an assistant secretary.
- D.** Bids by a partnership must be executed in the partnership name and signed by a partner, whose title must be shown below the signature.
- E.** The bid shall contain an acknowledgment of receipt of all addenda.
- F.** The address and telephone number for communication regarding the bid must be shown.
- G.** An out-of-state corporation must provide evidence of authority to conduct business in the State of Ohio.
- H.** The bid price stated in the bid form shall be the full price for completion of the work which price shall include all payments by the City to the contractor for all labor, material, equipment, supervision, and overhead required to complete the work.
- I.** The cost of completing all work specified in the drawings and in the specifications, in accordance with the contract documents, shall be included by the bidder in the pay items listed on the Bid Form.

102.07 Duty to Notify of Errors in Bid Documents. Notify the LPA of errors and omissions in the Bid Documents. The Contractor's duty to disclose errors and omissions is not only a bidding requirement but is also a legal requirement that cannot be ignored.

Failure to provide the required notification prior to the opening of bids shall constitute a waiver by the Contractor and does not obligate the LPA for any costs based upon any apparent or patent ambiguity arising from insufficient data or obvious errors in the Bid documents. Knowingly withholding information regarding an error or omission in the Bid Documents, or intentionally misrepresenting an item of Work for financial or competitive gain may result in civil or criminal penalties in excess of the value of the item bid.

102.08 Unbalanced Bidding. Bid all items correctly and price each quantity as indicated in the Bid Documents. The LPA will reject a Mathematically Unbalanced Bid if the Bid is also Materially Unbalanced. A Mathematically Unbalanced Bid is a Bid containing lump sum or unit price items that do not include reasonable labor, equipment, and material costs plus a reasonable proportionate share of the Bidder's overhead costs, other indirect costs, and anticipated profit. A Materially Unbalanced Bid is when the LPA determines that an award to the Bidder submitting a Mathematically Unbalanced Bid will not result in the lowest ultimate cost to the LPA.

102.09 Proposal Guaranty.

- A. Each bid must be accompanied by a bid guarantee. The bid guarantee may be either a **Bid/Contract Bond, Certified Check, Cashiers Check** or a **Letter of Credit**. The bid guarantee shall meet all requirements of Section 153.54 of the Ohio Revised Code and any additional requirements stated herein.
- B. Any bond shall be furnished by a surety company licensed to conduct business in the State of Ohio. Any check used as bid security shall be drawn on a solvent bank.
- C. Any **Bid/Contract Bond** submitted shall be for the full amount of the base bid plus the highest combination of additive alternates, if any. The form of the **Bid/Contract Bond** shall be of substantially the same form as provided in Section 153.571 of the Ohio Revised Code and it shall serve as both a bid bond and a contract bond. If stated, the amount of the **Bid/Contract Bond** shall be specified in figures. Specifying the amount of the bond as a percentage or one hundred percent (100%) is not acceptable.
- D. Section 3905.41, Ohio Revised Code, may require that a **Bid/Contract Bond** be countersigned by an Ohio resident agent. It is the bidder's responsibility to determine the applicability of Section 3905.41, Ohio Revised Code.
- E. Any **Certified Check, Cashiers Check** or a **Letter of Credit** submitted shall be made payable to the City of Elyria Ohio, and shall be for an amount of not less than ten percent (10%) of the base bid plus the highest combination of additive alternates, if any. The amount shall be stated in figures. Any **Certified Check, Cashiers Check** or a **Letter of Credit** submitted shall be accompanied by an executed Consent of Surety form. Any letter of credit shall be revocable only by the City. If the successful bidder used a certified check, cashier's check or letter of credit, it will be returned upon provision of

the **Contract Bond** required by Section 153.54, Ohio Revised Code.

- F. In case a bidder, to whom a contract is awarded, fails to execute the contract within ten (10) days after notice of award is delivered in writing to the bidder, or in case a bidder fails to secure the contract with an acceptable performance bond and payment bond (each in the full amount of the contract) and execute the contract within ten (10) days after notice of the award is delivered in writing to the bidder, the bidder shall be considered as refusing the contract and shall forfeit their bid security in accordance with provisions of Section 153.54 of the Ohio Revised Code.
- G. The bid security from each bidder may be held by the City for up to sixty (60) days. The bid security will be returned to the unsuccessful bidders after the contract has been signed and secured as provided herein above by the successful bidder.

102.10 Delivery of Bid.

- A. Bids shall be submitted at the time and place indicated in the Invitation to Bid and shall be bound with the other bidding documents, and enclosed in an opaque sealed envelope marked "**BID ENCLOSED**" for project (by name) plus the name and address of the bidder.
- B. If the bid is sent through the mail or delivered by another delivery system, the sealed bid envelope shall be enclosed in a separate envelope with the notation "**BID ENCLOSED**" on the face of the delivery envelope. Bids received, if any, after the deadline for delivery of bids, will be returned unopened.

102.11 Withdrawal of Bids.

After submission of a bid to the City, and at any time before the deadline for bid submission, the bidder may withdraw its bid by giving a duly signed written notice requesting to withdraw the bid to the City. Thereafter, that bidder will be disqualified from further bidding on the work, including any re-bid held by the City.

102.12 Combination Proposals. The LPA may elect to issue Bid Documents for projects in combination or separately, so that Bids may be submitted either on the combination or on separate units of the combination. The LPA reserves the right to make awards on combination Bids or separate Bids to the best advantage of the LPA. The LPA will not consider combination Bids, other than those it specifically identifies in the Bid Documents. The LPA will write separate Contracts for each individual Project included in the combination.

102.13 Public Opening of Bids. The LPA will publicly open Bids at the time and place indicated in the Invitation to Bid. The LPA will announce the total Bid amount for each Bid.

Bidders or their authorized agent and other interested persons are invited to the opening.

The LPA may postpone the receipt of Bid time or the opening of Bids time. If the LPA changes the hour or the date of the receipt of Bids or the opening of Bids, it will issue an addendum or public notice to notify prospective Bidders.

102.14 Disqualification of Bidders.

City reserves the right to disqualify non-responsive bidders.

102.15 Material Guaranty. Before any Contract is awarded, the LPA may require the Bidder to furnish a complete statement of the origin, composition, and manufacture of any or all Materials to be used in the construction of the Work together with samples. The LPA may test the samples as specified in these Specifications to determine their quality and fitness for the Work.

102.16 [unused]

102.17 Drug-Free Safety Program. 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 Safety Program ("DFSP") or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable program approved by the OBWC, the LPA requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the LPA.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC-approved DFSP prior to a lower-tier Subcontractor providing labor at the Site.

The LPA will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers' Compensation's Drug-Free Safety Program (DFSP) Discount Program or a similar program approved by the Bureau of Workers' Compensation within 8 days of the bid opening. Furthermore, the LPA will deny all requests to sublet when the subcontractor does not comply with the provisions of this section.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the an OBWC-approved DFSP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the State for five years after the date of the breach.

103 AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Proposals. After opening and announcing the Bids, the LPA will compare the Bidders' proposed prices. The proposed price is the summation of the products of the estimated quantities shown in the Proposal and the unit Bid prices. If the amount shown for the proposed product differs from the actual

product of the unit Bid price and the estimated quantity, then the actual product will govern.

The LPA may reject any or all Bids, waive technicalities, or advertise for new Bids without liability to the LPA.

103.02 Award of Contract.

- A. The City reserves the right to reject any or all bids, including without limitation, the rights to reject any or all nonconforming, non-responsive, unbalanced or conditional bids, and to reject the bid of any bidder if the City believes that it would not be in the best interest of the City to make an award to that bidder, whether because the bid is not responsive or the bidder is unqualified or of doubtful financial ability or fail to meet any other pertinent standard or criteria established by the City.
- B. In evaluating the bids to determine the lowest and best bid, the City will consider the qualification of the bidders, whether or not the bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may have been submitted with the bid or as may be requested per the contract documents before the award is made by the City.
- C. The City may consider the qualifications and experience of the subcontractors, suppliers, and other persons and organizations proposed for those portions of the work as to which the identity of subcontractors, suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. The City may consider also the operating cost, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the work when such data is required to be submitted prior to the award of the work.
- D. The City may conduct such investigations as the City deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the bidders, proposed subcontractors, suppliers, and other persons and organizations to perform and furnish the work in accordance with the contract documents to the City's satisfaction within the prescribed time.
- E. If the contract is to be awarded, it will be awarded to the bidder whose evaluation by the City indicates to the City that the award will be in the best interest of the City.
- F. If the contract is to be awarded, the City will give the successful bidder a Notice of Award within sixty (60) days after the day of the bid opening, unless the bidder grants a time extension to the City.

103.03 Cancellation of Award. The LPA may cancel a Contract award at any time before all parties sign the Contract without liability to the LPA.

103.04 Return of Proposal Guaranty. Immediately after the opening and checking of Bids, the LPA will return all Proposal Guaranties provided in the form of a certified check or cashier's check, except to the three lowest Bidders. Within 10 days after opening bids, the LPA will return the Proposal Guaranties of the two remaining unsuccessful Bidders. After the successful Bidder submits the signed Contract, Contract Bonds, and other Contract Documents, and after the LPA signs the Contract, the LPA will return the Proposal Guaranty to the successful Bidder. The LPA will not return Bid bonds.

103.05 Requirement of Contract Bond. Furnish Contract Bonds within 10 days after receiving notice of award. Furnish Contract Bonds to the LPA and ODOT shall be names as an obligee on the prescribed form, in the amount of the Contract, and according to ORC 5525.16.

103.06 Execution of Contract.

When the City gives a written Notice of Award to the successful bidder, it will be accompanied by the required number of the unsigned counterparts of the Agreement. Within ten (10) days thereafter the contractor shall sign the Agreement and deliver all copies to the City Engineer. The City will then execute the Agreement, and the City Finance Director's Certification of Funds, and will deliver one (1) fully executed Agreement to the contractor with the Notice to Commence Work. One copy of the Agreement and attached documents will be sent to the local agent of the contractor's surety.

103.07 Failure to Execute Contract. If the successful Bidder fails to sign the Contract and furnish the Contract Bonds, the LPA will have just cause to cancel the award. The successful Bidder shall forfeit the Proposal Guaranty to the LPA, not as a penalty, but as liquidated damages. The LPA may award the Contract to the next lowest responsive Bidder, re-advertise the Work, or take any other action decided by the PRC and/or CPE.

104 SCOPE OF WORK

104.01 Intent of the Contract Documents. The intent of the Contract Documents is to provide for the construction and completion of the Work. Perform the Work according to the Contract Documents.

104.02 Revisions to the Contract Documents.

A. General. The LPA reserves the right to revise the Contract Documents at any time. Such revisions do not invalidate the Contract or release the Surety, and the Contractor agrees to perform the Work as revised.

The provisions of this section are subject to the limitation of ORC 5525.14.

B. Differing Site Conditions. During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract Documents or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, notify the Engineer as specified in 108.02.F of the specific differing conditions before they are disturbed or the affected Work is performed.

Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, the LPA will make an adjustment and modify the Contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

C. Suspension of Work. If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or time is due as a result of such suspension or delay, notify the Engineer as specified in 108.02.

Upon receipt of notice, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time required for the performance of the Work has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an equitable adjustment (excluding profit) and modify the contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of its determination whether or not an adjustment to the Contract Documents is warranted. Failure of the Engineer to suspend or delay the Work in writing does not bar the Contractor from receiving a time extension or added compensation according to 108.06 or 109.05.

The LPA will not make an adjustment under this subsection in the event that performance is suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

D. Significant Changes in Character of the Work

Significant changes in the character of work.

- (i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
- (ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
- (iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
- (iv) The term "significant change" shall be construed to apply only to the following circumstances:
 - (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
 - (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the

original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

E. Eliminated Items. The LPA may partially or completely eliminate contract items.

The LPA will only make an adjustment to compensate the Contractor for the reasonable cost incurred in preparation to perform significantly changed work as set forth in 104.02.D or work completely eliminated prior to the date of the Engineer's written order to significantly change or completely eliminate the Work. The adjustment will be determined according to 109.04 and 109.05. Such payment will not exceed the price of the Contract Item.

The LPA will not seek a savings for maintaining traffic, mobilization, and construction layout stakes items for Eliminated Items of Work, unless there is a significant change.

F. Extra Work. Perform Extra Work as directed by the Engineer. The LPA will pay for Extra Work as specified in 109.05. Time extensions, if warranted, will be determined according to 108.06.

G. Unilateral Authority to Pay. The LPA has unilateral authority to pay the Contractor sums it determines to be due to the Contractor for work performed on the project. This unilateral authority to pay by the LPA does not preclude or limit the rights of the LPA and the Contractor to negotiate and agree to the amounts to be paid to the Contractor.

104.03 Rights in and Use of Materials Found on the Work. Upon obtaining the Engineer's approval, the Contractor may use material, such as stone, gravel, or sand, found in the plan excavation for another Contract Item. The LPA will pay for both the excavation of the material under the corresponding Contract Item and for the placement of the excavated material under the Contract Item(s) for which the excavated material is used. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

Obtain written permission from the Engineer according to 107.11.A.

104.04 Cleaning Up. Maintain the Project in a presentable condition. Remove all rubbish, layout stakes, sediment control devices as directed by the Engineer, excess material, temporary structures, and equipment, including stream channels and banks within the Right-of-Way at drainage structures, and all borrow and waste areas, storage sites, temporary plant sites, haul roads, and other ground occupied by the Contractor in connection with the Work. Establish suitable vegetative cover in these areas by seeding and mulching according to Item 659, except for cultivated fields. Leave the Project site in an acceptable condition as determined by the Engineer. The cost of cleanup is incidental to all contract items. The LPA may withhold 10 percent of the Bid amount for the mobilization contract item, if included, until performance under this section is complete. See 624.04.

105 CONTROL OF WORK

105.01 Authority of the Engineer. The Engineer will decide questions concerning all of the following:

- A. The quality and acceptability of Materials furnished.
- B. The quantity of Work performed.
- C. The Contractor's rate of progress.
- D. The interpretation of the Contract Documents.
- E. Acceptable fulfillment of the Contract.
- F. Contractor compensation.

The Engineer may suspend all or part of the Work when the Contractor fails to correct conditions that are unsafe for the workers or the general public, fails to comply with the Contract Documents, or fails to comply with the Engineer's orders. The Engineer may suspend the Work due to adverse weather conditions, conditions considered adverse to the prosecution of the Work, or other conditions or reasons in the public interest.

The Engineer's acceptance does not constitute a waiver of the LPA's right to pursue any and all legal remedies for defective work or work performed by the Contractor in an un-workmanlike manner.

105.02 Plans and Working Drawings. The Plans show details of structures, the lines and grades, typical cross-sections of the Roadway, and the location and design of structures. Keep at least one set of Plans at the Project at all times.

Prepare working drawings when required by the Contract Documents and after verifying applicable field and plan elevations, dimensions, and geometries. Where Work consists of repairs, extension, or alteration of existing structures, take measurements of existing structures to accurately join old and new Work.

Unless otherwise indicated, the LPA will review working drawing submittals to ensure conformance with the Contract and to provide the Contractor a written response to document the results of its review as follows:

- A. **“ACCEPTED.”** The LPA accepts the submittal for construction, fabrication, or manufacture.
- B. **“ACCEPTED AS NOTED.”** The LPA accepts the submittal for construction, fabrication, or manufacture, subject to the Contractor's compliance with all LPA comments or corrections to the submittal. If also marked “RESUBMIT,” the LPA still accepts the submittal, but requires the Contractor to provide a corrected submittal to the LPA.
- C. **“NOT ACCEPTED.”** The LPA does not accept the submittal. The submittal does not conform to Contract requirements. Do not begin construction, fabrication, or manufacture of Work included in the submittal. Revise the submittal to comply with LPA comments or corrections and Contract requirements and provide the revised submittal to the LPA for another review.

“Accepted” and “Accepted as Noted” Working Drawings are Contract Documents as defined in 101.03. The LPA's acceptance will not relieve the Contractor of responsibility to complete the Work according to the Contract nor

relieve a signatory engineer's responsibility as defined by OAC 4733-23. Include the cost of furnishing Working Drawings in the cost of the Work they cover.

105.03 Conformity with Contract Documents. Perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements as shown on the Plans and as specified.

If the PRC and/or CPE determines the Work is not in reasonably close conformity with the Contract Documents and determines the Contractor produced reasonably acceptable Work, the PRC and/or CPE may accept the Work based on engineering judgment. The PRC and/or CPE will document the basis of acceptance in a Change Order that provides for an appropriate adjustment to the Contract Price of the accepted Work or Materials. If the PRC and/or CPE determines the Work is not in reasonably close conformity with the Contract Documents and determines the Work is inferior or unsatisfactory, remove, replace, or otherwise correct the Work at no expense to the LPA.

105.04 Coordination of the Contract Documents. The Contract Documents are those defined in 101.03. A requirement appearing in one of these documents is as binding as though it occurs in all. The Engineer will resolve discrepancies using the following descending order of precedence:

- A. Addenda.
- B. Proposal and Special Provisions.
- C. Plans.
- D. Supplemental Specifications.
- E. Standard Construction Drawings.
- F. Standard Specifications.

Immediately notify the Engineer upon discovering any latent error or omission in the Contract Documents.

105.05 Cooperation by Contractor.

Contractor shall cooperate with City representatives, inspectors, consulting engineers, and other contractors that may be working in the area to the best of their ability.

105.06 Superintendent. Provide a Superintendent for the Project that is available and responsive at all times and is responsible for all aspects of the Work, irrespective of the amount of subcontract Work. The Superintendent must be capable of reading and understanding the Contract Documents and experienced in the type of Work being performed. The Superintendent shall receive instructions from the Engineer or the Engineer's authorized representatives. The Superintendent shall promptly execute the Engineer's orders or directions and promptly supply the required materials, equipment, tools, labor, and incidentals.

105.07 Cooperation with Utilities. Unless otherwise provided for by the Contract Documents, the LPA will direct the utility owners to relocate or adjust water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cableways, signals, and all other utility

appurtenances within the limits of the proposed construction at no cost to the Contractor.

If the Contractor is directed by a utility company to perform any work not specifically contained in this note, the LPA will not compensate the Contractor for this work unless the LPA approves the request in writing before the work begins. If the work is not preapproved by the LPA, the Contractor will be responsible for obtaining reimbursement for its work from the utility company which directed the Contractor to perform the work.

In the event that the Contractor requests that additional work, not specifically contained in this note, be performed by a utility company, the Contractor will be responsible for reimbursing the utility company for the additional work unless the LPA has agreed in writing to pay for the additional work before the work begins.

The Contract Documents will indicate various utility items and indicate a time frame or date when the LPA expects the owners to complete utility relocation or adjustment. Provide utility owners adjusting facilities during construction with adequate notification of the scheduled Work to prevent conflict with the Contractor's schedule of operations.

When bidding, consider all permanent and temporary utility appurtenances in present and relocated positions as shown in the Contract Documents.

According to ORC 153.64 and at least 2 Workdays prior to commencing construction operations in an area that may affect underground utilities shown on the Plans, notify the Engineer, the registered utility protection service, and the owners that are not members of the registered utility protection service.

The owner of the underground utility shall, within 48 hours, excluding Saturdays, Sundays, and legal holidays, after notice is received, start staking, marking, or otherwise designating the location, course, ± 2 feet (± 0.6 m), together with the approximate depth of the underground utilities in the construction area.

If the utility owners fail to relocate or adjust utilities as provided for in the Contract Documents and the Contractor sustains losses that could not have been avoided by the judicious handling of forces, equipment, and plant, or by reasonable revisions to the schedule of operations, then the Engineer will adjust the Contract according to 108.06 and 109.05.

105.08 Cooperation Between Contractors. At any time, the LPA may contract for other work on or near the Project.

Separate Contractors working within the limits of the Project shall conduct their work without interfering with or hindering the progress or completion of Work being performed by other Contractors and shall cooperate with each other as directed by the Engineer.

105.09 Authority and Duties of the Inspector. Inspectors are authorized to inspect the Work and the preparation, fabrication, or manufacture of materials. Inspectors are not authorized to alter or waive requirements of the Contract Documents. Inspectors are authorized to notify the Contractor of Work that does not conform to the Contract; reject materials that do not conform to Specification requirements; and until the issue is decided by the Engineer, suspend portions of the Work if there is a question regarding the Contract Documents, use of unapproved

material, or safety. Inspectors are not obligated or authorized to provide direction, superintendence, or guidance to the Contractor, its crew, its subcontractors, or suppliers to accomplish the Work.

Any action or inaction of the Inspector does not constitute a waiver of the LPA's right to pursue any and all legal remedies for defective work or work performed by the Contractor in an un-workmanlike manner.

105.10 Inspection of Work. The Engineer may inspect materials and the Work. Provide the Engineer or the Engineer's representative access to the Work, information, and assistance necessary to conduct a complete inspection. Notify the Engineer at least 24 hours prior to all required inspections.

When directed by the Engineer, remove or uncover completed Work to allow inspection. After the Engineer's inspection, restore the Work according to the requirements of the Contract Documents. If the inspected Work conformed to the requirements of the Contract Documents, the LPA will pay for uncovering or removing and restoring the Work as Extra Work according to 109.05. If the inspected Work did not conform to the Contract Documents, the LPA will not pay for uncovering or removing and restoring the Work.

The LPA shall have the discretion to dictate the level of inspection for any item of work. The Contractor bears sole responsibility for the quality of work and compliance with the contract regardless of the LPA's level of inspection.

The LPA's failure to identify defective Work or material shall not, in any way, prevent later rejection when defective Work or material is discovered, or obligate the LPA to grant acceptance under 109.11 or 109.12.

Inspection of Work may include inspection by representatives of other government agencies or railroad corporations that pay a portion of the cost of the Work. This inspection will not make other government agencies or railroad corporations a party to the Contract and will not interfere with the rights of the Contractor or LPA.

105.11 Removal of Defective and Unauthorized Work. Work that does not conform to the requirements of the Contract is defective.

Unless the LPA formally accepts defective Work according to 105.03, immediately remove and replace defective Work.

Unauthorized Work is Work done contrary to the instructions of the Engineer, beyond the plan lines, or any extra work done without the LPA's permission. The LPA will not pay for unauthorized Work. The Engineer may order the Contractor to remove or replace unauthorized Work at no expense to the LPA.

If the Contractor fails to comply with the Engineer's orders under the provisions of this subsection, the PRC and/or CPE may correct or remove and replace defective or unauthorized Work and deduct the costs from the Contract Price.

105.12 Load Restrictions. Comply with all legal load restrictions when hauling materials on public roads.

Operate equipment of a weight or so loaded as to not cause damage to structures, to the roadway, or to other types of construction. Comply with subsection 501.05.B.6 for allowed loads on bridges.

Do not use off road vehicles on bases or pavements unless permitted by the PRC and/or CPE in writing.

Do not haul on concrete pavement, base, or structures before the expiration of the curing period.

Do not exceed the legal load limits in this section unless permitted by the PRC and/or CPE in writing.

105.13 Haul Roads. Prior to hauling equipment or materials, provide written notification to the Engineer of the specific roads or streets on the haul route. If the haul route includes roads and streets that are not under the jurisdiction and control of the LPA and the PRC determines that LPA controlled roads are not available or practical for a haul route, the Contractor may use local roads and streets that are not restricted by local authorities. If the PRC determines that LPA controlled roads are available and practical for a haul route, revise the proposed haul route provided in the original written notification and resubmit to the PRC.

If the Engineer determines that haul route roads were properly used during construction to haul equipment and materials and that the haul route roads were damaged, then the Engineer may order the Contractor to perform immediate and practical repairs to ensure reasonably normal traveling conditions. The Engineer will pay for repairs according to applicable provisions of 109.04 and 109.05.

The Contractor shall not file a claim for delays or other impacts to the Work caused by disputes with the local authorities regarding the use of local roads or streets as haul routes. The Contractor shall save the LPA harmless for any closures or hauling restrictions outside the Project limits beyond the control of the LPA.

105.14 Maintenance During Construction. Maintain the Work during construction and until Final Inspector accepts the work under 109.12, except for portions of the Work accepted under 109.11. The Contractor is responsible for damage done by its equipment.

Maintain the previous courses or subgrade during all construction operations, when placing a course upon other courses of embankment, base, subgrade, concrete or asphalt pavement, or other similar items previously constructed. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or if destroyed, the removal of Work previously accepted by the LPA.

Maintain the Post Construction Storm Water Best Management Practice (BMP) features. Prevent sediment laden surface water from coming in contact with the BMP features during construction.

Maintain the Work during construction and before acceptance of the Work under 109.12, except for portions of the Work accepted under 109.11. The LPA will not provide additional compensation for maintenance work.

105.15 Failure to Maintain Roadway or Structure. If the Contractor, at any time, fails to comply with the provisions of 105.14, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer

may immediately proceed to maintain the Project, and deduct the entire cost of this maintenance from monies due or to become due the Contractor on the Contract.

105.16 Borrow and Waste Areas. Prior to beginning borrow or wasting operations, obtain the Engineer's written approval of a detailed operation plan that addresses the following concerns:

- A. Control of drainage water.
- B. Cleanup, shaping, and restoration of disturbed areas.
- C. Disposal of regulated materials.
- D. Avoidance of regulated areas.
- E. Excavation and filling of waste and borrow areas.
- F. Saving of topsoil.
- G. Temporary Sediment and Erosion Control BMPs required for compliance under the Clean Water Act, Ohio Water Pollution Control Act, (OWPCA) (ORC Chapter 6111) and the NPDES permit.

Perform all engineering necessary to ensure long term stability of all side slopes and foundations of all borrow and waste areas. Furnish a certification by a Registered Engineer attesting to the stability of all borrow and waste areas. All damage resulting from the instability of borrow and waste areas, the removal of borrow materials, the placement of waste materials, or the hauling of material to and from these areas is the sole responsibility of the Contractor. Repairs to approved haul roads will be made in accordance with 105.13.

Perform all engineering, including any field investigation, necessary to ensure long term stability of all side slopes and foundations of all borrow and waste areas.

Ensure that all side slopes of all waste areas do not reduce horizontal sight distance as defined by the current version of ODOT's *Location and Design Manual*.

Have the proposed borrow and waste areas reviewed by an environmental consultant that is pre-qualified by the Department for ecological work. Have the environmental consultant certify that the proposed borrow and waste operations will not impact the "Waters of the United States" or an isolated wetland. If consultant certification is not provided, obtain the 404/401 permits necessary to perform the operations as proposed. Have the environmental consultant certify that the work conforms to the requirements of the permit(s). Provide all documentation submitted to obtain the appropriate permit(s) and a copy of the permit(s) to ODOT Office of Environmental Services.

If burning is permitted under the OAC-3745-19 and ORC 1503.18, submit a copy of the Ohio EPA permit and the Ohio DNR permit to the Engineer and copies of all information used to obtain the permit.

Prior to the disposal of waste materials, submit to the LPA an executed copy of the Contract or permission statement from the property owner. The Contract or permission statement must indicate that the waste materials are not the property of the LPA. Further, it must expressly state that the LPA is not a party to the Contract or permission statement and that the Contractor and property owner will hold the

LPA harmless from claims that may arise from their contract or permission statement.

Restoration of all borrow or waste areas includes cleanup, shaping, replacement of topsoil, and establishment of vegetative cover by seeding and mulching according to 104.04 and Item 659. Ensure the restored area is well drained unless approval is given by the Engineer to convert a pit area into a pond or lake, in which case confine restoration measures to the disturbed areas above the anticipated normal water level.

For waste sites shown on the plan, the plan will indicate if the clearances have or have not been obtained for the project right-of-way locations. No extension of time or additional compensation will be paid for any delays due to not having the written permit(s) to waste in a floodplain.

The allowed use of Project Right-of-Way and other LPA property for borrow and waste is detailed in 104.03 and 107.11.

Borrow and Waste Area shall adhere to 107.10.

The cost of work described herein is incidental to the Contract, unless included under another item of work.

105.17 Construction and Demolition Debris. OAC-3745-37, OAC-3745-400, and ORC Chapter 3714 regulates the use and disposal of construction and demolition debris. Notify the local Board of Health or the local Ohio EPA office 7 days before placing Clean Hard Fill off the Right-of-Way. Submit copies of this notification to the Engineer.

Legally dispose of debris containing wood, road metal, or plaster at a licensed construction and demolition debris site.

Under the regulations cited above the disposal of brush, trees, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter is restricted. If allowed by the Contract Documents, the Contractor may waste brush, trees, stumps, tree trimming, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter within the Right-of-Way. Otherwise, submit a plan and any required permits to legally dispose of these materials off the Right-of-Way to the Engineer. Provide all documents submitted to obtain this permit to the Engineer.

If the Project contains garbage or solid and hazardous waste, the Contract Documents will detail the removal of these items.

When wasting PCC, mix the PCC with at least 30 percent natural soil to construct an inner core in the waste area. Cover this inner core with 3 feet (1.0 m) of natural soil on the top and 8 feet (2.4 m) on the side slopes. Place and compact the material according to 203.06.D to prevent future settlement and sliding.

Clean Hard Fill consisting of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile or stone that is free of all steel as per 703.16 shall be managed in one or more of the following ways:

- A. Recycled into a usable construction material.
- B. Disposed in licensed construction and demolition debris facility.
- C. Used in legitimate fill operations on the site of generation according to 105.16.

D. Used in legitimate fill operations on a site other than the site of generation to bring a site up to grade.

A Beneficial Reuse Certification form needs to be properly executed by the Recipient prior to any material leaving the project.

105.18 Acceptance. The LPA will accept Work according to 109.12 or completed sections of the Project according to 109.11.

105.19 Value Engineering Change Proposals. The LPA will partner with the Contractor by considering a Contractor's submission of a Value Engineering Change Proposal (VECP) which must reduce the overall construction cost on projects not containing Design Build provisions. Savings in construction costs will be shared equally between the Contractor and the LPA. The LPA will partner with the Contractor by considering a VECP for time savings on projects not containing time-based award provisions. The economic value of the savings in time will be shared equally between the Contractor and LPA, however the impacted completion date shall be adjusted to the full amount. Time savings VECPs shall not consist of only acceleration and shall contain a substantial amount of material savings as determined by the LPA.

The Contractor's costs for development, design and implementation of the VECP are not eligible for reimbursement. The VECP must not impair any of the essential functions and characteristics of the project such as service life, reliability, economy of operation, ease of maintenance, safety and necessary standardized features. The VECP designer may not be the designer of record. The submission of the VECP shall conform to Supplement 1113. Acceptance of a VECP is at the discretion of the LPA albeit the ODOT District and/or Central Office shall be involved for review and approval

The LPA will not approve VECPs with any of the following characteristics:

- A. Consist only of non-performing items of work contained in the plans.
- B. Include identified plan errors as part of the cost reduction, at the discretion of the LPA.
- C. Changes to any special architectural or aesthetic treatments or requires changes to NEPA commitments.
- D. Requires concrete beams to be installed with less than 17' vertical clearance over a state highway.
- E. Changes the type or buildup of permanent pavement.
- F. Compromises controlling design criteria or would require a design exception as discussed in Volume I, Section 100, of the Location and Design Manual.
- G. Proposes a time savings to any portion of work on a project which has an Incentive / Disincentive clause associated with Project award.

VECP engineering, design development and implementation costs are not recoverable. Contractor costs or delays due to the LPA's review or rejection of the VECP are not recoverable.

The LPA may reject the Contractor's initial VECP or portions thereof and may proceed with such revisions without any obligations to the Contractor if the LPA already is considering revisions to the contract which are subsequently proposed as a VECP.

Acceptance of a VECP is at the sole discretion of the LPA and may be rejected for any reason.

106 CONTROL OF MATERIAL

106.01 Source of Supply and Quality Requirements. Notify the Engineer of the proposed sources of supply before the delivery of materials. The Engineer may approve materials at the source of supply before delivery. If the proposed sources of supply cannot produce the specified material, then furnish materials from alternate sources without adjustment to the Contract Price or Completion Date.

106.02 Samples, Tests, and Cited Specifications. The Engineer will inspect and determine whether the materials comply with the specified requirements before they are incorporated into the Work. The LPA may sample and test materials or require certifications. Unless specified, the LPA will pay for and test materials according to AASHTO, ASTM, or the methods on file in the office of the Engineer. A qualified representative of the LPA will take test samples according to LPA procedures. Read any reference to other specifications or testing methods to mean the version in effect at the pertinent Project Advertisement date. All materials being used are subject to inspection, test, or rejection at any time before their incorporation into the Work. The LPA will furnish copies of the tests to the Contractor's representative upon request. Furnish the required samples and specified material certifications at no expense to the LPA other than provided in 109.03.

Equip all transports and distributors hauling asphalt material with an approved submerged asphalt material sampling device.

106.03 Small Quantities and Materials for Temporary Application. The Engineer may accept small quantities and materials for temporary application that are not intended for permanent incorporation in the Work. The Engineer may accept these small quantities and materials for temporary application in either of the following cases:

- A. Where similar materials from the same source have recently been approved.
- B. Where the materials, in the judgment of the Engineer, will serve the intended purpose.

106.04 Plant Sampling and Testing Plan. The Engineer may undertake the inspection of materials at the source.

In the event plant sampling and testing is undertaken, the Contractor and its material provider shall meet the following conditions:

- A. Cooperate and assist the Engineer with the inspection of materials. Provide full entry to the Engineer at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished. Agree to all documentation and inspection requirements of the DSR sampling and testing plan.

B. If required by the Engineer, arrange for the inspector to use an approved building on site. The building should be located near the plant and independent of any building used by the material producer.

C. Maintain and provide adequate safety measures at the plant at all times.

The LPA reserves the right to retest all materials that have been tested and accepted at the source of supply before their incorporation into the Work. After the approved materials have been delivered to the site, the LPA may reject all materials that when retested do not meet the requirements of the Contract Documents.

106.05 Storage of Materials. Properly store all materials to ensure the preservation of their quality and fitness for the Work. The Engineer may re-inspect stored materials before their incorporation into the Work, even though they were approved before storage. Locate stored materials to facilitate their prompt inspection. The Contractor may use approved portions of the Project Right-of-Way for storage; however, if any additional space is required, the Contractor must provide it at the Contractor's expense. Do not use private property for storage purposes without written permission from the owner or lessee. If requested by the Engineer, furnish copies of the written permission. Restore all storage sites to their original condition at no expense to the LPA. The Contractor and property owner will hold the LPA harmless from claims that may arise from their contract or permission statement. This subsection does not apply to the stripping and storing of topsoil, or to other materials salvaged from the Work.

Areas used to Store Materials shall conform to 107.10.

106.06 Handling Materials. Handle all materials in such manner as to preserve their quality and fitness for the Work. Transport aggregates from the storage site to the project site in vehicles constructed to prevent loss or segregation of materials after loading and measuring. Ensure that there are no inconsistencies in the quantities of materials loaded for delivery and the quantities actually received at the place of operations.

106.07 Unacceptable Materials. Unacceptable materials are all materials not conforming to the requirements of these Specifications at the time they are used. Immediately remove all unacceptable materials from the project site unless otherwise instructed by the PRC and/or CPE. The PRC and/or CPE will determine if unacceptance materials may remain conforming to Supplement 1102. The PRC and/or CPE must approve the use of previously identified unacceptable materials that have been corrected or repaired. If the Contractor fails to comply immediately with any order of the PRC and/or CPE made under the provisions of this subsection, the PRC and/or CPE will have authority to remove and replace defective materials and to deduct the cost of removal and replacement from any monies due or to become due to the Contractor.

106.08 LPA-Furnished Material. Furnish all materials required to complete the Work, except when otherwise provided in the Proposal.

The LPA will deliver the LPA-furnished materials to the Contractor at the points specified in the Contract Documents.

Include the cost of handling and placing of all LPA-furnished materials in the contract price for the contract item for which they are used.

The LPA will hold the Contractor responsible for all material upon delivery of the materials to the Project site. The LPA will make deductions from any monies due the Contractor to make good any shortages and deficiencies, for any cause whatsoever, and for any damage that may occur after such delivery, and for any demurrage charges.

106.09 Steel and Iron Products Made in the United States. Furnish steel products that are made in the United States according to the applicable provisions of State of Ohio laws, ORC 153.011 and 5525.21. “United States” means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

A. State Requirements. All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.

B. Exceptions. The Director may grant specific written permission to use foreign steel products in bridge construction. The Director may grant such exceptions under either of the following conditions:

1. The cost for each contract item used does not exceed 0.1 percent of the total contract cost, or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project..

2. The director determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

C. Proof of Domestic Origin. Furnish documentation to the Engineer showing the domestic origin of all steel products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

106.10 Qualified Products List. The LPA may use Qualified Product Lists (QPL) for approval of manufactured materials. The ODOT Office of Materials Management (OMM) will maintain the QPL and the standard procedure for the QPL process. Inclusion of a material onto the QPL will be determined by OMM with support from other Department offices. To be kept on the QPL, manufacturers must recertify their material according to the Department’s standard procedure by January 1 of each year. When a material requires QPL acceptance, only provide materials listed on the QPL at the time of delivery of the material to the project. Provide the Engineer documentation according to the Department’s standard procedure that, at the time of delivery, the material provided is on the QPL.

106.11 Maritime Transportation. On federal-aid projects, ensure that project-specific materials or equipment transported by ocean vessel are in compliance with 46 CFR 381 and the Cargo Preference Act. Transport at least 50% of any equipment or materials on privately owned United States-flag commercial vessels, if available.

106.12 Traffic Authorized Product. The LPA may use Traffic Authorized Product (TAP) List for approval of products used in Intelligent Transportation Systems (ITS) or Traffic Signal Systems. The ODOT Office of Traffic Operations

will maintain the TAP and the standard procedure for the TAP process. Inclusion of a product onto the TAP will be determined by Office of Traffic Operations with support from other Department offices. To be kept on the TAP, manufacturers must recertify their product according to the Department's standard procedure by February 28 of each year. When a product requires TAP acceptance, only provide products listed on the TAP at the time of delivery of the product to the project. Provide the Engineer documentation according to the LPA's standard procedure that, at the time of delivery, the material provided is on the TAP.

106.13 Certified Supplier. The LPA may use Certified Suppliers for approval of manufactured materials. The ODOT Office of Materials Management (OMM) will maintain the Certified Supplier list and the procedure for the Certified Supplier process. Inclusion of a material onto the Certified Supplier list will be determined by OMM with support from other Department offices. Administration of the Certified Supplier Program will be in accordance with Supplement 1139.

107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. Stay fully informed of all Federal and State laws, all local laws, ordinances, and regulations, and all orders and decrees of authorities having any jurisdiction or authority that affect those engaged or employed on the Work, or that affect the conduct of the Work. Observe and comply with all such laws, ordinances, regulations, orders, and decrees. The Contractor shall protect and indemnify the State, respective Local 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 the Contractor or the Contractor's employees, subcontractors, or agents.

The Contractor, under Title VI of the Civil Rights Act and related statutes, agrees that in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor, the subcontractor, nor any person acting on behalf of such Contractor or subcontractor shall, by reasons of race, religion, color, sex, national origin, disability or age, discriminate against any citizen of the United States in the employment of labor or workers, who is qualified and available to perform the Work to which the employment relates.

Neither the Contractor, the subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, religion, color, sex, national origin, disability or age.

Comply with OAC-4123:1-3, entitled "Specific Safety Requirements of the Industrial Commission of Ohio Relating to Construction," as amended, and with the Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulations, Title 29, Chapter XVII, Part 1926 and as amended.

107.02 Permits, Licenses, and Taxes. Procure all permits and licenses; pay all charges, fees, and taxes; and provide all notices necessary and incidental to the due and lawful prosecution of the Work.

107.03 Patented Devices, Materials, and Processes. Before employing any design, device, material, or process covered by letters of patent or copyright, provide for its use by suitable legal agreement with the patentee or owner. The Contractor and the Surety shall indemnify and save harmless the State, respective Local, any affected third party, or political subdivision from any and all claims for infringement of patented design, device, material, process, or any trademark or copyright, and shall indemnify the State for any costs, expenses, and damages that it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

107.04 Restoration of Surfaces Opened by Permit.

Any openings within the right of way requiring a permit shall be restored per City standards or as directed by the Engineer.

107.05 Federal-Aid Provisions. When the United States Government pays for all or any portion of the Project's cost, the Work is subject to the inspection of the appropriate Federal agency.

Such inspections will not make the Federal Government a party to this Contract. The inspections will in no way interfere with the rights of either party to the Contract.

107.06 Sanitary Provisions. Provide and maintain sanitary accommodations in a neat condition for the use of employees and LPA representatives that comply with the requirements of the State and local Boards of Health, or of other authorities having jurisdiction over the Project.

107.07 Public Convenience and Safety. At all times, ensure that the Work interferes as little as possible with the traffic. Provide for the safety and convenience of the general public and the residents along the highway and the protection of persons and property. Do not close any highways or streets unless specifically allowed by the Contract.

Any illegal drugs, drug paraphernalia, mobile drug labs or dumps, weapons or firearms found on the Project Right of Way shall be considered a potential crime scene and shall not be handled or moved. Immediately notify law enforcement and the Project Engineer.

107.08 Bridges Over Navigable Waters. Conduct all Work on navigable waters so that it does not interfere with free navigation of the waterways and that it does not alter the existing navigable depths, except as allowed by permit issued by the U.S. Coast Guard. Work within the flood plain of a navigable stream may require a permit from the U.S. Army Corps of Engineers. If an U.S. Army Corps of Engineers permit is required, provide all documentation submitted to obtain the permit(s) and a copy of the permit(s) to the LPA.

107.09 Use of Explosives. When the use of explosives is necessary for the prosecution of the Work, exercise the utmost care not to endanger life or property, including new Work. The Contractor is responsible for all damage resulting from the use of explosives.

Obtain written permission to perform in-stream blasting from the Chief of the Division of Wildlife, Ohio DNR according to ORC 1533.58. Provide the Engineer with all documentation submitted to obtain this permit and with a copy of the permit.

The Contractor agrees, warrants, and certifies that it will observe State laws and local ordinances and regulations relative to the use and storing of explosives kept on the Project site.

Perform all blasting operations according to Item 208.

107.10 Protection and Restoration of Property. The Contractor is responsible for the preservation of all public and private property impacted by the Contractor's operations.

The Contractor is responsible for all damage or injury to property, during the prosecution of the Work, resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the Work. The Contractor will remain responsible for all damage and injury to property until the Project is accepted under 109.12, except for portions of the Work accepted under 109.11.

If the Contractor causes any direct or indirect damage or injury to public or private property by any act, omission, neglect, or misconduct in the execution or the non-execution of the Work, then it must restore, at its own expense, the property to a condition similar or equal to that existing before the damage or injury.

If mail boxes, road, or street name signs and supports interfere with the Work, then remove and erect them in a temporary location during construction in a manner satisfactory to and as directed by the Engineer. After completion of the Work and before final acceptance of the Project, erect the mailboxes, road, or street name signs and supports in their permanent locations according to the plans unless otherwise directed by the Engineer. Consider the cost of this Work as incidental to the affected items.

Cooperate with the Engineer in protecting and preserving survey monuments that are affected by the Work as required by ORC 5519.05. At the beginning of the Work, verify the position of all survey monuments in the area to be improved, according to 623. If survey monuments not shown in the Contract Documents are unexpectedly encountered, then protect, reference, and preserve them in the same manner as survey monuments that are shown in the Contract Documents.

Do not create staging areas, store materials and equipment, or borrow or waste materials in areas labeled as an environmental resources areas in the Contract Documents. All properties to be utilized by the Contractor outside the project Work Limits must be cleared for all environmental resource impacts prior to the beginning of work. Environmental resources include but may not be limited to:

1. Cultural Resources

a. Buildings, structures, objects, and sites eligible for or listed on the National Register of Historic Places

b. Historic or prehistoric human remains, cemeteries, and/or burial sites (pursuant with ORC 2909.05 and 2927.11)

2. Ecological Resources

a. Wetlands

- b. Streams
- c. Wooded areas with trees to be removed in excess of 8 inches diameter at breast height

- 3. Public Lands
 - a. Lands meeting the criteria of 49 U.S.C. 303, 23 CFR 771.I35: 4(f).
 - b. Lands meeting the criteria of 16 U.S.C. 4601-4, 36 CFR59.1: 6(f).
- 4. FEMA Mapped 100 year Floodplains
- 5. Hazardous Waste Areas

Except for locations utilized specifically for:

- 1. Parking of equipment between workdays for maintenance type projects:
- 2. Reuse of Clean Hard Fill as described in CA-EW-20 (ODOT Beneficial Reuse Form). Prior to transferring Clean Hard Fill from the project, fully execute form CA-EW-20 and provide appropriate documentation to the Engineer as described for each reuse option.

All areas proposed to be utilized by the Contractor outside the project construction limits and not described above shall be reviewed by environmental Contractor(s) that are prequalified by the Department for each environmental resource. Exception (1.) noted above only applies to projects with “maintenance” in the project description. Have the consultant(s) certify that the proposed site to be utilized for the Contractor will not impact:

- 1. Cultural Resources
- 2. Ecological Resources
- 3. Public Lands
- 4. FEMA Mapped 100 year Floodplains
- 5. Hazardous Waste Areas

Provide all documentation and the consultant certification to the ODOT Office of Environmental Services with a copy to the Engineer.

Should the areas proposed for use by the Contractor outside the project right of way limits contain environmental resources the Contractor is responsible to the LPA for all environmental clearances and permits prior to the beginning of work.

107.11 Contractor's Use of the Project Right-of-Way or Other LPA-Owned Property.

A. Disposal of Waste Material and Construction Debris and Excavation of Borrow on the Project Right-of-Way or on Other LPA-Owned Property. Dispose of waste material according to 105.16 and dispose of construction debris according to 105.17. In addition to the rights granted in 104.03, the Contractor's use of the Project Right-of-Way or other LPA-owned property for the disposal of waste material and construction debris and excavation of borrow material is restricted as follows:

1. If the Contract Documents identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of-Way or on other LPA-owned property, then only perform these operations in these designated locations.

2. If the Contract Documents do not identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of-Way or on other LPA-owned property, then do not Bid assuming that the LPA will make such locations available.

If the Contractor's request to use locations within the Project Right-of-Way or on other LPA-owned property is approved by the Engineer, then the LPA may allow the Contractor to dispose of waste material and construction debris or excavate borrow material for a fee of \$0.50 per cubic yard.

B. Contractor's Use of Portable Plants Within the Project Right-of-Way or on Other LPA-Owned Property. The Contractor's use of portable plants within the Project Right-of-Way or on other LPA-owned property is limited as follows:

1. If the Contract Documents identify locations within the Project Right-of-Way or on other LPA-owned property to place a portable plant, then only place a portable plant in these designated locations subject to the requirements of 107.11.C.

2. If the Contract Documents do not identify locations within the Project Right-of-Way or on other LPA-owned property to place a portable plant, then do not bid assuming that the LPA will make such locations available.

However, the LPA will consider a Value Engineering Change Proposal (VECP) for the placement of a portable plant within the Project Right-of-Way or on other LPA-owned property and, if accepted, may allow the use of a particular site on its property subject to the requirements of 107.11.C.

C. Placement of a Portable Plant within the Project Right-of-Way or on Other LPA-Owned Property. To place a portable plant within the Project Right-of-Way or on other LPA-owned property, comply with the following requirements:

1. Local noise ordinances.

2. Obtain any necessary EPA permits for the operation of the plant. Provide the LPA with a copy of the information submitted to obtain the permit and a copy of the permit.

3. Provide the Engineer written certification that the plant will supply material only for the Project for which it was approved. Do not use the plant to supply any other project or to sell materials commercially.

4. Submit a traffic control plan to the Engineer for approval that details the anticipated truck movements and provides acceptable protection, warning, and guidance to motorists, pedestrians, and the workers.

D. Equipment Storage and Staging. The Contractor may use, fee-free, any portion of the Project within the Project Right-of-Way for staging, equipment storage, or an office site with the approval of the Engineer, provided such usages do not interfere with the Work and are not prohibited by the Contract Documents. Do not bid in anticipation of using any properties within the Project Right-of-Way or

LPA-owned property outside the Project Right-of-Way for equipment storage or staging.

E. Equipment Removal and Site Restoration. Remove all Contractor equipment and completely restore all utilized sites used as required by 104.04 before Final Acceptance as provided in 109.12.

107.12 Responsibility for Damage Claims and Liability Insurance. The Contractor shall indemnify and save harmless the State and all of its representatives, municipalities, counties, public utilities, any affected railroad or railway company, and any fee owner from whom a temporary Right-of-Way was acquired for the Project from all suits, actions, claims, damages, or costs of any character brought on account of any injuries or damages sustained by any person or property on account of any negligent act or omission by the Contractor or its subcontractors or agents in the prosecution or safeguarding of the Work.

The Contractor shall procure and maintain insurance for liability for damages imposed by law and assumed under this Contract, of the kinds and in the amounts hereinafter provided from insurance companies authorized to do business in the State by the Ohio Department of Insurance. The cost of insurance is incidental to all contract items. Before the execution of the Contract by the PRC, furnish to the LPA a certificate or certificates of insurance in the form satisfactory to the LPA demonstrating compliance with this subsection. Provide an insurance certificate or certificates that show that the Contractor's liability and auto policies coverage are not reduced, restricted, or canceled until 30 days written notice has been given to the LPA by the insurer.

Mail all certificates and notices to: City of Elyria Engineering Department, 131 Court Street, Suite 303, Elyria, OH 44035

Upon request, the Contractor shall furnish the LPA with a certified copy of each policy, including the provisions establishing premiums.

The types and minimum limits of insurance are as follows:

A. Workers' Compensation Insurance. Comply with all provisions of the laws and rules of the Ohio Bureau of Workers' Compensation covering all operations under Contract with the LPA whether performed by it or its subcontractors. In addition, if a portion of the Work is performed from a barge or ship or requires unloading material from a barge or ship on a navigable waterway of the United States, it is the responsibility of the Contractor to arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act [33 USC Section 901 *et seq.*] and the Jones Act [5 USC Section 751 *et seq.*] and provide proof of coverage to the LPA.

B. Commercial General Liability Insurance. The minimum limits for liability insurance are as follows:

General Aggregate Limit	\$2,000,000
Products - Completed Operations	
Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

Obtain the above minimum coverages through primary insurance or any combination of primary and umbrella insurance. In addition, the LPA will require the General Aggregate Limit on a per project basis.

Ensure that the Commercial General Liability Insurance policy names the State of Ohio, Local Public Agency, its officers, agents, and employees as additional insureds with all rights to due notices in the manner set out above. Obtain Explosion, Collapse, and Underground (XCU) coverage at the same limits as the commercial general liability insurance policy. In addition, if blasting is to be performed, obtain XCU coverage providing a minimum Aggregate Limit of \$5,000,000 and Each Occurrence Limit of \$1,000,000. Submit proof of insurance, endorsements, and attachments to the Engineer prior to starting the Work.

C. Comprehensive Automobile Liability Insurance. The Comprehensive Automobile Liability policy shall cover owned, non-owned, and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability Limit	
Each Occurrence	\$1,000,000

Insurance coverage in the minimum amounts set forth neither relieves the Contractor from liability in excess of such coverage, nor precludes the LPA from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

Clearly set forth all exclusions and deductible clauses in all proof of insurance submitted to the LPA. The Contractor is responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

If the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by terms of this Contract, then the LPA will accept the certificates, but the Contractor is obligated to renew its insurance policies as necessary. Provide new certificates of insurance from time to time, so that the LPA is continuously in possession of evidence that the Contractor's insurance is according to the foregoing provisions.

If the Contractor fails or refuses to renew its insurance policies or the policies are canceled or terminated, or if aggregate limits have been impaired by claims so that the amount available is under the minimum aggregate required, or modified so that the insurance does not meet the requirements of 107.12.C, the LPA may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the LPA. The LPA in its sole discretion may use monies retained pursuant to this subsection to renew or increase the Contractor's insurance as necessary for the periods and amounts referred to above. Alternatively, should the Contractor fail to comply with these requirements, the LPA may default the Contractor and call upon the Contractor's Surety to remedy any deficiencies. During any period when the required insurance is not in effect, the Engineer may suspend performance of the Contract. If the Contract is so suspended, the Contractor is not entitled to additional compensation or an extension of time on account thereof.

Nothing in the Contract Documents and insurance requirements is intended to create in the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

107.13 Reporting, Investigating, and Resolving Motorist Damage Claims.

The Contractor or City shall contact the Elyria Police Department (EPD) to file a report regarding Motorist Damage. Along with EPD, representatives of the contractor and the City may investigate damage claims and provide the information to the City Law Department, Contractor and insurance companies as needed.

107.14 Opening Sections of Project to Traffic. The Engineer may order the Contractor to open a section of the Work to the safe use of traffic at any time. The LPA will make an adjustment according 108.06 and 109.05 to compensate the Contractor for the added costs and delay, if any, resulting from such an opening.

107.15 Contractor's Responsibility for Work. Until the Final Inspector accepts the Work during the Final Inspection according to 109.12.A, the Contractor is responsible for the Project and will take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. Rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before final acceptance. Bear the expense of the repairs except when damage to the Work was due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. Unforeseeable causes include but are not restricted to; (a) earthquake, floods, tornados, high winds, lightning or other catastrophes proclaimed a disaster or emergency, (b) slides, (c) civil disturbances, or (d) governmental acts.

In the event that the Engineer determines that damage to completed permanent items of Work results from traffic using a substantially completed section of Roadway, the LPA may compensate the Contractor for repair of the damage as authorized by Change Order. Additionally, if traffic permanently damages beyond use and of the following temporary maintenance of traffic items, the LPA may compensate the Contractor for replacement of the item as authorized by Change Order:

Arrow board,

Work zone signal, pole, or controller,

Lighting unit or pole,

Changeable message sign,

Work Zone Impact Attenuator,

Truck Mounted Impact Attenuator,

Digital Speed Limit Sign Assembly.

To receive compensation for the damage to permanent items of Work or temporary maintenance of traffic items named above, the Contractor must first meet the following requirements.

- A. Notify the Engineer of each occurrence of damage in writing within 10 Calendar Days.
- B. Contact the local law enforcement agency to determine if the accident was investigated and a report filed. If an accident report was filed, obtain the report and notify the motorist, and copy their insurance company, via certified mail informing both that the motorist is responsible for the cost of damage repairs. If the motorist does not respond within 30 days, make a second attempt to contact the motorist and copy the insurance company via certified mail.
- C. If no response is received from the motorist or insurance company within 30 days of the motorist receipt of the second notice, send a letter to the Engineer within eighteen months of the event and include documentation of good faith effort to seek recovery from responsible parties.
- D. The LPA will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from the repair or replacement of damaged Work.

If there is no accident report on file and no means of identifying the responsible motorist, the Contractor may likewise be compensated to repair the damaged Work.

In case of suspension of Work by the Contractor or under the provisions of 105.01, the Contractor is responsible for the Project and shall take necessary precautions to prevent damage to the Project; provide for normal drainage; and erect any necessary temporary structures, signs, or other facilities at its expense. During such period of suspension of Work, properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedlings, and soddings furnished under the Contract, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

The Engineer may direct the Contractor to remove graffiti any time during the Work. The LPA will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from all ordered graffiti removal.

107.16 Contractor's Responsibility for Utility Property and Services. At points where the Contractor's operations are adjacent to properties of railway, cable, telephone, and power companies, or are adjacent to other property, and any damage to their property may result in considerable expense, loss, or inconvenience, do not commence with the operation until all arrangements necessary for the protection of the property have been made.

Cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations to ensure these operations progress in a reasonable manner, that duplication of rearrangement Work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event interruption to underground or overhead utility services results from an accidental breakage or from being exposed or unsupported, immediately alert the occupants of nearby premises as to any emergency that the accidental breakage may create at or near such premises. Then notify the Engineer and the owner or operator

of the utility facility of the disruption and cooperate with the said utility owner or operator in the restoration of service. If water service is interrupted, perform the repair work continuously until the service is restored unless the repair work is performed by the local governmental authority. Do not begin Work around fire hydrants until the local fire authority approves provisions for continued service.

107.17 Furnishing Right-of-Way. The LPA is responsible for securing all necessary Right-of-Way in advance of construction. The Bid Documents will indicate any exceptions. The LPA will notify all prospective Bidders in writing before the date scheduled for receipt of Bids regarding the specific dates certain parcels will be made available to the Contractor.

107.18 No Waiver of Legal Rights. The following LPA actions do not waive the LPA's rights or powers under the Contract, or any right to damages herein provided:

- A. Inspection by the Engineer or by any of Engineer's duly authorized representatives.
- B. Any order, measurements, or certificate by the PRC and/or CPE, or LPA representatives.
- C. Any order by the PRC and/or CPE or LPA representatives for the payments of money or the withholding of money.
- D. Acceptance of any Work.
- E. Any extension of time.
- F. Any possession taken by the LPA or its duly authorized representatives.

The LPA will not consider any waiver of a breach of this Contract to be a waiver of any other subsequent breach.

107.19 Environmental Protection. Comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Avoid polluting streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, sediments, or other harmful materials, and avoid polluting the atmosphere with particulate and gaseous matter.

By execution of this contract, the Contractor, will be deemed to have stipulated as follows:

- A. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- B. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- C. That the firm shall promptly notify the LPA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that

a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

D. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

Fording of streams is prohibited. Causeways for stream and river crossings or for Work below a bridge are permitted provided:

A. The causeway complies with the requirements of the 404 Permit the LPA obtained for the Project.

B. The Contractor obtains a 404 Permit from the U.S. Army Corps of Engineers if the LPA has not obtained such a permit. Obtain the 404 Permit prior to beginning construction of the causeway. The LPA does not guarantee that the Contractor will be able to obtain a 404 Permit.

Comply with all current provisions of the Ohio Water Pollution Control Act (OWPCA), (ORC Chapter 6111). The LPA will obtain a storm water permit under the OWPCA provisions when the plan work acreage requires a permit. Apply for a permit to cover operations outside the Project limits shown on the plans as required by the OWPCA provisions. When the LPA has not applied for a permit on the Project and a permit is required under the provisions of the OWPCA because of the total area of the Contractor's work, apply for, obtain, and comply with the required permit for both the Work within Project limits and the Contractor's work.

The LPA has obtained the required permits from the U.S. Army Corps of Engineers and Ohio EPA for Work in the "Waters of the United States" and isolated wetlands under ORC Chapter 6111. Comply with the requirements of these permits.

When equipment is working next to a stream, lake, pond, or reservoir, appropriate spill response equipment is required. Do not stockpile fine material next to a stream, lake, pond, or reservoir.

Take precautions to avoid demolition debris and discharges associated with the excavation and hauling of material from entering the stream. Remove any material that does fall into the stream as soon as possible.

When excavating in or adjacent to streams, separate such areas from the main stream by a dike or barrier to keep sediment from entering the stream. Take care during the construction and removal of such barriers to minimize sediment entering the stream.

Contain, collect, characterize and legally dispose of all liquid waste and sludge generated during the work. Do not mix wastes with storm water. Do not discharge any liquid waste without the appropriate regulatory permits. Manage liquid waste and sludge in accordance with ORC Chapter 6111 and all other laws, regulations, permits and local ordinances relating to this waste. Liquid waste management is incidental to the Work unless otherwise specified in the contract.

Control the fugitive dust generated by the Work according to OAC-3745-17-07(B), OAC-3745-17-08, OAC-3745-15-07, and OAC-3745-17-03 and local

ordinances and regulations. Prior to the initiation of abrasive coating removal, pavement cutting or any other construction operation that generates dust, demonstrate to the Engineer that construction related dust will be controlled with appropriate Reasonable Available Control Measures (RACM) as described in OEPA Engineering Guide #57 (<http://epa.ohio.gov/dapc/engineer/eguides.aspx>).

In addition, use dust control measures when fugitive dust creates unsafe conditions as determined by the Engineer. Perform this work without additional compensation except for Item 616.

Perform open burning according to 105.16.

107.20 [UNUSED]

107.21 Prompt Payment. In accordance with ORC 4113.61, make payment to each subcontractor and supplier within 10 Calendar Days after receipt of payment from either the Department or LPA for Work performed or materials delivered or incorporated into the Project, provided that the pay estimate prepared by the Engineer includes Work performed or materials delivered or incorporated into the public improvement by the subcontractor or supplier. Contractors are prohibited from holding retainage from subcontractors that can provide a bond. For unbonded subcontractors and suppliers, promptly release any retainage held, as set forth in any subcontractor or supplier agreement, 30 days after the work is satisfactory completed. For the purposes of this section, satisfactory completed will be interpreted as when the subcontractor has completed all physical work and submitted any necessary documentation required by the specifications and the LPA. No subcontract provision shall permit the Contractor to delay subcontractor's retainage payments until the Project's final payment.

Also require that this contractual obligation be placed in all subcontractor and supplier contracts that it enters into and further require that all subcontractor and suppliers place the same payment obligation in each of their lower tier contracts. If the Contractor, subcontractors, or supplier subject to this provision fail to comply with the 10 Calendar Day requirement, the offending party shall pay, in addition to the payment due, interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from either the Department or LPA and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and suppliers timely pursuant to this subsection will result in a finding by the LPA that the Contractor is in breach of Contract and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely pursuant to this subsection will result in a lower evaluation score for the Contractor and those subcontractors who are subject to evaluation by the Department.

107.22 Unmanned Aircraft Systems. If the project requires or anticipates the use of Unmanned Aircraft Systems within LPA Right of Way, the Contractor will follow proper risk assessment and federal regulations in accordance with Supplement 1132.

108 PROSECUTION AND PROGRESS

108.01 Subletting of the Contract. Perform Work amounting to not less than 50 percent of the Contract Price with its own organization, unless otherwise approved by the PRC or CPE. The phrase “its own organization” includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement acceptable to the PRC or CPE, and equipment owned or rented with or without operators by the Contractor. The phrase does not include employees or equipment of a subcontractor, assignee, or agent of the Contractor. Obtain the PRC or CPE’s written consent to subcontract, sublet, sell, transfer, assign, or otherwise relinquish rights, title, or interest in the Work. Provide the PRC or CPE with a copy of all Disadvantaged Business Enterprise subcontracts.

The Contractor’s percentage of the total Contract Price includes the cost of materials and manufactured products purchased by the Contractor, but not the cost of materials and manufactured products purchased by subcontractors.

The PRC or CPE will calculate the Contractor’s percentage based on the quantities shown in the Proposal and the unit prices of the contract items to be performed by the Contractor’s organization. If the Contractor performs only a portion of a contract item, then the PRC or CPE will determine the proportional value administratively on the same basis. The PRC or CPE will follow this procedure even when the part not subcontracted consists only of the procurement of materials. However, if a firm both sells the materials to the Contractor and performs the Work of incorporating the materials into the Project, then the PRC or CPE will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the PRC or CPE may refuse approval. An affiliate is one who has some common ownership or other close relation to said firm.

If only a part of a contract item is sublet, then determine its proportional value administratively on the same basis. The PRC or CPE will follow this procedure even when the part not sublet consists only of procuring materials. However, if a firm both sells the materials to the Contractor and performs the work of incorporating the materials into the Project, then the LPA will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the LPA may refuse approval.

108.02 Partnering. It is the intent of the LPA to partner every project. The purpose of Partnering is to develop a proactive effort and spirit of trust, respect, and cooperation among all stakeholders in a project. Partnering does not affect the terms and conditions of the Contract. The Partnering process in this section is Self-facilitated Partnering performed by the Project personnel. Costs associated with the Self-facilitated Partnering process are incidental to the Contract.

A. Preconstruction Meeting. Meet with the Engineer for a Preconstruction Meeting before beginning the Work. At or before the meeting, submit the initial progress schedule to the PRC. Prepare the schedule according to 108.03.

Furnish a list of proposed subcontractors and material suppliers at or before the Preconstruction Meeting. If the Contractor fails to provide the required submissions at or before the Preconstruction Meeting, the Engineer may order the

meeting suspended until they are furnished. Do not begin the Work until the meeting is reconvened and concluded or the Engineer gives specific written permission to proceed.

B. Initial Partnering Session. If partnering is intended for the project, the Initial Partnering Session will be conducted as part of the Preconstruction Meeting.

C. Progress Meetings. Hold monthly Progress Meetings unless the frequency is otherwise determined at the Preconstruction Meeting. Coordinate with the Engineer to determine agenda topics prior to each meeting. The purpose of Progress Meetings is to keep open communication between the Contractor and the Engineer. The senior personnel team is encouraged to participate in all Progress Meetings. Include Partnering as an agenda item at the Progress Meetings.

D. Post-milestone Meeting. In conjunction with the PRC and/or CPE, determine whether the Post-milestone Meeting will be conducted as part of the Progress Meeting or as a separate meeting for multi-year, multi-phase, or projects with critical items of work or milestone dates. Consider discussing and updating items from the Initial Partnering Session in addition to items specific to the Project. All stakeholders should be invited to attend.

E. Partnering Monitoring.

Partner monitoring will be conducted with Progress Meetings as needed upon concurrence with senior team members.

F. Mitigation and Notice. Mitigation of any issue, whether caused by the LPA, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and substitution of materials. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

1. Contractor Initial Oral Notification. Provide immediate oral notification to the PRC and/or CPE upon discovering a circumstance that may require a revision to the Contract Documents or may result in a dispute. Upon notification, the PRC and/or CPE will attempt to resolve the identified issue as quickly as possible.

2. Contractor Written Early Notice. If the PRC and/or CPE has not resolved the identified issue within two (2) working days after receipt of oral notification, provide written notice to the PRC and/or CPE of any circumstance that may require a revision to the Contract Documents or may result in a dispute. This early notice must be given by the end of the second working day following the occurrence of the circumstance.

The PRC and/or CPE and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the PRC and/or CPE. Tracking such information is not an acknowledgement that the LPA accepts responsibility for payment for this disputed work.

If an issue is not resolved through the initial mitigation efforts, either abandon or escalate to the Dispute and Administrative Claims Process defined in 108.02.G.

G. Dispute Resolution and Administrative Claims Process.

City of Elyria will utilize following procedure that is fair to all parties, to resolve the disputes administratively, and expedites dispute resolution.

- a. Contractor's claims involving minor quantity adjustments can be approved by the Chief Construction Inspector in the field. Any necessary quantity adjustments that are agreed upon are noted by the Chief Construction Inspector and addressed in a future Change Order. These claims typically result from minor plan calculations errors, actual field measurements and/or proof of material deliveries. Contractor shall provide necessary documents to in support.
- b. If the Contractor's claim cannot be resolved by the Chief Construction Inspector, then the claim and all supporting documentation will be forwarded to the Construction Project Engineer (CPE) for review. This review typically takes three (3) business days complete.
- c. If the Contractor's claim cannot be resolved by the Construction Project Engineer, then the claim and all supporting documentation will be forwarded to the City Engineer for review. This review takes typically seven (7) business days to complete.
- d. If the Contractor's claim cannot be resolved by the City Engineer, then the claim and all supporting documentation will be forwarded to the City Law Director for resolution through remediation or through Court action.

1. The Claim Management process for this project will follow the guidelines shown below:

Please note that any claim resolution that is achieved during this process that either increases or decreases the total contract amount, or modifies the Contractor's contractual completion date must be approved by the City Engineer through Change Order process to be valid. The Change Order is approved and signed by the Mayor, City of Elyria.

2. When analyzing a Contractor's claim, the following items will be considered:

- a. Was the claim filed in a timely manner and was the City given proper notice of the claim by the contractor?
- b. The Contractor's justification of the claim.
- c. Do the project plans and specifications address the elements of the claim?
- d. Do the contract documents address the elements of the Contractor's claim?
 - e. Determination of actual field conditions giving rise to the claim.
 - f. Identify each specific claim issue. Identify the position of both sides on each issue.
 - g. Identify responsibility. If the claim is delay related, is it excusable vs. non-excusable, compensable or is there an issue of concurrent delay?
 - h. The actual impact of the delay on the contractor.
 - i. Did the contractor inspect the project site and become familiar with all conditions prior to submitting his bid?

H. Post Construction Meeting. The LPA will conduct a Post Construction Meeting with the Contractor prior to the project finalization. The PRC and/or CPE will invite the design agency and any other stakeholders deemed necessary including utility companies, other transportation entities (i.e. railroads), community leaders, all Project participants including subcontractors performing critical work to attend this meeting.

Consider the following items for discussion:

1. Project Safety.
2. How were the goals evaluated or measured?
3. How were foremen/ workers involved in the Partnering process?
4. How were the subcontractors involved in the Partnering process?
5. How were relationships with key stakeholders managed?
6. Teambuilding activities or unique motivational activities.

I. Partnering Close-Out Survey.

Close-out to be discussed at Post Construction Meeting

108.03 Prosecution and Progress. Start the Work according to 108.02. Notify the Engineer at least 24 hours before starting the Work. If the prosecution of the Work is suspended, notify the Engineer a minimum of 24 hours in advance of resuming operations.

Pursue the Work diligently and continuously as to complete the Project by the Completion Date.

A. Progress Schedule.

1. General. Furnish a bar chart progress schedule to the PRC and/or CPE for review at or before the Preconstruction Meeting. The Engineer will review the schedule and within 14 calendar days of receipt, will either accept the schedule or provide the Contractor with comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 days of a written request by the Engineer. The LPA will withhold Estimates until the Engineer accepts the schedule. The Engineer will not measure or pay for the preparation of the schedule and schedule updates directly, but the cost of preparing and updating the schedule is incidental to all Contract Items.

a. Include the following Administrative Identifier Information:

- (1) Project Number
- (2) County
- (3) Route Number
- (4) PID Number
- (5) Completion Date
- (6) Contractor's Name
- (7) Contractor's Dated Signature
- (8) LPA's Dated Acceptance Signature

Provide a working day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to

complete the Project by the Completion Date. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress of each activity. The bar chart schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for submittals, working and shop drawing preparation, submittal review time for the LPA, material procurement and fabrication, and the delivery of materials, plant, and equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.

b. Activity requirements are discussed in further detail as follows:

(1) Activity Description. Assign each activity an unambiguous descriptive word or phrase. For example, use "Excavate Area A," not "Start Excavation."

(2) Activity Original Duration. Indicate a planned duration in calendar days for each activity. Do not exceed a duration of 20 working days for any activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities in order to meet the duration requirements of this paragraph.

2. Early Completion Schedule. An Early Completion Schedule is defined as a baseline schedule or update schedule which anticipates completion of all work prior to the Completion Date established by the contract documents and the Contractor submits as an Early Completion Schedule. In the event that an Early Completion Schedule is accepted, the Engineer will initiate a change order amending the Completion Date to the finish date shown on the accepted Early Completion Schedule. The amended Completion Date will be effective upon execution of that change order and all contract provisions concerning the Completion Date such as incentives, disincentives, excusable delays, compensable delays, and liquidated damages will be measured against the amended Completion Date. The Contractor may elect not to execute the change order amending the Completion Date; however, in so doing, the Contractor waives its rights to delay damages in meeting the projected early Completion Date.

3. Updated Progress Schedule. Submit an updated progress schedule when ordered by the Engineer. The Engineer may request an updated progress schedule when progress on the work has fallen more than 14 calendar days behind the latest accepted progress schedule. Information in the updated schedule must include a "% work completed" value for each activity.

4. Recovery Schedule. If the progress schedule projects a finish date for the Project more than 14 calendar days later than the Completion Date, submit a revised schedule showing a plan to finish by the Completion Date. The LPA will withhold Estimates until the Engineer accepts the revised schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor.

108.04 Limitation of Operations. Limit operations to prevent unnecessary inconvenience to the traveling public. If the Engineer concludes that the extent of the Contractor's Work unnecessarily inconveniences the public or concludes limiting operations are necessary to protect the existing or new construction from damage, the Engineer will require the Contractor to finish portions of Work in progress before starting new Work.

108.05 Character of Workers Methods and Equipment. Provide personnel with sufficient skills and experience to perform assigned tasks.

Ensure that no debarred individuals listed on the Federal website: www.epls.gov or State debarment list at the website: www.dot.state.oh.us/divisions/contractadmin/act in any ownership, leadership, managerial, or other similar position that could influence the operations of an entity doing business with the LPA.

If the Engineer gives written notification that specific Contractor or subcontractor personnel are improperly performing the Work, intemperate, disorderly, or creating a hostile work environment, remove the identified personnel from the Project. Do not allow removed personnel to return to the Project without the Engineer's approval.

The Engineer may suspend the Work by written notice under this subsection for the following reasons:

- A. The Contractor does not furnish sufficient skilled and experienced personnel to complete the Project by the Completion Date.
- B. The Contractor does not remove personnel from the Project as directed in writing by the Engineer.

Use equipment of sufficient size and mechanical condition to complete the Project by the Completion Date. Ensure that the equipment does not harm the roadway, adjacent property, other highways, workers, or the public.

If the Contract Documents do not prescribe the methods and equipment required to accomplish the Work, determine the methods or equipment necessary to complete the Work according to the Contract.

If the Contract Documents specify methods and equipment to perform the Work, use such methods and equipment, unless others are authorized by the Engineer. Obtain the Engineer's written approval before substituting alternate methods or equipment. To obtain the Engineer's approval, submit a written description of the alternate methods and equipment proposed and an explanation of the reasons for making the change. The Engineer's approval of the substitute methods and equipment does not relieve the Contractor of the obligation to produce Work according to 105.03. If after trial use of the substituted methods or equipment, the Engineer determines that the Work does not conform to the Contract Documents, then complete the remaining Work using the specified methods and equipment. Remove all deficient Work and replace it according to the Contract Documents, or take such other corrective action as directed by the Engineer. The Engineer's authorization to substitute alternate methods and equipment will not change the basis of payment for the construction items involved or the Contract Time.

108.06 Determining a Time Extension to the Completion Date and Payment for Excusable Delays.

A. General. The LPA will only extend the Completion Date if an excusable delay, as specified in 108.06.B or 108.06.D, delays Work on the critical path shown on the accepted progress schedule and impacts the Completion Date. The critical path is defined as; the longest path of activities in the project that determines the project schedule completion date. The activities that make-up the critical path of activities are the “Critical Activities.” Any extension of the Completion Date will be executed by a change order.

Mitigation of any delay, whether caused by the LPA, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and continuation of work through an otherwise planned shutdown period. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

The LPA will not evaluate a request for extension of the Completion Date unless the Contractor notifies the Engineer as specified in 108.02.F. Notification shall be in writing to the Engineer within 30 days following the termination of the event giving rise to the request and shall be accompanied by supporting analysis and documentation.

The Engineer will evaluate the Contractor’s analysis and determine the time extension due, if any. The Engineer will measure all time extensions in Calendar Days. For delays measured in Workdays, the Engineer will convert Workdays to Calendar Days by multiplying by 1.4 for a 5-day work week or less; 1.2 for a 6-day work week; and 1 for a 7-day work week; and extend the Completion Date by the resulting number of Calendar Days plus any holidays the Contractor does not normally work that occur in the extension period. When the conversion of Workdays to Calendar Days results in a decimal of 0.5 or greater, the Engineer will round the number of Calendar Days to the next highest whole number. When the conversion results in a decimal less than 0.5, the Engineer will delete the decimal portion of the Calendar Days.

The Engineer will not grant an extension of time for delays incurred from December 1 to April 30 unless the Contractor’s accepted progress schedule depicts work on the critical path occurring during this period.

The Engineer may order the Contractor to continue Work after November 30 and compensate the Contractor for costs incurred due to cold weather Work.

The Contractor’s plea that insufficient time was specified is not a valid reason for an extension of time.

The LPA will relieve the Contractor from associated liquidated damages, as specified in 108.07, if the Engineer extends the Completion Date under 108.06.A.

The extended Completion Date shall then have the same standing and effect as though it was the original Completion Date.

If the Contractor contends that an excusable delay is also compensable, as specified in 108.06.D, submit a detailed cost analysis of the requested additional compensation along with the request for extension of Completion Date.

B. Excusable, Non-Compensable Delays. Excusable, non-compensable delays are delays that are not the Contractor's or the LPA's fault or responsibility. The Engineer will not grant additional payment for excusable, non-compensable delays.

The following are excusable, non-compensable delays:

1. Delays due to floods, tornadoes, lightning strikes, earthquakes, or other cataclysmic phenomena of nature.
2. Delays due to weather as specified in 108.06.C.
3. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts, or area-wide material shortages. Delays due to the Contractor's, subcontractor's, or supplier's insolvency or mismanagement are not excusable.
4. Delays due to civil disturbances.
5. Delays from fires or epidemics.
6. Delays from labor strikes that are beyond the Contractor's, subcontractor's, or supplier's power to settle and are not caused by improper acts or omissions of the Contractor, subcontractor, or supplier.
7. Added quantities that delay an activity on the critical path.
8. All other delays not the Contractor's and LPA's fault or responsibility.

C. Extension to the Completion Date for Weather or Seasonal Conditions. A weather day is defined as a workday that weather or seasonal conditions reduced production by more than 50 percent on items of work on the critical path. Submit the dates and number of weather days in writing to the Engineer at the end of each month. In the event the Contractor fails to submit weather days at the end of each month the Engineer will determine the dates and number of weather days from project records.

Delays caused by weather and seasonal conditions should be anticipated and will be considered as the basis for an extension of time when the Contractor's accepted progress schedule depicts Work on the critical path and the actual workdays lost exceeds the number of work days lost each month as determined by Table 108.06-1.

TABLE 108.06-1

Month	Number of Workdays Lost Due to Weather
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

This table applies to the duration between contract execution and original completion date. Extensions for weather days beyond the original completion date will be for the actual workdays lost each month.

Lane closures within the project, 60 days or less as indicated in the contract documents, which are impacted by weather will be extended for the actual work days lost each month. Lane closures within the project, 61 days or longer as indicated in the contract documents, which are impacted by weather will be extended when the actual work days lost exceeds the number of anticipated work days lost each month as determined by Table 108.06-1.

The Engineer will not consider weekends and holidays as lost workdays unless the Contractor normally works those days or unless the Engineer directs the Contractor to work those days.

D. Excusable, Compensable Delays. Excusable, compensable delays are delays that are not the Contractor's fault or responsibility, and are the LPA's fault or responsibility or are determined by judicial proceeding to be the LPA's sole responsibility or are the fault and responsibility of a local government. For the following excusable, compensable delays, the Engineer will extend the Completion Date if the conditions specified in 108.06.A are met:

1. Delays due to revised Work as specified in 104.02.B, 104.02.D, or 104.02.F.
2. Delays due to utility or railroad interference within the Project limits.
3. Delays due to an Engineer-ordered suspension as specified in 104.02.C.
4. Delays due to acts of the government or a political subdivision other than the LPA.
5. Delays due to the neglect of the LPA or its failure to act in a timely manner.

Compensation for excusable, compensable delays will be determined by the Engineer according to 109.05.D.

E. Non-Excusable Delays. Non-excusable delays are delays that are the Contractor's fault or responsibility. All non-excusable delays are non-compensable.

F. Concurrent Delays. Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the Contractor is entitled to additional time but not entitled to additional compensation.

108.07 Failure to Complete on Time. If the Contractor fails to complete the Work by the Completion Date, then the PRC and/or CPE, if satisfied that the Contractor is making reasonable progress, and deems it in the best interest of the public, may allow the Contractor to continue in control of the Work. The LPA will pay the Contractor for Work performed on the Project less any liquidated damages incurred.

If the Work is not completed by the Completion Date and the PRC and/or CPE permits the Contractor to remain in control, prosecute the Work at as many different places, at such times, and with such forces as the PRC requests. Provide a written plan for the completion of the Work.

For each calendar day that Work remains uncompleted after the Completion Date, the LPA will deduct the sum specified herein from any money due the Contractor, not as a penalty, but as liquidated damages. The PRC will adjust the Completion Date or other contractually mandated dates for delays specified in 108.06.B.7 and 108.06.D.

Permitting the Contractor to continue and complete the Work or any part of the Work after the Completion Date, or after extensions to the Completion Date, will in no way operate as a waiver on the part of the LPA of any of its rights under the Contract.

Provided the project is available for use as intended by the Contract and the Work remaining will not impact traffic, the Contractor may submit a request that the LPA suspend the assessment of liquidated damages for a stated period of time. For the limited purposes of assessing liquidated damages, the closing of a shoulder is not considered an impact upon traffic. Submit this request within 30 days of the assessment of the liquidated damages. In addition to the written plan required to remain in control of the Work as stated above, this request should include at a minimum the Work left to be completed, the reason(s) the Work is incomplete or on hold, as well as, methods, resources and timelines for pursuing the same. This will define diligent pursuit of the work. Once accepted, and provided both of the following criteria are met, the LPA may suspend the assessment of liquidated damages:

- A.** The Contractor is diligently pursuing the remaining Work.
- B.** Necessary items are completed and operational to provide an appropriate level of safety to the traveling public. These items include but are not limited to signs, pavement markings, guardrail, attenuators, signals and RPM's.

TABLE 108.07-1 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	\$500,000	\$400
\$500,000	\$2,000,000	\$600
\$2,000,000	\$10,000,000	\$900
\$10,000,000	\$50,000,000	\$1,650
Over \$50,000,000		\$3,970

108.08 Unsatisfactory Progress and Default of Contractor. The PRC and/or CPE will notify the Contractor in writing of unsatisfactory progress for any of the following reasons:

- A. The Contractor has not commenced the Work by the dates established in the schedule.
- B. The Contractor does not proceed with the Work in a manner necessary for completion of the Project by the Completion Date.
- C. The Contractor is performing the Work improperly.
- D. The Contractor abandons, fails, or refuses to complete the Work.
- E. Any other reason the PRC and/or CPE believes jeopardizes completion of the Work by the Completion Date.

If the Contractor does not respond to the satisfaction of the PRC and/or CPE, the PRC and/or CPE may declare the Contractor in default and may notify the Contractor and Surety that the responsibility to complete the Work is transferred to the Surety. Upon receipt of this notification, the Contractor's right to control and supervise the Work will immediately cease. In such a case, the PRC and/or CPE will proceed as specified in ORC 5525.17. The defaulted Contractor will not be compensated for costs resulting from the default and is not eligible to be retained by the Surety to complete the Work. If it is determined that the LPA's default of the Contractor according to 108.08 is wrongful, then the default will revert to a termination of the Contract according to 108.09.

108.09 Termination of the Contract for Convenience of the LPA. The PRC and/or CPE may terminate the Contract at any time for the convenience of the LPA. The LPA will compensate the Contractor according to 109.04 and 109.05 for termination of the Contract for the convenience of the LPA. This subsection is subject to the provisions of ORC 5525.14.

108.10 Payroll Records. Keep payroll records as specified in ORC 4115.07 or as required by Federal law.

Authorized representatives of the PRC and/or CPE may inspect the certified payroll and other payroll records. Upon completion of the Work and before receiving the final estimate and when required by ORC 4115.07, submit an affidavit stating that wages have been paid according to the minimum rates specified in the Contract Documents.

109 ACCEPTANCE, MEASUREMENT, AND PAYMENT

109.01 Measurement of Quantities. The LPA will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the LPA will measure quantities as described below unless otherwise specified in the Contract Documents. The accuracy for both Daily Diary payment and Final Quantity payment will be in accordance with Supplement 1133.

Lump Sum. Not measured. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

Each. Measured by the number of individual items of Work completed.

Foot (Meter). Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m), with a minimum vertical measurement of 1 foot (0.10 m), at each unit.

Square Yard or Square Foot (Square Meter). Measured by a two-dimensional area method on the surface of the item.

M Square Feet. One thousand square feet.

Cubic Yard (Cubic Meter). Measured by a three-dimensional volume method. Measure all “loose material” or material “measured in the vehicle” by the cubic yard (cubic meter). Haul material “measured in the vehicle” in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Engineer, provided the vehicle’s bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

Cubic Yard (Cubic Meter) for Asphalt Concrete. Measure as specified in 401.12.

Acre (Hectare). Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

Pound (Kilogram). Measured by actual item net weight avoirdupois (mass).

Ton (Metric Ton). The term “ton” means the short ton consisting of 2000 pounds avoirdupois. The term “metric ton” means 1000 kilograms. Weigh all materials that are proportioned by weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Engineer. However, car weights will not be acceptable for materials to be passed through mixing plants. If trucks are used to haul material being paid for by weight, weigh the empty truck at least once daily and as the Engineer directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Engineer receipted freight bills for railroad shipments and certified weight-bills when materials are received by any

other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

Gallon (Liter). Measured by actual item liquid volume. The LPA will measure the following materials by the gallon (liter) at the following temperatures:

Temperatures	Items
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to Supplement 1060.

M Gallon. One thousand gallons.

Thousand Board Feet, MBF (Cubic Meter). Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

Standard Manufactured Items. When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

109.02 Measurement Units. The LPA will measure using either English or metric units as indicated in the Contract Documents. Use the Tables 109.02-1 and 109.02-2 to convert units when required. If Tables 109.02-1 and 109.02-2 do not provide a required factor, then use the appropriate factor provided in the IEEE/ASTM SI 10.

TABLE 109.02-1 ENGLISH TO SI (METRIC) CONVERSION FACTORS

Symbol	When You Know	Multiply By	To Find	Symbol
Length				
mil	mils	25.4	micrometers	μm
in	inches	25.4	millimeters	mm
ft	feet	0.3048	meters	m
yd	yards	0.9144	meters	m
mi	miles	1.609347	kilometers	km
Area				
in^2	square inches	645.16	square millimeters	mm^2
ft^2	square feet	0.09290304	square meters	m^2
yd^2	square yards	0.8361274	square meters	m^2
ac	acres	0.4046873	hectares	ha
ac	acres	4046.873	square meters	m^2
mi^2	square miles	2.589998	square kilometers	km^2
Volume				
fl oz	fluid ounces	29.57353	milliliters	mL
gal	gallons	3.785412	liters	L
ft^3	cubic feet	0.02831685	cubic meters	m^3
yd^3	cubic yards	0.7645549	cubic meters	m^3
Mass				
oz	ounces	28.34952	grams	g
lb	pounds	0.4535924	kilograms	kg
T	2000 pounds	0.9071847	metric tons	t
Temperature				
$^{\circ}\text{F}$	Fahrenheit	$\text{C} = (\text{F}-32)/1.8$	Celsius	$^{\circ}\text{C}$
Illumination				
fc	foot-candles	10.76391	lux	lx
fl	foot-lamberts	3.426259	candelas per square meter	cd/m^2
Force and Pressure or Stress				
lbf·ft	pounds-force foot	1.355818	newton meter	$\text{N}\cdot\text{m}$
lbf	pounds force	4.448222	newtons	N
lbf/ ft^2 (psf)	pounds force per square foot	47.88026	pascals	Pa
lbf/ in^2 (psi)	pounds force per square inch	0.006894757	megapascals	MPa

TABLE 109.02-2 SI (METRIC) TO ENGLISH CONVERSION FACTORS

Symbol	When You Know	Multiply By	To Find	Symbol
Length				
μm	micrometers	0.03937	mils	mil
mm	millimeters	0.03937	inches	in
m	meters	3.28084	feet	ft
m	meters	1.093613	yards	yd
km	kilometers	0.62137	miles	mi
Area				
mm^2	square millimeters	0.00155	square inches	in^2
m^2	square meters	10.76391	square feet	ft^2
m^2	square meters	1.19599	square yards	yd^2
ha	hectares	2.4710437	acres	ac
m^2	square meters	0.000247	acres	ac
km^2	square kilometers	0.3861	square miles	mi^2
Volume				
mL	milliliters	0.033814	fluid ounces	fl oz
L	liters	0.264172	gallons	gal
m^3	cubic meters	35.31466	cubic feet	ft^3
m^3	cubic meters	1.30795	cubic yard	yd^3
Mass				
g	grams	0.035274	ounces	oz
kg	kilograms	2.204622	pounds	lb
t	metric tons	1.1023114	2000 pounds	T
Temperature				
$^{\circ}\text{C}$	Celsius	$\text{F} = 1.8\text{C} + 32$	Fahrenheit	$^{\circ}\text{F}$
Illumination				
lx	lux	0.09290304	foot-candles	fc
cd/m^2	candelas per square meter	0.29186352	foot-lamberts	fl
Force and Pressure or Stress				
N·m	newton meters	0.7375621	pounds-foot force	lbf ft
N	newtons	0.22480892	pound force	lbf
Pa	pascals	0.02088543	pounds force per square foot	lbf/ft^2 (psf)
MPa	megapascals	145.03774	pounds force per square inch	lbf/in^2 (psi)

109.03 Scope of Payment. Payment of the Contract Price is full compensation for all resources necessary to complete the Contract Item and maintain the Work. Assume liability for risk, loss, damage, or expense resulting from the Work. The Contract Price and Contract Time shall only be changed by written Change Order or as determined by the LPA in writing in accordance with the contract documents.

109.04 Compensation for Altered Quantities, Eliminated Items or Termination of the Contract for Convenience of the LPA. If the agreed quantities of contract items vary from the quantities in the Contract, the LPA will make payment at the original Contract unit prices for the agreed quantities of Work.

A. If an item is eliminated in accordance with 104.02.E or the contract is terminated in accordance with 108.09 the LPA will pay the following in addition to that provided by 104.02.D:

1. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.

2. The cost of material transferred to the LPA in lieu of restocking or disposal. The allowed compensation is the paid invoice cost plus 15 percent markup, but no more than the unit bid price for the reference number involved.

3. Hauling costs, if not included in restocking charges, for returned material and for material delivered to the LPA.

B. If the project is terminated for convenience of the LPA, the LPA will negotiate compensation with the Contractor for actual costs incurred as a result of the termination. The LPA will pay for Extra Work as stipulated in approved Extra Work Change Orders or written authorizations subject to the limitations set forth in ORC 5525.14. Such authorizations for emergencies and to avoid Project delays are in advance of an approved Extra Work Change Order and commit the LPA only to the terms of the authorizations. The LPA will pay for Extra Work after the approval of the subsequent Change Order.

109.05 Changes and Extra Work.

A. **General.** If the LPA revises the Contract under: 104.02, 105.07, 105.10, 105.13, 107.10, 107.14, 107.15, 108.09, 109.06, or 109.07, the LPA will pay for changes and Extra Work with a Change Order using the sequence specified in 109.05.B through 109.05.E.

In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the Contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

Unless otherwise stated in 109.05, the compensation provided in 109.05.B through 109.05.E constitutes payment in full for all changes and Extra Work completed by original Contract Price, agreed unit price, agreed lump sum price, and for work performed on a force account basis, including:

1. Administration.
2. Superintendence.
3. Project and field office overhead.
4. Home office overhead.
5. Use of tools and equipment for which no rental is allowed.
6. Profit.

7. Taxes other than sales tax.

8. Premiums on insurance including additional premiums for Commercial General Liability Insurance required by 107.12.B and any additional coverage carried by the Contractor or subcontractor, excluding pollution and railroad General Liability Insurance. The LPA will pay the Contractor's pollution and railroad liability insurance premiums, if required by the contract, by a separate Change Order for the cost of the premium without any markup. When the Contractors or subcontractors basic rate for General Commercial Liability Insurance required by 107.12.B is greater than 5 percent of payroll, the LPA will pay directly without markup the portion of the premium in excess of 5 percent and provide copies of paid premiums.

Sales tax will not be allowed on any item for which tax exemption was obtained.

B. Negotiated Prices. Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitive bid contract. The Engineer and Contractor will negotiate agreed unit or lump sum prices using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:

- a. increased or decreased material costs specified in 109.05.C.3.
- b. increased or decreased labor costs specified in 109.05.C.2
- c. increased or decreased equipment costs specified in 109.05.C.4

Adjustments of these prices for inflation or markup for subcontractor work is not allowed.

2. State-wide average unit price awarded for the item or items as listed in the LPA's annual "Summary of Contracts Awarded." These prices may be adjusted for inflation using factors issued by the ODOT Office of Construction Administration. No markup for subcontractor work is allowed.

3. Average price awarded on three different projects of similar work and quantity. These prices may be adjusted for inflation using factors issued by the ODOT Office of Construction Administration. No markup for subcontractor work is allowed.

4. Prices computed by the ODOT Office of Estimating.

5. Cost analysis of labor, material, equipment, and markups as allowed in 109.05.C.

6. For the cost of compensable delays as defined in 108.06, prepare a cost analysis as allowed by 109.05.D.

Provide proposed pricing and cost justification for changes or Extra Work within 5 business days after the LPA's request. The LPA will respond within 5 business days after receipt of the Contractor's proposal. The LPA and the Contractor can mutually agree to extend these 5-day time limits.

If the LPA negotiates with the Contractor but does not agree on a price adjustment, the Engineer may direct the Contractor to perform all or part of the revised Work under force account.

C. Force Account.

1. General. The Engineer may direct the Contractor to perform the revised Work under force account. Submit a written proposal and estimated costs for the Work, including the planned equipment, materials, labor, and a work schedule.

The LPA will pay the Contractor as specified in 109.05.C as full compensation for performing the force account Work. The Project and Contractor personnel will document the labor and equipment used on the force account work on a Daily Force Account Record. At the end of each Workday, the Project and Contractor personnel will compare and sign the Daily Force Account Record. The LPA will make no force account payment before the Contractor submits an itemized statement of the costs for that work.

The Engineer will examine and, if found to be acceptable, approve all rates and costs submitted by the Contractor.

Provide the following content in itemized statements for all force account work:

a. Name, classification, date, daily hours, total hours, rate, and amount for all labor.

b. Designation, dates, daily hours, total hours of actual operation and idle time, Blue Book rate with reference or category, and amount for each unit of equipment and the applicable Blue Book hourly operating cost for each unit of equipment and invoices for all rental equipment. The designation includes the manufacturer's name or trademark, model number, and year of manufacture.

c. Quantities of materials and prices.

d. Transportation charges on materials, free on board (F.O.B.) at the job site.

e. Cost of workers' compensation insurance premiums, all applicable insurance premiums, unemployment insurance contributions, and social security tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which should be expressed as a cost per hour.

f. Documentation showing payment for all surveying, professional, or similar specialized Work not normally a part of a LPA contract.

g. If materials are taken from Contractor's stock and original received invoices for the materials and transportation charges do not exist, provide an affidavit and certify all of the following:

- (1) The materials were taken from the Contractor's stock.
- (2) The quantity shown was actually used for the force account work.
- (3) The price and transportation costs represent the actual cost to the Contractor.

h. Documentation showing payment to trucking firms and owner-operators. Submit documentation showing owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.1.a, 109.05.C.1.b, and 109.05.C.1.e.

i. Provide "receipted invoices" for all costs substantiated by an invoice.

If only part of the expenditure represented by an invoice is applicable to force account work, or if the invoice represents expenditure for more than one item of work, clearly indicate the actual amount of expenditure applicable to each item of work.

2. Labor. The LPA will pay the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. The LPA will pay an additional 38 percent markup on these wages and benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The LPA will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.
- e. Longshore and Harborworkers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

Provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. Provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the LPA will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The LPA will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The LPA will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account work.

If the foreman or timekeeper is employed partly on force account work and partly on other work, the Contractor shall prorate the number of hours between the force and non-force account work according to the number of people on each task as shown on payrolls.

The LPA will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor must provide payroll records for pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original Contract Work. The LPA will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in original Contract Work.

The LPA will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The LPA will not pay a percent markup on these costs.

3. Materials. The LPA will pay the Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Engineer approved materials the Contractor uses in force account Work. The LPA will pay an additional 15 percent markup on these costs.

Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented equipment used to haul materials to the project is not part of the materials cost. Such equipment, when used for hauling materials, shall be listed under cost of equipment.

Provide itemized statements in addition to the documentation requirements for all equipment including the quantity and price of each material and transportation charges free on board (F.O.B.) at the job site. Attach invoices to support the quantities of materials used, unit prices paid and transportation charges. If the Contractor uses materials from the Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the LPA and the Contractor will agree on a price that represents the actual cost to the Contractor. Provide an affidavit and certify all of the following:

- a. The materials were taken from the Contractor's stock.
- b. The quantity shown was actually used for the force account work.
- c. The price and transportation costs represent the actual cost to the Contractor.

Do not incorporate materials into the Work without a price agreement.

4. Equipment.

a. General. The LPA will pay the Contractor's costs for equipment the Engineer deems necessary to perform the force account work for the time

directed by the Engineer or until the Contractor completes the force account Work, whichever happens first. The LPA will pay the Contractor the established rates for equipment only during the hours that it is operated, except as otherwise allowed elsewhere in these Specifications. The LPA will pay for non-operating hours at the idle equipment rate as specified in 109.05.C.4.c. Report equipment hours to the nearest 1/2 hour. The established equipment rates in these Specifications include compensation for overhead and profit except as otherwise specified.

The LPA will pay for use of Contractor-owned equipment the Engineer approves for force account Work at established rates. The LPA will pay the rates, as modified in 109.05.C.4.b, given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by EquipmentWatch, a division of Penton Business Media, Inc.

Provide, and the Engineer will confirm, the manufacturer's ratings and manufacturer-approved modifications required to classify equipment for rental rate determination. For equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.

The LPA will not pay rental for small tools or equipment that show a daily rate less than \$5.00 or for unlisted equipment that has a value of less than \$400.

Tool trucks will be allowed for compensation if they are used at the force account site. Only the tools used from the tool truck will be allowed for compensation. Tools in the tool truck that are not used in the force account work will not be compensated. A tool trailer that remains at the Contractor's office or yard will not be allowed on the force account work. Tool trailers that are taken to the force account site will be allowed for compensation along with the tools used on the force account work that were taken from the trailer.

Treat traffic control devices used in Maintaining Traffic and owned by the Contractor as owned equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by the LPA.

Use Engineer approved equipment in good working condition and providing normal output or production. The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the Work.

For each piece of equipment used, whether owned or rented, provide the Engineer with the following information:

- (1) Manufacturer's name or trademark.
- (2) Equipment type.
- (3) Year of manufacture.
- (4) Model number.
- (5) Type of fuel used.
- (6) Horsepower rating.
- (7) Attachments required, together with their size or capacity.
- (8) All further information necessary to determine the proper rate.

- (9) Dates, daily hours, total hours of actual operation and idle time,
- (10) Blue Book rate with reference or category,
- (11) Amount
- (12) Applicable Blue Book hourly operating cost
- (13) Invoices for all rental equipment.

b. Hourly Owned Equipment Rates. The base rate for the machine and attachments represent the major cost of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

For all equipment used on force account work, determine, and have the LPA confirm, the hourly owned equipment rates as follows:

$$\text{HOER} = [\text{RAF} \times \text{ARA} \times (\text{R} / 176)] + \text{HOC}$$

Where:

HOER = hourly owned equipment rate

RAF = regional adjustment factor shown in the Blue Book

ARA = age rate adjustment factor shown in the Blue Book

R = current Blue Book monthly rate

HOC = estimated hourly operating cost shown in the Blue Book

However, compensation for equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs.

The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base equipment.

When multiple attachments are included with the rental equipment, only the attachment having the highest rental rate will be eligible for payment, provided that the attachment has been approved by the Engineer as being necessary to the force account Work.

When a piece of owned equipment is not listed in the Blue Book, use the rate for similar equipment found in the Blue Book or use 6 percent of the purchase price as the monthly rate (*R*) and add the hourly operating rate found in the Blue Book for similar equipment of the same horsepower.

For equipment brought to the Project exclusively for force account work and on the Project for less than a month, multiply the monthly rate (*R*) by the factor listed below:

TABLE 109.05-1

Working Hours	Factor
Less than or equal to 8.0	2.00
8.1 to 175.9	2.048 - (hours/168)
176 or greater	1.00

The term "WORKING HOURS," as used in Table 109.05-1, includes only those hours the equipment is actually in operation performing force account work; apply the factor, as determined above, to these actual working hours

only. Calculate compensation for any idle time according to 109.05.C.4.c without application of the factor.

The LPA will pay as working equipment for the entire Workday equipment used intermittently during the Workday. The following criteria qualify for intermittently used equipment:

(1) Equipment dedicated to the force account exclusively all day and not used on bid work.

(2) Equipment works before and after the intermittent idle period and its total working time during the Workday is at least 2 hours.

Equipment that is captive to the force account work (i.e. it must remain at the force account site), but does not qualify for intermittently used owned equipment, is paid as idle equipment according to C&MS Section 109.05.C.4.c. for the time it is not working.

c. Hourly Idle Equipment Rate. For equipment that is in operational condition, on site, and necessary for force account Work, but is idle, the LPA will pay an hourly idle equipment rate. The procedure to determine the hourly idle equipment rate for Contractor owned equipment is as follows:

$$\text{HIER} = \text{RAF} \times \text{ARA} \times (R / 176) \times (1/2)$$

Where:

HIER = Hourly idle equipment rate.

RAF = Regional adjustment factor shown in the Blue Book.

ARA = Age rate adjustment factor shown in the Blue Book.

R = Current Blue Book monthly rate.

If rented equipment necessary for force account work is idle, the LPA will pay the Contractor for the actual invoiced rates prorated for the duration of the idle period. The actual invoiced rates must be reasonably in line with the Blue Book rates and approved by the Engineer. The LPA will pay a 15 percent markup for overhead and profit for the actual invoiced rates during the idle period.

The LPA will not pay idle owned equipment costs for more than 8 hours in a 24-hour day or 40 hours in a week.

The LPA will not pay for inoperable equipment.

The Engineer may order specific equipment to the site up to 5 days before its planned usage. If this equipment is not used for other work, the LPA will pay for it as idle equipment until used.

The LPA will pay for the cost of idle owned or rented equipment when the Work was suspended for the convenience of the State. The LPA will not pay the cost of idle equipment when the Work was suspended by the Contractor for the Contractor's own reasons.

The LPA will only pay for the number of Calendar Days during the existence of the suspension. The LPA will not compensate the Contractor for days that the Engineer determined were lost to weather.

The LPA will only pay for equipment physically located at the Project site that was received to prosecute the scheduled work during the delay.

Compensation for idle equipment will stop at the completion of the force account Work or at the end of the suspension of Work.

d. Rented Equipment. The LPA will pay a 15 percent markup for overhead and profit for all rented equipment, its corresponding Blue Book hourly operating costs, and State and Local sales taxes.

(1) Equipment Rented Solely for Force Account Work. If the Contractor rents or leases equipment from a third party exclusively for force account Work, the LPA will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Engineer. The LPA will pay a 15 percent markup for overhead and profit for all rented equipment paid for by the actual invoices. Add the Blue Book hourly operating cost to the marked up actual invoiced rates.

(2) Equipment Rented for Original Contract Work, but Used for Force Account Work. If the Contractor uses rented equipment currently on the Project for original Contract Work to perform force account Work, then determine the hourly outside-rented equipment rate as follows:

$$\text{HRER} = (\text{HRI} \times 115\%) + \text{HOC}$$

Where:

HRER = hourly rented equipment rate

HRI = hourly rental invoice costs prorated for the actual number of hours that rented equipment is operated solely on force account work. Use a monthly invoice rate divided by 176, a weekly invoice rate divided by 40, or a daily invoice rate divided by 8.

HOC = hourly operating cost shown in the Blue Book

The LPA will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the Work by the Engineer.

e. Moving of Equipment. The LPA will also pay for the time required to move needed equipment to the location of the force account work and to return it to its original location. The LPA will pay for loading and transportation costs instead of moving time if equipment is moved by means other than its own power. Moving time back to the original location or loading and transportation costs will not be allowed if the equipment is used at the site of the force account work on contract items or related work.

The LPA will consider the actual cost of transferring the equipment to the Project and returning it to the original location as an additional expense and pay for it as specified, for equipment moved on the Project exclusively for force account work.

The Engineer will confirm the original location of the equipment before the Contractor moves and uses it for force account work.

If the equipment is transported by a common carrier, the allowance is the invoiced amount paid for the freight plus 15 percent. However, if the Contractor's forces transport the equipment, the allowable compensation will be

Blue Book rate of the hauling unit and hourly Blue Book operating cost plus the driver's wages and the cost of loading and unloading the equipment calculated according to 109.05.C.2.

5. Foreman's Transportation. The LPA will pay the Blue Book rate for every hour the foreman's truck is on the force account site or moving to or from the site. This rate includes equipment cost, fuel and lubricants, overhead, profit, and mobile phone or two-way radios.

6. Subcontract Work. For Work performed by an approved subcontractor, the LPA will pay an amount to cover administrative costs of 8% on the first \$10,000 of work and 5% for work in excess of \$10,000 as provided in 109.05.C.2 through 109.05.C.5. No additional mark-up is allowed for work of a sub-subcontractor or trucking services employed by a subcontractor.

7. Final Adjustment to Premium for Contract Bonds. The final bond premium amount for the payment and performance bonds will be computed based on the actual final contract value. For the purpose of computing a bond premium adjustment the actual final contract value is defined as the whole sum of money, excluding any bond premium adjustment, which is passed from the LPA to the Contractor as a result of the completion of the Work. If the actual final contract value is different from the original contract value, the premium shall be adjusted accordingly; either by refund of part of the original bond premium by the Contractor if the original contract value is larger than the actual final contract value; or by payment of additional bond premium by the LPA if the original contract value is smaller than the actual final contract value. Additional payment by the LPA or refund by the Contractor will be based on the difference between the invoiced bond premium for the original contract value and the invoiced bond premium for the actual final contract value without any markup. A final bond premium adjustment will not be made when the actual final contract value differs from the original contract value by less than \$ 40,000.00.

8. Trucking.

a. Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8% on the first \$10,000 of trucking and 5% for trucking in excess of \$10,000 to cover administrative costs.

b. Trucking that is subject to the prevailing wage law will be compensated according to 109.05.C.1, 109.05.C.2, 109.05.C.4, 109.05.C.6, and 109.05.C.10.

Provide documentation showing payment to trucking firms and owner-operators and owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.2 and 109.05.C.4.

9. Professional and Specialized Work. The following work, when performed by a firm hired by the Contractor, is paid at the reasonable and fair market invoiced cost plus 8% on the first \$10,000 of work and 5% for work in excess of \$10,000.

a. Surveying.

- b. Engineering design.
- c. Specialized work that is not normally part of a LPA Contract and is not normally subject to prevailing wage.
- d. Installation, periodic maintenance, and removal of traffic control devices under Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project full-time. Maintenance of Traffic services performed by LEO.
- e. Other professional or specialized work not contemplated at the time of Bid.

Provide documentation showing payment for professional and specialized Work.

10. Payment for Force Account Work. Submit an analysis of estimated cost prepared in accordance with 109.05C for work that will be performed on a force account basis. Attach an original affidavit to the analysis stating:

“Labor rates shown are the actual rates paid for labor, unit prices for materials and rates for owned and rented equipment have been estimated on the basis they are not in excess of those charged in the area in which the work will be performed.”

The Engineer will process an Estimated Cost of Force Account (ECFA) if the amount of the force account work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. The Engineer will process an Actual Cost of Force Account (ACFA) to make any necessary adjustment between the ECFA and the final itemized costs for the force account work.

For force account work estimated to be less than \$100,000 and anticipated to require less than two weeks to perform, the Engineer will process an Actual Cost of Force Account (ACFA) at the conclusion of the work.

Submit biweekly itemized statement of costs prepared from the Daily Force Account Records to the Engineer as the work is being performed. The Engineer will process estimates as the force account work is performed. Payment will only be made upon receipt of the Contractor's itemized statement of costs.

Upon conclusion of the work performed by an ECFA or work performed by an ACFA submit an itemized statement of the actual costs prepared from the Daily Force Account Record and utilizing the LPA's electronic template titled “Electronic Force Account.” Submit a compact disk (CD), labeled with the Contractor's name and the project number, and a hard copy of the “Electronic Force Account.” The “Electronic Force Account” template can be downloaded from the following website:

www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx

The Engineer may approve an alternative electronic template provided all calculations and printouts are equivalent to those generated by the “Electronic Force Account” template.

Attach an original affidavit to the hard copy stating:

“The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons

employed on the force account work. All unit prices for materials and rates for owned and rented equipment listed on the Summary of Actual Costs are substantiated by actual records of materials and equipment actually used in performance of the force account work and the price of any owned equipment not previously agreed upon does not exceed prices charged for similar equipment in the area in which the work was performed.”

Daily Force Account Records signed by both the LPA and Contractor will govern over other LPA and Contractor records subject to the following:

a. When the Contractor is subject to a Union Contract that requires a minimum number of paid hours, the compensation will be for the verified contract minimum hours.

b. Material quantity disagreements will be resolved by field measurements of the installed quantities or the Engineer's estimate of the amount of temporary or un-measurable material used. The Engineer may also review and consider the Contractor's material invoices and material certifications to make the final determination.

In the event the Contractor declines to sign the Daily Force Account Record, the LPA's records shall govern. Any resulting dispute must be pursued in accordance with 108.02.G.

D. Delay Costs.

1. General. If the LPA agrees that it has caused a delay, the LPA will pay for the costs specified in 109.05.D as allowed by 108.06.D, unless these costs have been previously paid as listed in 109.05.B or 109.05.C. Such payment constitutes full compensation for any and all delay costs

The LPA will make no payment for delays occurring during the period from December 1 to April 30 unless the Contractor's approved progress schedule depicts critical Work occurring throughout this period.

The LPA will not pay for delay costs until the Contractor submits an itemized statement of those costs. Provide the content specified in 109.05.C.1, for the applicable items in this statement and as follows:

a. Proof of cost of Superintendent, or other project staff salaries, wages, and payroll taxes and insurance.

b. Proof of cost of office rent, utilities, land rent, and office supplies.

c. Proof of escalated cost for labor and material.

d. Proof of material storage costs.

2. Allowable Delay Costs

a. Extended Labor. Compute labor costs during delays as specified in 109.05.C.2 for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Engineer-approved reasons.

b. Escalated Labor. To receive payment for escalated labor costs, demonstrate that the LPA-caused delay forced the Work to be performed during a period when labor costs were higher than planned at the time of Bid. Provide

adequate support documentation for the costs, allowances, and benefits specified in 109.05.C.2. The LPA will pay wages and fringes with a 20 percent mark-up to cover administrative costs.

c. Idle Equipment or Equipment Demobilization. The LPA will pay the Contractor according to 109.05.C.4.c for idle equipment, other than small tools, that must remain on the Project during the delays. The LPA will pay the Contractor's transportation costs to remove and return equipment not required on the Project during the delays. No other equipment costs are recoverable as a result of delay.

d. Material Escalation or Material Storage. The LPA will pay the Contractor for increased material costs or material storage costs due to the delay. Obtain the Engineer's approval before storing materials due to a delay. Payment will be based upon the accepted quantity of work performed during the period for which escalated costs have been approved. The LPA will pay increased material costs with an 8 percent mark-up to cover administrative costs and any material waste inherent to the Work.

e. Field Overhead. The LPA will pay any Contractor or subcontractor for field overhead costs which include the cost of supervision, field office and office supplies, and utilities for which payment is not provided for in 109.05.D.2.f, during a delay period provided all of the following criteria are met:

(1) The Contractor or subcontractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of field overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3, 108.06.D.5 or for delays due to revised Work as specified in 104.02.B or 104.02.F.

The LPA will pay the salary and fringes plus a 5 percent markup for field personnel identified in Table 109.05-4.

TABLE 109.05-4

Original Contract Amount	Field Personnel
Up to \$5,000,000	One Superintendent
\$5,000,001 to \$50,000,000	One Superintendent, One Assistant Superintendent or One Engineer, One Clerk
Over \$50,000,000	One Superintendent, One Assistant Superintendent, One Engineer, One Clerk

Superintendent's transportation is compensable at the same rate allowed for foreman's transportation in Section 109.05.C.5, which includes the cost of mobile communication devices. The allowed hours are when the superintendent is at the project site.

Superintendent's subsistence, provided this is the company's terms of compensation to such employees, as documented by the Contractor's written company policy or contracts with their employees.

The Contractor's or subcontractor's field office costs include field office trailers, tool trailers, office equipment rental, temporary toilets, and other

incidental facilities and supplies. Compute these costs on a Calendar Day basis. Owned trailers are paid at the Blue Book rate. Rented trailers are paid at the invoiced cost plus a 15 percent markup. Rented office space, toilets, and office equipment are allowed a 5 percent markup. Purchased office supplies are allowed a 5 percent markup.

Office utilities include, but are not limited to, telephone, electric, water, and natural gas. Compute these costs on a Calendar Day basis and allow a 5 percent markup.

f. Home Office Overhead. The LPA will pay the Contractor for home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in 109.05.D.2.e, including overhead costs that would otherwise be calculated using the Eichleay formula or some other apportionment formula, provided all of the following criteria are met:

(1) The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of home office overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3 and 108.06.D.5.

Any subcontractor that has approved C-92's for subcontracted work totaling \$4,000,000 or more is eligible for reimbursement of home office overhead provided the criteria set forth in 109.05.D.2.f.(1) and 109.05.D.2.f.(2) are met.

Payment will be made for every eligible day beyond the original contract completion date at the rate determined by 109.05.D.2.f.i. Payment for eligible days occurring during an unanticipated construction period will be calculated in accordance with 109.05.D.2.f.ii. Payment for eligible days occurring during an unanticipated winter period will be calculated in accordance with 109.05.D.2.f.iii.

(i) Home Office Overhead Daily Rate

Calculate the home office overhead daily rate using the following formula:

$$\text{Daily HOOP} = (A \times C)/B$$

Where:

A = original contract amount

B = contract duration in Calendar Days

C = value from Table 109.05-5

TABLE 109.05-5

Original Contract Amount	C
Up to \$5,000,000	0.08
\$5,000,001 to \$25,000,000	0.06
Over \$25,000,000	0.05

Daily HOOP = home office overhead daily rate

Contract duration term, B, includes every Calendar Day from the execution of the Contract, unless otherwise specified by the PRC and/or CPE, to the original Contract Completion Date.

When the Contractor requests home office overhead compensation for a subcontractor, use the above formula to calculate the subcontractor's Daily HOOP; however, in the subcontractor calculation, A is equal to the subcontractor's portion of the original contract amount as determined by the sum of all approved C-92's issued for the subcontracted work.

(ii) Home Office Overhead Payment for an Unanticipated Construction Period

Calculate the home office overhead payment for an unanticipated construction period occurring between May 1 and November 30 using the following formula:

$$\text{CP HOOP} = \text{Daily HOOP} \times D$$

Where:

D = sum of all excusable, compensable delays in Calendar Days
minus the sum of all delays due to 108.06.D.1 and 108.06.D.4
in Calendar Days

Daily HOOP = daily home office overhead rate

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30

The excusable, compensable delay term, D, is the additional, unanticipated extended period for work performed between May 1 and November 30 in Calendar Days.

(iii) Home Office Overhead Payment for an Unanticipated Winter Period

Calculate the payment for home office overhead for an unanticipated winter period occurring between December 1 and April 30 using the following formula:

$$\text{WP HOOP} = \text{Daily HOOP} \times F \times D/E$$

Where:

D = sum of all excusable, compensable delays in Calendar Days
minus the sum of all delays due to 108.06.D.1 and 108.06.D.4
in Calendar Days

E = sum of all excusable, compensable delays in Calendar Days
plus the sum of all excusable, non-compensable delays in
Calendar Days

F = 151 for a non-leap year or 152 for a leap year

Daily HOOP = daily home office overhead rate

WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30

Payment for Home Office Overhead for an unanticipated winter period will not be made when the value of the remaining work is below the lesser of \$500,000.00 or 10 percent of the estimated final contract value.

(iv) Total Home Office Overhead Payment

Calculate the total home office overhead payment using the following formula:

$$\text{Total HOOP} = \text{CP HOOP} + \text{WP HOOP}$$

Where:

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30

WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30

Total HOOP = total home office overhead payment

g. Subsistence and Travel Allowance. The LPA will pay costs for subsistence and travel allowances for labor that must remain on the Project during the delays, when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the project. Overnight lodging will be reimbursed if the person is at a location greater than forty-five miles from their residence up to a maximum of \$106 per day. Meals and incidental expenses will reimbursed up to a maximum of \$56 per day. The LPA will not pay a percent markup on these costs.

E. Changes in Materials. Changes in material specifications that result in increased cost to the Contractor are compensated by lump sum adjustment to the reference number. The allowed compensation is equal to the invoice supported material cost increase plus 15 percent markup for profit and overhead.

Material cost savings resulting from a specification change shall be credited to the project by a lump sum adjustment to the reference number plus a 15 percent markup if the originally specified material has not been ordered.

If the original material was ordered before the Contractor was informed of the change, the savings markup allowed is 2.5 percent in order to exclude profit on the original bid price and pay only for incurred overhead.

109.06 Directed Acceleration. The PRC and/or CPE may order the Contractor to accelerate the Work to avoid delay costs or to complete the Project early. The PRC and/or CPE and the Contractor will negotiate acceleration costs.

109.07 Inefficiency. The LPA will compensate the Contractor for inefficiency or loss of productivity resulting from 104.02 Revisions to the Contract Documents. Use the Measured Mile analysis comparing the productivity of work impacted by a change to the productivity of similar work performed under un-impacted conditions to prove and quantify the inefficiency.

Provide notice as per 108.02.F when inefficiency or loss of production is experienced resulting from 104.02 Revisions to the Contract Documents.

Use the following calculation for the Measured Mile analysis:

Additional Crew Hours = $(\text{Unit Productivity Unimpacted Period} - \text{Unit Productivity Impacted Period}) / \text{Unit Productivity Unimpacted Period} \times (\text{Number of Units During Impacted Period} / \text{Unit Productivity Impacted Period})$.

109.08 Unrecoverable Costs. The Contractor is not entitled to additional compensation for costs not specifically allowed or provided for in 109.05 including, but not limited to, the following:

- A. Loss of anticipated profit.
- B. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.
- C. Indirect costs.
- D. Attorney's fees, claim preparation expenses, and the costs of litigation.

109.09 Estimates. If satisfactory progress is being made, the Contractor will receive monthly payments equaling the Work and materials in place. The monthly payment is approximate, and all partial estimates and payments are subject to correction in the Final Estimate and payment. Payment for Work and materials shall not, in any way, prevent later rejection when defective Work or material is discovered, or constitute acceptance under 109.11 or 109.12. Any pay item deficient in material approval can be withheld for payment on an estimate.

Except for the final estimate, the LPA will not pay an estimate until the Contractor certifies to the Engineer that the work for which payment is being made was performed in accordance with the contract. Certification will be made on forms provided by the LPA.

No estimate or payment shall be construed as acceptance of defective Work or improper materials.

The LPA will not pay the adjusted final estimate until the Contractor remedies all defective Work and accepted Work damaged by the Contractor's operations.

109.10 Payment for Delivered Materials. The LPA will pay, up to 75 percent of the applicable contract item, for the invoiced cost of the delivered and approved materials before they are incorporated in the Work, if the approved materials are delivered, accepted, and properly stored on the project or stored in acceptable storage places in the vicinity of the Project.

The LPA will pay for the cost of approved materials before they are incorporated in the Work when asked by the Contractor, if the Engineer determines that it is not practical to deliver the material to the Project site. This provision applies only to bulky materials that are durable in nature and represent a significant portion of the project cost, such as aggregates, steel, and precast concrete. The LPA will pay for un-fabricated structural steel if the following requirements are met:

- A. The Contractor has provided both the Engineer and the ODOT Office of Materials Management an itemized invoice from the steel mill for the steel for which reimbursement is requested
- B. Project structural Steel design plans are complete with no forthcoming revisions. For design build projects, Contractor accepted show drawings per 501.04, will need to be provided.
- C. Contractor accepted certified test data for all steel in question along with mill shipping notices have been received by the ODOT Office of Materials Management per 501.06.

D. The steel is properly stored to allow inspection by the ODOT Office of Materials Management. It shall also be properly set apart from other material and identified as belonging to ODOT.

E. The Contractor will provide the Engineer a written statement that under 106, the Contractor is responsible for the steel that has been paid for until the actual steel is erected and accepted in the field.

F. Payment shall only be authorized after all the aforementioned documentation has been received by the ODOT Office of Materials Management and the steel has been inspected by the ODOT Office of Materials Management to verify that all steel listed in the itemized invoice has been received by the fabricator and properly stored. The amount to be paid shall be equivalent to the itemized invoice from the steel mill, but shall not exceed 50% of the bid price for the structural steel.

The LPA will not pay delivered materials on small warehouse items or for plant materials.

109.11 Partial Acceptance. Upon completion of a portion of the Work, the Contractor may request acceptance of a completed portion of the Work.

A. An inspection may be performed on a completed portion of the project roadway section provided:

1. All safety items are in place including permanent pavement markings.
2. Traffic is in its final pattern.
3. A completed portion of the project constitutes a completed geographic section of the project or a direction of traffic on a divided highway.
4. Is in accordance with other contract provisions.

B. An inspection may be performed on a completed bridge provided:

1. All work on the bridge and approaches are complete, including all safety items and permanent pavement markings.
2. The Contractor will not return to the bridge for any work except as allowed in 4.
3. Traffic is in its final pattern.
4. Painting of structural steel is either completed or scheduled to be performed.
5. Is in accordance with other contract provisions.

The Final Inspector will grant written partial acceptance for that portion of the Work or reject the Contractor's request. Such written partial acceptance will designate what portion of the Work is accepted, the date of acceptance, and the warranty provisions started by the partial acceptance.

Partial acceptance will relieve the Contractor of maintenance responsibility for the designated portion of the Work. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the LPA is entitled at law or in equity.

109.12 Final Acceptance.

A. Final Inspection. The LPA will perform a Final Inspection for the sole purpose of relieving the Contractor of maintenance responsibility for the Work.

The Final Inspection shall be a limited visual review of the Work and shall only serve as the LPA's verification that the Work appears substantially complete. Final Inspection does not waive any available rights or remedies of the LPA, nor divest the Contractor of any responsibility for compliance with the contract or liability for damages.

Notify the Engineer when the Project is complete and all of the Engineer's punch list items are complete. If the Engineer agrees the Project is complete, then within 15 business days the District Final Inspector will inspect the Work and categorize it as one of the following:

1. Unacceptable or not complete.
2. Substantially complete with punch list items found by the Final Inspector.
3. Substantially complete.

If the Final Inspector finds the Work substantially complete or substantially complete with punch list items, then the Contractor's maintenance responsibilities end on the day of the Final Inspection, except for any maintenance related to unfinished punch list items. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the LPA is entitled at law or in equity. The Final Inspector will issue a Final Inspection Report that will document the findings of the inspection and start any warranty period.

B. Punch List. The Final Inspector will issue to the Contractor a written punch list of work required as a condition of acceptance. For project involving multiple public agencies, the Final Inspector will receive and compile punch lists from all agencies that have authority to provide one prior to issuing the LPA's punch list. The Final Inspector's punch list will stipulate a reasonable time to complete the required Work. Failure of the Contractor to complete the punch list items by the stipulated time will result in the assessment of fifty percent of the Liquidated Damages according to 108.07 for each Calendar Day for every day beyond the stipulated time the punch list work remains incomplete and beyond the revised Completion Date.

C. Finalization. The Contractor shall accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within 30 Calendar Days of receiving the Engineer's list of final quantities. The prescribed 30 Calendar Day period can be modified by mutual agreement of the Contractor and the PRC and/or CPE. If no notice of disagreement is received, then the final payment will be based on the Engineer's list of final quantities.

Supply all documents necessary for Project finalization within 60 Calendar Days from the date that the Work is physically complete. These documents include:

1. Delinquent material certifications.
2. Delinquent certified payrolls or required revised payrolls.

3. Wage affidavit required by ORC Chapter 4115 on projects without any Federal funding.
4. Delinquent force account records.
5. Any other document required to complete finalization of the project.

Failure to submit these acceptably completed documents will result in an administrative fee of \$100 per Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

D. Final Payment. Final payment is based on:

1. The agreed final quantities or as determined by the Engineer if agreement is not possible, no compensation for unauthorized work is allowed.
2. Finding of substantial completion by the Final Inspector.
3. Receipt of acceptable finalization documents.
4. Contractor certification that the Work was performed in accordance with the contract.

E. Completion of Contract and Continuation of Contractor's Responsibility. The Contract is complete, except for items covered by the required bonds, when the Contractor receives final payment. The PRC or if applicable, the CPE will issue a letter confirming completion of the contract, noting any exception as provided in Items 659 and 661 and any warranty. The date the final payment is approved by the PRC or if applicable, the CPE constitutes acceptance for the purpose of ORC 5525.16. Neither Completion of the Contract nor substantial completion relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the LPA is entitled at law or in equity.

"General Decision Number: OH20260001 01/02/2026

Superseded General Decision Number: OH20250001

State: Ohio

Construction Types: Heavy and Highway

Counties: Ohio Statewide.

Heavy and Highway Construction Projects

Modification Number	Publication Date
0	01/02/2026

BROH0001-001 06/01/2024

DEFIANCE, FULTON (Excluding Fulton, Amboy & Swan Creek Townships), HENRY (Excluding Monroe, Bartlow, Liberty, Washington, Richfield, Marion, Damascus & Townships & that part of Harrison Township outside corporate limits of city of Napoleon), PAULDING, PUTNAM and WILLIAMS COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0001-004 06/01/2023

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...\$ 32.40		19.30

BROH0003-002 06/01/2024

FULTON (Townships of Amboy, Swan Creek & Fulton), HENRY (Townships of Washington, Damascus, Richfield, Bartlow, Liberty, Harrison, Monroe, & Marion), LUCAS and WOOD (Townships of Perrysburg, Ross, Lake, Troy, Freedom, Montgomery, Webster, Center, Portage, Middleton, Plain, Liberty, Henry, Washington, Weston, Milton, Jackson & Grand Rapids) COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0005-003 06/01/2020

CUYAHOGA, LORAIN & MEDINA (Hinckley, Granger, Brunswick, Liverpool, Montville, York, Homer, Harrisville, Chatham, Litchfield & Spencer Townships and the city of Medina)

	Rates	Fringes
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BRICKLAYER

BRICKLAYERS; CAULKERS;		
CLEANERS; POINTERS; &		
STONEMASONS.....\$ 36.64	17.13	
SANDBLASTERS.....\$ 36.39	17.13	
SEWER BRICKLAYERS & STACK		
BUILDERS.....\$ 36.64	17.13	
SWING SCAFFOLDS.....\$ 37.14	17.13	

BROH0006-005 06/01/2024

CARROLL, COLUMBIANA (Knox, Butler, West & Hanover Townships),
STARK & TUSCARAWAS

	Rates	Fringes
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Bricklayer, Stonemason.....\$ 33.39	20.06	
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BROH0007-002 06/01/2024

LAWRENCE

	Rates	Fringes
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Bricklayer, Stonemason.....\$ 33.39	20.06	
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BROH0007-005 06/01/2023

PORTAGE & SUMMIT

	Rates	Fringes
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BRICKLAYER.....\$ 32.40	19.30	
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BROH0007-010 06/01/2024

PORTAGE & SUMMIT

	Rates	Fringes
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MASON - STONE.....\$ 33.39	20.06	
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BROH0008-001 06/01/2024

COLUMBIANA (Salem, Perry, Fairfield, Center, Elk Run,
Middleton, & Unity Townships and the city of New Waterford),
MAHONING & TRUMBULL

	Rates	Fringes
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BRICKLAYER.....\$ 33.39 20.06

BROH0009-002 06/01/2024

BELMONT & MONROE COUNTIES and the Townships of Warren & Mt. Pleasant and the Village of Dillonvale in JEFFERSON COUNTY

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06
Refractory.....\$ 31.45		19.01

BROH0010-002 06/01/2024

COLUMBIANA (St. Clair, Madison, Wayne, Franklin, Washington, Yellow Creek & Liverpool Townships) & JEFFERSON (Brush Creek & Saline Townships)

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0014-002 06/01/2024

HARRISON & JEFFERSON (Except Mt. Pleasant, Warren, Brush Creek, Saline & Salineville Townships & the Village of Dillonvale)

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0016-002 06/01/2023

ASHTABULA, GEAUGA, and LAKE COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 32.40		19.30

BROH0018-002 06/01/2024

BROWN, BUTLER, CLERMONT, HAMILTON, PREBLE (Gasper, Dixon, Israel, Lanier, Somers & Gratis Townships) & WARREN COUNTIES:

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0022-004 06/01/2024

CHAMPAIGN, CLARK, CLINTON, DARKE, GREENE, HIGHLAND, LOGAN,
MIAMI, MONTGOMERY, PREBLE (Jackson, Monroe, Harrison, Twin,
Jefferson & Washington Townships) and SHELBY COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0032-001 06/01/2024

GALLIA & MEIGS

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0035-002 06/01/2024

ALLEN, AUGLAIZE, MERCER and VAN WERT COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0039-002 06/01/2024

ADAMS & SCIOTO

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

BROH0040-003 06/01/2024

ASHLAND, CRAWFORD, HARDIN, HOLMES, MARION, MORROW, RICHLAND,
WAYNE and WYANDOT (Except Crawford, Ridge, Richland & Tymochtee
Townships) COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....\$ 33.39		20.06

FOOTNOTE: Layout Man and Sawman rate: \$1.00 per hour above
journeyman rate.
Free standing stack work ground level to top of stack;
Sandblasting and laying of carbon masonry material in swing
stage and/or scaffold; Ramming and spading of plastics and
gunniting: \$1.50 per hour above journeyman rate.
""Hot"" work: \$2.50 above journeyman rate.

BROH0044-002 06/01/2024

Rates Fringes

Bricklayer, Stonemason
COSHOCOTON, FAIRFIELD,
GUERNSEY, HOCKING, KNOX,
KICKING, MORGAN,
MUSKINGUM, NOBLE (Beaver,
Buffalo, Seneca & Wayne
Townships) & PERRY
COUNTIES:.....\$ 33.39 20.06

BROH0045-002 06/01/2023

FAYETTE, JACKSON, PIKE, ROSS and VINTON COUNTIES

Rates Fringes

Bricklayer, Stonemason.....\$ 35.39 17.47

BROH0046-002 06/01/2024

ERIE, HANCOCK, HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Townships) and WYANDOT (Tymochtee, Crawford, Ridge & Richland Townships) COUNTIES & the Islands of Lake Erie north of Sandusky

Rates Fringes

Bricklayer, Stonemason.....\$ 33.39 20.06

FOOTNOTE: Layout Man and Sawman rate: \$1.00 per hour above journeyman rate.

Free standing stack work ground level to top of stack; Sandblasting and laying of carbon masonry material in swing stage and/or scaffold; Ramming and spading of plastics and gunniting: \$1.50 per hour above journeyman rate.

""Hot"" work: \$2.50 above journeyman rate.

BROH0052-001 06/01/2024

ATHENS COUNTY

Rates Fringes

Bricklayer, Stonemason.....\$ 33.39 20.06

BROH0052-003 06/01/2024

NOBLE (Brookfield, Noble, Center, Sharon, Olive, Enoch, Stock, Jackson, Jefferson & Elk Townships) and WASHINGTON COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 33.39	20.06

BROH0055-003 06/01/2024

DELAWARE, FRANKLIN, MADISON, PICKAWAY and UNION COUNTIES

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 33.39	20.06

CARP0002-024 05/01/2025

BROWN, BUTLER, CHAMPAIGN, CLARK, CLERMONT, CLINTON, DARKE,
GREENE, HAMILTON, LOGAN, MIAMI, MONTGOMERY, PREBLE, SHELBY &
WARREN

	Rates	Fringes
Carpenter & Piledrivermen.....	\$ 35.94	23.59
Diver.....	\$ 40.58	9.69

CARP0171-001 05/01/2025

MAHONING & TRUMBULL

	Rates	Fringes
CARPENTER.....	\$ 33.19	25.02

CARP0171-002 05/01/2025

BELMONT, COLUMBIANA, HARRISON, JEFFERSON & MONROE

	Rates	Fringes
CARPENTER.....	\$ 32.50	26.19

CARP0200-002 05/01/2025

ADAMS, ATHENS, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, GALLIA,
GUERNSEY, HIGHLAND, HOCKING, JACKSON, LAWRENCE, LICKING,
MADISON, MARION, MEIGS, MORGAN, MUSKINGUM, NOBLE, PERRY,
PICKAWAY, PIKE, ROSS, SCIOTO, UNION, VINTON and WASHINGTON
COUNTIES

	Rates	Fringes
CARPENTER.....	\$ 35.94	23.59

Diver.....	\$ 39.41	10.40
PILEDRIVERMAN.....	\$ 35.94	23.59

CARP0285-001 05/01/2025

CARROLL, STARK, TUSCARAWAS and WAYNE

	Rates	Fringes
CARPENTER.....	\$ 34.07	24.28

CARP0285-002 05/01/2025

COSHOCTON, HOLMES, KNOX & MORROW

	Rates	Fringes
CARPENTER.....	\$ 33.38	24.69

CARP0285-008 05/01/2025

MEDINA, PORTAGE & SUMMIT

	Rates	Fringes
CARPENTER.....	\$ 37.18	25.07

CARP0351-005 05/01/2025

LUCAS & WOOD

	Rates	Fringes
CARPENTER.....	\$ 35.44	27.56

CARP0351-006 05/01/2025

	Rates	Fringes
CARPENTER		
DEFIANCE, FULTON, HANCOCK,		
HENRY, PAULDING & WILLIAMS		
COUNTIES.....	\$ 32.05	26.13

CARP0372-002 05/01/2025

ALLEN, AUGLAIZE, HARDIN, MERCER, PUTNAM & VAN WERT

	Rates	Fringes
CARPENTER.....	\$ 31.80	26.33

CARP0435-005 05/01/2025

ASHTABULA, CUYAHOGA, GEAUGA & LAKE

	Rates	Fringes
CARPENTER.....	\$ 38.57	24.64

CARP0735-001 05/01/2025		

ASHLAND, HURON & RICHLAND

	Rates	Fringes
CARPENTER.....	\$ 34.67	23.57

CARP0735-002 05/01/2025		

LORAIN

	Rates	Fringes
CARPENTER.....	\$ 38.42	24.01

CARP0735-004 05/01/2025		

ERIE

	Rates	Fringes
CARPENTER.....	\$ 36.71	24.14

CARP0744-001 05/01/2025		

CRAWFORD, OTTAWA, SANDUSKY, SENECA & WYANDOT

	Rates	Fringes
CARPENTER.....	\$ 33.74	27.05

CARP1090-002 05/01/2025		

ALLEN, AUGLAIZE, HARDIN, MERCER, PUTNAM, VAN WERT & WYANDOT

	Rates	Fringes
Piledrivermen & Diver's Tender...	\$ 35.94	28.39
DIVERS - \$250.00 per day		

CARP1090-003 05/01/2025		

BELMONT, HARRISON, & MONROE

Rates	Fringes
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Diver, Wet.....	\$ 58.52	24.91
Piledrivermen; Diver, Dry.....	\$ 39.01	24.91

CARP1090-004 05/01/2025

CARROLL, STARK, TUSCARAWAS & WAYNE

	Rates	Fringes
Diver, Wet.....	\$ 49.82	25.40
Piledrivermen; Diver, Dry.....	\$ 33.21	25.40

CARP1090-005 05/01/2025

ASHLAND, ASHTABULA, CUYAHOGA, ERIE, GEAUGA, HURON, LAKE,
LORAIN, MEDINA, PORTAGE, RICHLAND & SUMMIT

	Rates	Fringes
Diver, Wet.....	\$ 54.51	27.50
Piledrivermen; Diver, Dry.....	\$ 36.34	27.50

CARP1090-006 05/01/2025

COSHOCOTON, HOLMES, KNOX & MORROW

	Rates	Fringes
Diver, Wet.....	\$ 54.36	22.54
Piledrivermen; Diver, Dry.....	\$ 36.24	22.54

CARP1090-007 05/01/2025

MAHONING & TRUMBULL

	Rates	Fringes
Diver, Wet.....	\$ 50.85	24.82
Piledrivermen; Diver, Dry.....	\$ 33.90	24.82

CARP1090-008 05/01/2025

COLUMBIANA & JEFFERSON

	Rates	Fringes
PILEDRIVERMAN.....	\$ 39.01	24.91

CARP1090-009 05/01/2025

CRAWFORD, DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA,
PAULDING, SANDUSKY, SENECA, WILLIAMS & WOOD

	Rates	Fringes
Piledrivermen & Diver's Tender...	\$ 37.98	28.63
DIVERS - \$250.00 per day		

ELEC0008-002 05/27/2024		

DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING,
PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD

	Rates	Fringes
CABLE SPLICER.....	\$ 38.98	18.96
ELECTRICIAN.....	\$ 48.40	4.5%+23.06

ELEC0032-003 06/01/2025		

ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT &
WYANDOT (Crawford, Jackson, Marseilles, Mifflin, Ridgeland,
Ridge & Salem Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 39.17	23.60

ELEC0038-002 04/28/2025		

CUYAHOGA, GEAUGA (Bainbridge, Chester & Russell Townships) &
LORAIN (Columbia Township)

	Rates	Fringes
ELECTRICIAN		
Excluding Sound &		
Communications Work.....	\$ 46.63	24.92

FOOTNOTES;

- a. 6 Paid Holidays: New Year's Day; Memorial Day; July 4th;
Labor Day; Thanksgiving Day; & Christmas Day
- b. 1 week's paid vacation for 1 year's service; 2 weeks' paid
vacation for 2 or more years' service

ELEC0038-008 04/28/2025

CUYAHOGA, GEAUGA (Bainbridge, Chester & Russell Townships) &
LORAIN (Columbia Township)

	Rates	Fringes
Sound & Communication Technician		
Communications Technician....\$ 34.30		14.95
Installer Technician.....\$ 33.05		14.91

FOOTNOTES:

- a. 6 Paid Holidays: New Year's Day; Memorial Day; July 4th; Labor Day; Thanksgiving Day; & Christmas Day
- b. 1 week's paid vacation for 1 year's service; 2 weeks' paid vacation for 2 or more years' service

ELEC0064-003 11/30/2025

COLUMBIANA (Butler, Fairfield, Perry, Salem & Unity Townships)
MAHONING (Austintown, Beaver, Berlin, Boardman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield & Youngstown Townships), & TRUMBULL (Hubbard & Liberty Townships)

	Rates	Fringes
ELECTRICIAN.....\$ 41.49		21.81

ELEC0071-005 01/06/2025

ASHTABULA, CUYAHOGA, GEAUGA, LAKE & LORAIN

	Rates	Fringes
LINE CONSTRUCTION: Equipment Operator		
DOT/Traffic Signal & Highway Lighting Projects...\$ 39.97		27%+8.00
Municipal Power/Transit Projects.....\$ 49.46		27%+8.25
LINE CONSTRUCTION: Groundman		
DOT/Traffic Signal & Highway Lighting Projects...\$ 31.10		27%+8.00
Municipal Power/Transit Projects.....\$ 38.47		27%+8.25
LINE CONSTRUCTION: Linemen/Cable Splicer		
DOT/Traffic Signal & Highway Lighting Projects...\$ 43.89		27%+8.00
Municipal Power/Transit Projects.....\$ 54.96		27%+8.25

ELEC0071-010 01/06/2025

Statewide

	Rates	Fringes
Line Construction		
Equipment Operator.....	\$ 40.44	4%+16.09
Groundman.....	\$ 29.07	4%+13.81
Lineman & Cable Splicers....	\$ 46.02	4%+17.20

ELEC0082-002 12/02/2024

CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE & WARREN
(Wayne, Clear Creek & Franklin Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 38.00	22.49

ELEC0082-006 11/25/2024

CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE & WARREN
(Wayne, Clear Creek & Franklin Townships)

	Rates	Fringes
Sound & Communication Technician		
Cable Puller.....	\$ 13.85	5.30
Installer/Technician.....	\$ 27.70	15.71

ELEC0129-003 02/24/2025

LORAIN (Except Columbia Township) & MEDINA (Litchfield &
Liverpool Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 42.95	18.81

ELEC0129-004 02/24/2025

ERIE & HURON (Lyme, Ridgefield, Norwalk, Townsend, Wakeman,
Sherman, Peru, Bronson, Hartland, Clarksfield, Norwich,
Greenfield, Fairfield, Fitchville & New London Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 42.95	18.81

ELEC0141-003 06/02/2025

BELMONT COUNTY

	Rates	Fringes
CABLE SPLICER.....	\$ 42.94	27.74
ELECTRICIAN.....	\$ 39.25	31.23

ELEC0212-003 11/26/2018

BROWN, CLERMONT & HAMILTON

	Rates	Fringes
Sound & Communication		
Technician.....	\$ 24.35	10.99

ELEC0212-005 06/02/2025

BROWN, CLERMONT, and HAMILTON COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 38.05	22.97

ELEC0245-001 08/26/2024

ALLEN, HARDIN, VAN WERT & WYANDOT (Crawford, Jackson, Marseilles, Mifflin, Richland, Ridge & Salem Townships)

	Rates	Fringes
Line Construction		
Equipment Operator.....	\$ 32.95	28%+7.85
Groundman Truck Driver.....	\$ 20.59	28%+7.85
Lineman.....	\$ 47.07	28%+7.85

FOOTNOTE: a. Half day's Paid Holiday: The last 4 hours of the workday prior to Christmas or New Year's Day

ELEC0245-003 01/01/2025

DEFIANCE, FULTON, HANCOCK, HENRY, HURON, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, and WOOD COUNTIES

	Rates	Fringes
Line Construction		
Cable Splicer.....	\$ 53.90	8.10+28%
Groundman/Truck Driver.....	\$ 20.51	8.10+28%
Heli-arc Welding.....	\$ 47.17	8.10+28%
Lineman.....	\$ 46.87	8.10+28%

Operator - Class 1.....	\$ 37.50	8.10+28%
Operator - Class 2.....	\$ 32.81	8.10+28%
Traffic Signal & Lighting		
Technician.....	\$ 42.18	8.10+28%

FOOTNOTE: a. 6 Observed Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; & Christmas Day. Employees who work on a holiday shall be paid at a rate of double their applicable classified straight-time rates for the work performed on such holiday.

ELEC0245-004 01/01/2025

ERIE COUNTY

	Rates	Fringes
Line Construction		
Cable Splicer.....	\$ 53.90	28%+8.10
Groundman/Truck Driver.....	\$ 20.51	28%+8.10
Lineman.....	\$ 46.87	28%+8.10
Operator - Class 1.....	\$ 37.50	28%+8.10
Operator - Class 2.....	\$ 32.81	28%+8.10

FOOTNOTE: a. 6 Observed Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; & Christmas Day. Employees who work on a holiday shall be paid at a rate of double their applicable classified straight-time rates for the work performed on such holiday.

ELEC0246-001 10/28/2024

Carroll, Columbiana, Harrison and Jefferson Counties in Ohio; Brooke and Hancock Counties in West Virginia.

	Rates	Fringes
ELECTRICIAN.....	\$ 44.00	30.38%+24.31

FOOTNOTE: a. 1 1/2 Paid Holidays: The last scheduled workday prior to Christmas & 4 hours on Good Friday.

ELEC0306-005 05/27/2024

MEDINA (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield & York Townships), PORTAGE (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantua, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro & Suffield Townships), SUMMIT & WAYNE (Baughman, Canaan, Chester,

Chippewa, Congress, Green, Milton, & Wayne Townships)

	Rates	Fringes
CABLE SPLICER.....	\$ 46.81	20.95
ELECTRICIAN.....	\$ 42.55	20.95

ELEC0317-002 06/02/2025		

GALLIA & LAWRENCE

	Rates	Fringes
CABLE SPLICER.....	\$ 32.68	18.13
ELECTRICIAN.....	\$ 41.15	29.35

ELEC0540-005 06/30/2025		

CARROLL (Northern half, including Fox, Harrison, Rose & Washington Townships), COLUMBIANA (Knox Township), HOLMES, MAHONING (Smith Township), STARK, TUSCARAWAS (North of Auburn, Clay, Rush & York Townships), and WAYNE (South of Baughman, Chester, Green & Wayne Townships) COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 39.86	29.19

ELEC0573-003 06/01/2025		

ASHTABULA (Colebrook, Wayne, Williamsfield, Orwell & Windsor Townships), GEAUGA (Auburn, Middlefield, Parkman & Troy Townships), MAHONING (Milton Township), PORTAGE (Charlestown, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris & Windham Townships), and TRUMBULL (Except Liberty & Hubbard Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 42.20	23.37

ELEC0575-001 05/29/2023		

ADAMS, FAYETTE, HIGHLAND, HOCKING, JACKSON (Bloomfield, Franklin, Hamilton, Jefferson, Lick, Madison, Scioto, Coal, Jackson, Liberty, Milton & Washington Townships), PICKAWAY (Deer Creek, Perry, Pickaway, Salt Creek & Wayne Townships), PIKE (Beaver, Benton, Jackson, Mifflin, Pebble, PeePee, Perry, Seal, Camp Creek, Newton, Scioto, Sunfish, Union & Marion Townships), ROSS, SCIOTO & VINTON (Clinton, Eagle, Elk, Harrison, Jackson, Richland & Swan Townships)

	Rates	Fringes
ELECTRICIAN.....	\$ 37.00	22.26

ELEC0648-001 09/01/2025

BUTLER and WARREN COUNTIES (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Townships)

	Rates	Fringes
CABLE SPLICER.....	\$ 30.50	18.23
ELECTRICIAN.....	\$ 38.00	24.162

ELEC0673-004 05/26/2025

ASHTABULA (Excluding Orwell, Colebrook, Williamsfield, Wayne & Windsor Townships), GEAUGA (Burton, Chardon, Claridon, Hambden, Huntsburg, Montville, Munson, Newbury & Thompson Townships) and LAKE COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 33.81	21.47
ELECTRICIAN.....	\$ 41.17	24.58

ELEC0683-002 06/02/2025

CHAMPAIGN, CLARK, DELAWARE, FAIRFIELD, FRANKLIN, MADISON, PICKAWAY (Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlenberg, Scioto, Walnut & Washington Townships), and UNION COUNTIES

	Rates	Fringes
CABLE SPLICER.....	\$ 44.00	26.40
ELECTRICIAN.....	\$ 43.00	26.37

ELEC0688-003 05/30/2022

ASHLAND, CRAWFORD, HURON (Richmond, New Haven, Ripley & Greenwich Townships), KNOX (Liberty, Clinton, Union, Howard, Monroe, Middleberry, Morris, Wayne, Berlin, Pike, Brown & Jefferson Townships), MARION, MORROW, RICHLAND and WYANDOT (Sycamore, Crane, Eden, Pitt, Antrim & Tymochtee Townships) COUNTIES

Rates	Fringes
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ELECTRICIAN.....\$ 32.30 21.83

ELEC0972-002 06/01/2024

ATHENS, MEIGS, MONROE, MORGAN, NOBLE, VINTON (Brown, Knox, Madison, Vinton & Wilkesville Townships), and WASHINGTON COUNITES

	Rates	Fringes
CABLE SPLICER.....	\$ 40.25	33.33
ELECTRICIAN.....	\$ 40.00	33.32

ELEC1105-001 05/27/2024

COSHOCTON, GUERNSEY, KNOX (Jackson, Clay, Morgan, Miller, Milford, Hilliar, Butler, Harrison, Pleasant & College Townships), LICKING, MUSKINGUM, PERRY, and TUSCARAWAS (Auburn, York, Clay, Jefferson, Rush, Oxford, Washington, Salem, Perry & Bucks Townships) COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 39.60	24.41

ENGI0018-003 05/01/2024

ASHTABULA, CUYAHOGA, ERIE, GEAUGA, LAKE, LORAIN, MEDINA, PORTAGE, and SUMMIT COUNTIES

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1.....	\$ 45.63	16.41
GROUP 2.....	\$ 45.53	16.41
GROUP 3.....	\$ 44.49	16.41
GROUP 4.....	\$ 43.27	16.41
GROUP 5.....	\$ 37.98	16.41
GROUP 6.....	\$ 46.63	16.41
GROUP 7.....	\$ 46.63	16.41

OPERATING ENGINEER CLASSIFICATIONS

GROUP 1 - Air Compressor on Steel Erection; Barrier Moving Machine; Boiler Operator on Compressor or Generator when mounted on a Rig; Cableway; Combination Concrete Mixer & Tower; Concrete Plant (over 4 yd. Capacity); Concrete Pump; Crane (All Types, Including Boom Truck, Cherry Picker); Crane-Compact, Track or Rubber over 4,000 lbs. capacity; Cranes-Self Erecting, Stationary, Track or Truck (All Configurations); Derrick; Dragline; Dredge (Dipper, Clam or

Suction); Elevating Grader or Euclid Loader; Floating Equipment (All Types); Gradall; Helicopter Crew (Operator-Hoist or Winch); Hoe (all types); Hoisting Engine on Shaft or Tunnel Work; Hydraulic Gantry (Lifting System); Industrial-Type Tractor; Jet Engine Dryer (D8 or D9) Diesel Tractor; Locomotive (Standard Gauge); Maintenance Operator Class A; Mixer, Paving (Single or Double Drum); Mucking Machine; Multiple Scraper; Piledriving Machine (All Types); Power Shovel; Prentice Loader; Quad 9 (Double Pusher); Rail Tamper (with auto lifting & aligning device); Refrigerating Machine (Freezer Operation); Rotary Drill, on Caisson work; Rough Terrain Fork Lift with Winch/Hoist; Side-Boom; Slip-Form Paver; Tower Derrick; Tree Shredder; Trench Machine (Over 24" wide); Truck Mounted Concrete Pump; Tug Boat; Tunnel Machine and/or Mining Machine; Wheel Excavator; and Asphalt Plant Engineer (Cleveland District Only).

GROUP 2 - Asphalt Paver; Automatic Subgrader Machine, Self-Propelled (CMI Type); Bobcat Type and/or Skid Steer Loader with Hoe Attachment Greater than 7,000 lbs.; Boring Machine More than 48"'; Bulldozer; Endloader; Horizontal Directional Drill (Over 50,000 ft lbs thrust); Hydro Milling Machine; Kolman-type Loader (production type-Dirt); Lead Greaseman; Lighting & Traffic Signal Installation Equipment (includes all groups or classifications); Material Transfer Equipment (Shuttle Buggy) Asphalt; Pettibone-Rail Equipment; Power Grader; Power Scraper; Push Cat; Rotomill (all), Grinders & Planers of All types; Trench Machine (24" wide & under); Vermeer type Concrete Saw; and Maintenance Operators (Portage and Summit Counties Only).

GROUP 3 - A-Frame; Air Compressor on Tunnel Work (low pressure); Asphalt Plant Engineer (Portage and Summit Counties Only); Bobcat-type and/or Skid Steer Loader with or without Attachments; Highway Drills (all types); Locomotive (narrow gauge); Material Hoist/Elevator; Mixer, Concrete (more than one bag capacity); Mixer, one bag capacity (Side Loader); Power Boiler (Over 15 lbs. Pressure) Pump Operator installing & operating Well Points; Pump (4" & over discharge); Roller, Asphalt; Rotovator (lime soil stabilizer); Switch & Tie Tampers (without lifting & aligning device); Utility Operator (Small equipment); Welding Machines; and Railroad Tie Inserter/Remover; Articulating/straight bed end dumps if assigned (minus \$4.00 per hour).

GROUP 4 - Backfiller; Ballast Re-locator; Bars, Joint & Mesh Installing Machine; Batch Plant; Boring Machine Operator (48" or less); Bull Floats; Burlap & Curing Machine; Concrete Plant (capacity 4 yd. & under); Concrete Saw (Multiple); Conveyor (Highway); Crusher; Deckhand; Farm-type Tractor with attachments (highway); Finishing

Machine; Fireperson, Floating Equipment (all types); Forklift; Form Trencher; Hydro Hammer expect masonry; Hydro Seeder; Pavement Breaker; Plant Mixer; Post Driver; Post Hole Digger (Power Auger); Power Brush Burner; Power Form Handling Equipment; Road Widening Trencher; Roller (Brick, Grade & Macadam); Self-Propelled Power Spreader; Self-Propelled Power Subgrader; Steam Fireperson; Tractor (Pulling Sheepfoot, Roller or Grader); and Vibratory Compactor with Integral Power.

GROUP 5 - Compressor (Portable, Sewer, Heavy & Highway); Drum Fireperson (Asphalt Plant); Generator; Masonry Fork Lift; Inboard-Outboard Motor Boat Launch; Oil Heater (asphalt plant); Oiler/Helper; Power Driven Heater; Power Sweeper & Scrubber; Pump (under 4" discharge); Signalperson; Tire Repairperson; VAC/ALLS; Cranes - Compact, track or rubber under 4,000 pound capacity; fueling and greasing; and Chainmen.

GROUP 6 - Master Mechanic & Boom from 150 to 180.

GROUP 7 - Boom from 180 and over.

ENGI0018-004 05/01/2024

ADAMS, ALLEN, ASHLAND, ATHENS, AUGLAIZE, BELMONT, BROWN, BUTLER, CARROLL, CHAMPAIGN, CLARK, CLERMONT, CLINTON, COSHOCTON, CRAWFORD, DARKE, DEFIANCE, DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, FULTON, GALLIA, GREENE, GUERNSEY, HAMILTON, HANCOCK, HARDIN, HARRISON, HENRY, HIGHLAND, HOCKING, HOLMES, HURON, JACKSON, JEFFERSON, KNOX, LAWRENCE, LICKING, LOGAN, LUCAS, MADISON, MARION, MEIGS, MERCER, MIAMI, MONROE, MONTGOMERY, MORGAN, MORROW, MUSKINGUM, NOBLE, OTTAWA, PAULDING, PERRY, PICKAWAY, PIKE, PREBLE, PUTNAM, RICHLAND, ROSS, SANDUSKY, SCIOTO, SENECA, SHELBY, STARK, TUSCARAWAS, UNION, VAN WERT, VINTON, WARREN, WASHINGTON, WAYNE, WILLIAMS, WOOD, and YANDOT COUNTIES

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
GROUP 1.....	\$ 44.14	16.41
GROUP 2.....	\$ 44.02	16.41
GROUP 3.....	\$ 42.98	16.41
GROUP 4.....	\$ 41.80	16.41
GROUP 5.....	\$ 36.34	16.41
GROUP 6.....	\$ 45.14	16.41
GROUP 7.....	\$ 45.14	16.41

OPERATING ENGINEER CLASSIFICATIONS

GROUP 1 - Air Compressor on Steel Erection; Barrier Moving

Machine; Boiler Operator on Compressor or Generator when mounted on a Rig; Cableway; Combination Concrete Mixer & Tower; Concrete Plant (over 4 yd. Capacity); Concrete Pump; Crane (All Types, Including Boom Truck, Cherry Picker); Crane-Compact, Track or Rubber over 4,000 lbs. capacity; Cranes-Self Erecting, Stationary, Track or Truck (All Configurations); Derrick; Dragline; Dredge (Dipper, Clam or Suction); Elevating Grader or Euclid Loader; Floating Equipment (All Types); Gradall; Helicopter Crew (Operator-Hoist or Winch); Hoe (all types); Hoisting Engine on Shaft or Tunnel Work; Hydraulic Gantry (Lifting System); Industrial-Type Tractor; Jet Engine Dryer (D8 or D9) Diesel Tractor; Locomotive (Standard Gauge); Maintenance Operator Class A; Mixer, Paving (Single or Double Drum); Mucking Machine; Multiple Scraper; Piledriving Machine (All Types); Power Shovel; Prentice Loader; Quad 9 (Double Pusher); Rail Tamper (with auto lifting & aligning device); Refrigerating Machine (Freezer Operation); Rotary Drill, on Caisson work; Rough Terrain Fork Lift with Winch/Hoist; Side-Boom; Slip-Form Paver; Tower Derrick; Tree Shredder; Trench Machine (Over 24" wide); Truck Mounted Concrete Pump; Tug Boat; Tunnel Machine and/or Mining Machine; and Wheel Excavator.

GROUP 2 - Asphalt Paver; Automatic Subgrader Machine, Self-Propelled (CMI Type); Bobcat Type and/or Skid Steer Loader with Hoe Attachment Greater than 7,000 lbs.; Boring Machine More than 48"; Bulldozer; Endloader; Hydro Milling Machine; Horizontal Directional Drill (over 50,000 ft. lbs. thrust); Kolman-type Loader (production type-Dirt); Lead Greaseman; Lighting & Traffic Signal Installation Equipment (includes all groups or classifications); Material Transfer Equipment (Shuttle Buggy) Asphalt; Pettibone-Rail Equipment; Power Grader; Power Scraper; Push Cat; Rotomill (all), Grinders & Planers of All types; Trench Machine (24" wide & under); and Vermeer type Concrete Saw.

GROUP 3 - A-Frame; Air Compressor on Tunnel Work (low pressure); Asphalt Plant Engineer; Bobcat-type and/or Skid Steer Loader with or without Attachments; Highway Drills (all types); Locomotive (narrow gauge); Material Hoist/Elevator; Mixer, Concrete (more than one bag capacity); Mixer, one bag capacity (Side Loader); Power Boiler (Over 15 lbs. Pressure) Pump Operator installing & operating Well Points; Pump (4" & over discharge); Railroad Tie Inserter/Remover; Roller, Asphalt; Rotovator (lime soil stabilizer); Switch & Tie Tampers (without lifting & aligning device); Utility Operator (Small equipment); and Welding Machines; Articulating/straight bed end dumps if assigned (minus \$4.00 per hour).

GROUP 4 - Backfiller; Ballast Re-locator; Bars, Joint & Mesh Installing Machine; Batch Plant; Boring Machine Operator (48" or less); Bull Floats; Burlap & Curing Machine;

Concrete Plant (capacity 4 yd. & under); Concrete Saw (Multiple); Conveyor (Highway); Crusher; Deckhand; Farm-type Tractor with attachments (highway); Finishing Machine; Fireperson, Floating Equipment (all types); Fork Lift; Form Trencher; Hydro Hammer expect masonry; Hydro Seeder; Pavement Breaker; Plant Mixer; Post Driver; Post Hole Digger (Power Auger); Power Brush Burner; Power Form Handling Equipment; Road Widening Trencher; Roller (Brick, Grade & Macadam); Self-Propelled Power Spreader; Self-Propelled Power Subgrader; Steam Fireperson; Tractor (Pulling Sheepfoot, Roller or Grader); and Vibratory Compactor with Integral Power.

GROUP 5 - Compressor (Portable, Sewer, Heavy & Highway); Drum Fireperson (Asphalt Plant); Generator; Masonary Forklift; Inboard-Outboard Motor Boat Launch; Oil Heater (asphalt plant); Oiler/Helper; Power Driven Heater; Power Sweeper & Scrubber; Pump (under 4" discharge); Signalperson; Tire Repairperson; VAC/ALLS; Cranes - Compact, track or rubber under 4,000 pound capacity; fueling and greasing; and Chainmen.

GROUP 6 - Master Mechanic & Boom from 150 to 180.

GROUP 7 - Boom from 180 and over.

ENGI0066-023 06/01/2023

COLUMBIANA, MAHONING & TRUMBULL COUNTIES

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
ASBESTOS; HAZARDOUS/TOXIC		
WASTE PROJECTS		
GROUP 1 - A & B.....\$ 44.63		24.30
ASBESTOS; HAZARDOUS/TOXIC		
WASTE PROJECTS		
GROUP 2 - A & B.....\$ 44.30		24.30
ASBESTOS; HAZARDOUS/TOXIC		
WASTE PROJECTS		
GROUP 3 - A & B.....\$ 38.47		24.30
ASBESTOS; HAZARDOUS/TOXIC		
WASTE PROJECTS		
GROUP 4 - A & B.....\$ 34.52		24.30
ASBESTOS; HAZARDOUS/TOXIC		
WASTE PROJECTS		
GROUP 5 - A & B.....\$ 31.13		24.30
HAZARDOUS/TOXIC WASTE		
PROJECTS		
GROUP 1 - C & D.....\$ 40.91		24.30
HAZARDOUS/TOXIC WASTE		
PROJECTS		

GROUP 2 - C & D.....\$ 40.61	24.30
HAZARDOUS/TOXIC WASTE	
PROJECTS	
GROUP 3 - C & D.....\$ 35.27	24.30
HAZARDOUS/TOXIC WASTE	
PROJECTS	
GROUP 4 - C & D.....\$ 31.65	24.30
HAZARDOUS/TOXIC WASTE	
PROJECTS	
GROUP 5 - C & D.....\$ 28.53	24.30
ALL OTHER WORK	
GROUP 1.....\$ 37.19	24.30
ALL OTHER WORK	
GROUP 2.....\$ 36.92	24.30
ALL OTHER WORK	
GROUP 3.....\$ 32.06	24.30
ALL OTHER WORK	
GROUP 4.....\$ 28.77	24.30
ALL OTHER WORK	
GROUP 5.....\$ 25.94	24.30

GROUP 1 - Rig, Pile Driver or Caisson Type; & Rig, Pile Hydraulic Unit Attached

GROUP 2 - Asphalt Heater Planer; Backfiller with Drag Attachment; Backhoe; Backhoe with Shear attached; Backhoe-Rear Pivotal Swing; Batch Plant-Central Mix Concrete; Batch Plant, Portable concrete; Berm Builder-Automatic; Boat Derrick; Boat-Tug; Boring Machine Attached to Tractor; Bullclam; Bulldozer; C.M.I. Road Builder & Similar Type; Cable Placer & Layer; Carrier-Straddle; Carryall-Scraper or Scoop; Chicago Boom; Compactor with Blade Attached; Concrete Saw (Vermeer or similar type); Concrete Spreader Finisher; Combination, Bidwell Machine; Crane; Crane-Electric Overhead; Crane-Rough Terrain; Crane-Side Boom; Crane-Truck; Crane-Tower; Derrick-Boom; Derrick-Car; Digger-Wheel (Not trencher or road widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Easy Pour Median Barrier Machine (or similar type); Electromatic; Frankie Pile; Gradall; Grader; Gurry; Self-Propelled; Heavy Equipment Robotics Operator/Mechanic; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist, 2 or 3 drum; Horizontal Directional Drill Operator; Jackall; Jumbo Machine; Kocal & Kuhlman; Land-Seagoing Vehicle; Loader, Elevating; Loader, Front End; Loader, Skid Steer; Locomotive; Mechanic/Welder; Metro Chip Harvester with Boom; Mucking Machine; Paver-Asphalt Finishing Machine; Paver-Road Concrete; Paver-Slip Form (C.M.I. or similar); Place Crete Machine with Boom; Post Driver (Carrier mounted); Power Driven Hydraulic Pump & Jack (When used in Slip Form or Lift Slab Construction); Pump Crete Machine; Regulator-Ballast; Hydraulic Power Unit not attached to Rig for Pile Drillings; Rigs-Drilling; Roto Mill or similar

Full Lane (8' Wide & Over); Roto Mill or similar type (Under 8'); Shovel; Slip Form Curb Machine; Speedwing; Spikemaster; Stonecrusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor with Attachments; Truck-Boom; Truck-Tire; Trench Machine; Tunnel Machine (Mark 21 Java or similar); & Whirley (or similar type)

GROUP 3 - Asphalt Plant; Bending Machine (Pipeline or similar type); Boring machine, Motor Driven; Chip Harvester without Boom; Cleaning Machine, Pipeline Type; Coating Machine, Pipeline Type; Compactor; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift (Home building only); Fork lift & Lulls; Fork Lift Walk Behind (Hoisting over 1 buck high); Form Line Machine; Grease Truck operator; Grout Pump; Gunnite Machine; Horizontal Directional Drill Locator; Single Drum Hoist with or without Tower; Huck Bolting Machine; Hydraulic Scaffold (Hoisting building materials); Paving Breaker (Self-propelled or Ridden); Pipe Dream; Pot Fireperson (Power Agitated); Refrigeration Plant; Road Widener; Roller; Sasgen Derrick; Seeding Machine; Soil Stabilizer (Pump type); Spray Cure Machine, Self-Propelled; Straw Blower Machine; Sub-Grader; Tube Finisher or Broom C.M.I. or similar type; & Tugger Hoist

GROUP 4 - Air Curtain Destructor & Similar Type; Batch Plant-Job Related; Boiler Operator; Compressor; Conveyor; Curb Builder, self-propelled; Drill Wagon; Generator Set; Generator-Steam; Heater-Portable Power; Hydraulic Manipulator Crane; Jack-Hydraulic Power driven; Jack-Hydraulic (Railroad); Ladavator; Minor Machine Operator; Mixer-Concrete; Mulching Machine; Pin Puller; Power Broom; Pulverizer; Pump; Road Finishing Machine (Pull Type); Saw-Concrete-Self-Propelled (Highway Work); Signal Person; Spray Cure Machine-Motor Powered; Stump Cutter; Tractor; Trencher Form; Water Blaster; Steam Jenny; Syphon; Vibrator-Gasoline; & Welding Machine

GROUP 5 - Brakeperson; Fireperson; & Oiler

IRON0017-002 05/01/2024

ASHTABULA (North of Route 6, starting at the Geauga County Line, proceeding east to State Route 45), CUYAHOGA, ERIE (Eastern 2/3), GEAUGA, HURON (East of a line drawn from the north border through Monroeville & Willard), LAKE, LORAIN, MEDINA (North of Old Rte. #224), PORTAGE (West of a line from Middlefield to Shalersville to Deerfield), and SUMMIT (North of Old Rte. #224, including city limits of Barberton) COUNTIES

Rates

Fringes

IRONWORKER

Ornamental, Reinforcing, &		
Structural.....	\$ 36.83	29.01

IRON0017-010 05/01/2024

ASHTABULA (Eastern part from Lake Erie on the north to route #322 on the south to include Conneaut, Kingsville, Sheffield, Denmark, Dorset, Cherry Valley, Wayne, Monroe, Pierpont, Richmond, Andover & Williamsfield Townships)

Rates	Fringes
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IRONWORKER

Structural, including		
metal building erection &		
Reinforcing.....	\$ 36.83	29.01

IRON0044-001 06/01/2025

ADAMS (Western Part), BROWN, BUTLER (Southern Part), CLERMONT, CLINTON (South of a line drawn from Blanchester to Lynchburg), HAMILTON, HIGHLAND (Excluding eastern one-fifth & portion of county inside lines drawn from Marshall to Lynchburg from the northern county line through E. Monroe to Marshall) and WARREN (South of a line drawn from Blanchester through Morrow to the west county line) COUNTIES

Rates	Fringes
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IRONWORKER, REINFORCING.....\$ 38.27 23.90

IRON0044-002 06/01/2025

CLINTON (South of a line drawn from Blanchester to Lynchburg), HAMILTON, HIGHLAND (Excluding eastern one-fifth & portion of county inside lines drawn from Marshall to Lynchburg from the northern county line through E. Monroe to Marshall) & WARREN (South of a line drawn from Blanchester through Morrow to the west county line)

Rates	Fringes
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IRONWORKER

Fence Erector.....	\$ 35.88	23.90
Ornamental; Structural.....	\$ 37.77	23.90

IRON0055-003 07/01/2024

CRAWFORD (Area Between lines drawn from where Hwy #598 & #30 meet through N. Liberty to the northern border & from said Hwy

junction point due west to the border), DEFIANCE (S. of a line drawn from where Rte. #66 meets the northern line through Independence to the eastern county border), ERIE (Western 1/3), FULTON, HANCOCK, HARDIN (North of a line drawn from Maysville to a point 4 miles south of the northern line on the eastern line), HENRY, HURON (West of a line drawn from the northern border through Monroeville & Willard), LUCAS, OTTAWA, PUTNAM (East of a line drawn from the northern border down through Miller City to where #696 meets the southern border), SANDUSKY, SENECA, WILLIAMS (East of a line drawn from Pioneer through Stryker to the southern border), WOOD & WYANDOT (North of Rte. #30)

	Rates	Fringes
IRONWORKER		
Fence Erector.....	\$ 26.40	24.62
Flat Road Mesh.....	\$ 29.77	21.30
Tunnels & Caissons Under		
Pressure.....	\$ 29.77	21.30
All Other Work.....	\$ 35.50	29.20

IRON0147-002 06/01/2025

ALLEN (Northern half), DEFIANCE (Northern part, excluding south of a line drawn from where Rte. #66 meets the northern line through Independence to the eastern county border), MERCER (Northern half), PAULDING, PUTNAM (Western part, excluding east of a line drawn from the northern border down through Miller City to where #696 meets the southern border), VAN WERT, and WILLIAMS (Western part, excluding east of a line drawn from Pioneer through Stryker to the southern border) COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 38.00	26.39

IRON0172-002 06/01/2025

CHAMPAIGN (Eastern one-third), CLARK (Eastern one-fourth), COSHOCTON (West of a line beginning at the northwestern county line going through Walhonding & Tunnel Hill to the southern county line), CRAWFORD (South of Rte. #30), DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, HARDIN (Excluding a line drawn from Roundhead to Maysville), HIGHLAND (Eastern one-fifth), HOCKING, JACKSON (Northern half), KNOX, LICKING, LOGAN (Eastern one-third), MADISON, MARION, MORROW, MUSKINGUM (West of a line starting at Adams Mill going to Adamsville & going from Adamsville through Blue Rock to the southern border), PERRY, PICKAWAY, PIKE (Northern half), ROSS, UNION, VINTON and WYANDOT (South of Rte. #30) COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 40.87	23.15

IRON0207-004 06/01/2025

ASHTABULA (Southern part starting at the Geauga County line), COLUMBIANA (E. of a line from Damascus to Highlandtown), MAHONING (N. of Old Route #224), PORTAGE (E. of a line from Middlefield to Shalersville to Deerfield) & TRUMBULL

	Rates	Fringes
IRONWORKER		
Layout; Sheeter.....	\$ 37.26	28.16
Ornamental; Reinforcing;		
Structural.....	\$ 36.26	28.16

IRON0290-002 06/01/2025

ALLEN (Southern half), AUGLAIZE, BUTLER (North of a line drawn from east to the west county line going through Oxford, Darrtown & Woodsdale), CHAMPAIGN (Excluding east of a line drawn from Catawla to the point where #68 intersects the northern county line), CLARK (Western two-thirds), CLINTON (Excluding south of a line drawn from Blanchester to Lynchburg), DARKE, GREENE, HIGHLAND (Inside lines drawn from Marshall to Lynchburg & from the northern county line through East Monroe to Marshall), LOGAN (West of a line drawn from West Liberty to where the northern county line meets the western county line of Hardin), MERCER (Southern half), MIAMI, MONTGOMERY, PREBLE, SHELBY & WARREN (Excluding south of a line drawn from Blanchester through Morrow to the western county line) COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 37.39	25.35

IRON0549-003 12/01/2022

BELMONT, GUERNSEY, HARRISON, JEFFERSON, MONROE & MUSKINGUM (Excluding portion west of a line starting at Adams Mill going to Adamsville and going from Adamsville through Blue Rock to the south border)

	Rates	Fringes
IRONWORKER.....	\$ 35.19	25.66

IRON0550-004 05/01/2024

ASHLAND, CARROLL, COLUMBIANA (W. of a line from Damascus to Highlandtown), COSHOCTON (E. of a line beginning at NW Co. line going through Walhonding & Tunnel Hill to the South Co. line), HOLMES, HURON (S. of Old Rte. #224), MAHONING (S. of Old Rte. #224), MEDINA (S. of Old Rte. #224), PORTAGE (S. of Old Rte. #224), RICHLAND, STARK, SUMMIT (S. of Old Rte. #224, Excluding city limits of Barberton), TUSCARAWAS, & WAYNE

	Rates	Fringes
Ironworkers: Structural, Ornamental and Reinforcing.....	\$ 34.70	22.88

IRON0769-004 06/01/2025

ADAMS (Eastern Half), GALLIA, JACKSON (Southern Half), LAWRENCE & SCIOTO

	Rates	Fringes
IRONWORKER.....	\$ 39.70	29.59

IRON0787-003 06/01/2025

ATHENS, MEIGS, MORGAN, NOBLE, and WASHINGTON COUNTIES

	Rates	Fringes
IRONWORKER.....	\$ 36.10	24.65

LABO0265-008 05/01/2024

	Rates	Fringes
LABORER		
ASHTABULA, ERIE, HURON, LORAIN, LUCAS, MAHONING, MEDINA, OTTAWA, PORTAGE, SANDUSKY, STARK, SUMMIT, TRUMBULL & WOOD COUNTIES		
GROUP 1.....	\$ 35.95	14.45
GROUP 2.....	\$ 36.12	14.45
GROUP 3.....	\$ 36.45	14.45
GROUP 4.....	\$ 36.90	14.45
CUYAHOGA AND GEAUGA COUNTIES ONLY: SEWAGE PLANTS, WASTE PLANTS, WATER TREATMENT FACILITIES, PUMPING STATIONS, & ETHANOL PLANTS		

CONSTRUCTION.....	\$ 38.56	14.45
CUYAHOGA, GEAUGA & LAKE		
COUNTIES		
GROUP 1.....	\$ 37.18	14.45
GROUP 2.....	\$ 37.35	14.45
GROUP 3.....	\$ 37.68	14.45
GROUP 4.....	\$ 38.13	14.45
REMAINING COUNTIES OF OHIO		
GROUP 1.....	\$ 35.52	14.45
GROUP 2.....	\$ 35.69	14.45
GROUP 3.....	\$ 36.02	14.45
GROUP 4.....	\$ 36.47	14.45

LABORER CLASSIFICATIONS

GROUP 1 - Asphalt Laborer; Carpenter Tender; Concrete Curing Applicator; Dump Man (Batch Truck); Guardrail and Fence Installer; Joint Setter; Laborer (Construction); Landscape Laborer; Mesh Handlers & Placer; Right-of-way Laborer; Riprap Laborer & Grouter; Scaffold Erector; Seal Coating; Surface Treatment or Road Mix Laborer; Sign Installer; Slurry Seal; Utility Man; Bridge Man; Handyman; Waterproofing Laborer; Flagperson; Hazardous Waste (level D); Diver Tender; Zone Person & Traffic Control

GROUP 2 - Asphalt Raker; Concrete Puddler; Kettle Man Pipeline); Machine Driven Tools (Gas, Electric, Air); Mason Tender; Brick Paver; Mortar Mixer; Power Buggy or Power Wheelbarrow; Paint Stripper; Sheeting & Shoring Man; Surface Grinder Man; Plastic Fusing Machine Operator; Pug Mill Operator; & Vacuum Devices (wet or dry); Rodding Machine Operator; Diver; Screwman or Paver; Screed Person; Water Blast, Hand Held Wand; Pumps 4" & Under (Gas, Air or Electric) & Hazardous Waste (level C); Air Track and Wagon Drill; Bottom Person; Cofferdam (below 25 ft. deep); Concrete Saw Person; Cutting with Burning Torch; Form Setter; Hand Spiker (Railroad); Pipelayer; Tunnel Laborer (without air) & Caisson; Underground Person (working in Sewer and Waterline, Cleaning, Repairing & Reconditioning); Sandblaster Nozzle Person; & Hazardous Waste (level B)

GROUP 3 - Blaster; Mucker; Powder Person; Top Lander; Wrencher (Mechanical Joints & Utility Pipeline); Yarner; Hazardous Waste (level A); Concrete Specialist; Concrete Crew in Tunnels (With Air-pressurized - \$1.00 premium); Curb Setter & Cutter; Grade Checker; Utility Pipeline Tapper; Waterline; and Caulker

GROUP 4 - Miner (With Air-pressurized - \$1.00 premium); & Gunite Nozzle Person

TUNNEL LABORER WITH AIR-PRESSURIZED ADD \$1.00 TO BASE RATE

SIGNAL PERSON WILL RECEIVE THE RATE EQUAL TO THE RATE PAID

THE LABORER CLASSIFICATION FOR WHICH HE OR SHE IS SIGNALING.

PAIN0006-002 05/01/2023

ASHTABULA, CUYAHOGA, GEAUGA, LAKE, LORAIN, PORTAGE (N. of the East-West Turnpike) & SUMMIT (N. of the East-West Turnpike)

	Rates	Fringes
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PAINTER

COMMERCIAL NEW WORK;

REMODELING; & RENOVATIONS

GROUP 1.....	\$ 30.75	18.95
GROUP 2.....	\$ 31.15	18.95
GROUP 3.....	\$ 31.45	18.95
GROUP 4.....	\$ 37.01	18.95

COMMERCIAL REPAINT

GROUP 1.....	\$ 29.25	18.95
GROUP 2.....	\$ 29.65	18.95
GROUP 3.....	\$ 29.95	18.95

PAINTER CLASSIFICATIONS - COMMERCIAL NEW WORK; REMODELING; & RENOVATIONS

GROUP 1 - Brush; & Roller

GROUP 2 - Sandblasting & Buffing

GROUP 3 - Spray Painting; Closed Steel Above 55 feet; Bridges & Open Structural Steel; Tanks - Water Towers; Bridge Painters; Bridge Riggers; Containment Builders

GROUP 4 - Bridge Blaster

PAINTER CLASSIFICATIONS - COMMERCIAL REPAINT

GROUP 1 - Brush; & Roller

GROUP 2 - Sandblasting & Buffing

GROUP 3 - Spray Painting

PAIN0007-002 07/01/2025

FULTON, HENRY, LUCAS, OTTAWA (Excluding Allen, Bay, Bono, Catawba Island, Clay Center, Curtice, Danbury, Eagle Beach, Elliston, Elmore, Erie, Fishback, Gem Beach & Genova) & WOOD

	Rates	Fringes
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P A I N T E R

N E W C O M M E R C I A L W O R K

GROUP 1.....	\$ 33.66	23.88
GROUP 2.....	\$ 34.66	23.88
GROUP 3.....	\$ 34.66	23.88
GROUP 4.....	\$ 34.66	23.88
GROUP 5.....	\$ 34.66	23.88
GROUP 6.....	\$ 34.66	23.88
GROUP 7.....	\$ 34.66	23.88
GROUP 8.....	\$ 34.66	23.88
GROUP 9.....	\$ 34.66	23.88

R E P A I N T I S 90% O F J R

P A I N T E R C L A S S I F I C A T I O N S

G R O U P 1 - B r u s h ; S p r a y & S a n d b l a s t i n g P o t T e n d e r

G R O U P 2 - R e f i n e r i e s & R e f i n e r y T a n k s ; S u r f a c e s 30 f t . o r
o v e r w h e r e m a t e r i a l i s a p p l i e d t o o r l a b o r p e r f o r m e d o n
a b o v e g r o u n d l e v e l (e x t e r i o r) , f l o o r l e v e l (i n t e r i o r)

G R O U P 3 - S w i n g S t a g e & C h a i r

G R O U P 4 - L e a d A b a t e m e n t

G R O U P 5 - A l l M e t h o d s o f S p r a y

G R O U P 6 - S o l v e n t - B a s e d C a t a l i z e d E p o x y M a t e r i a l s o f 2 o r
M o r e C o m p o n e n t M a t e r i a l s , t o i n c l u d e S o l v e n t - B a s e d
C o n v e r s i o n V a r n i s h (e x c l u d i n g w a t e r b a s e d)

G R O U P 7 - S p r a y S o l v e n t B a s e d M a t e r i a l ; S a n d & A b r a s i v e
B l a s t i n g

G R O U P 8 - T o w e r s ; T a n k s ; B r i d g e s ; S t a c k s O v e r 3 0 F e e t

G R O U P 9 - E p o x y S p r a y (e x c l u d i n g w a t e r b a s e d)

P A I N 0 0 1 2 - 0 0 8 0 5 / 0 1 / 2 0 1 9

B U T L E R C O U N T Y

	R a t e s	F r i n g e s
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P A I N T E R

G R O U P 1	\$ 21.95	10.20
G R O U P 2	\$ 25.30	10.20
G R O U P 3	\$ 25.80	10.20
G R O U P 4	\$ 26.05	10.20
G R O U P 5	\$ 26.30	10.20

P A I N T E R C L A S S I F I C A T I O N S

GROUP 1: Bridge Equipment Tender; Bridge/Containment Builder

GROUP 2: Brush & Roller

GROUP 3: Spray

GROUP 4: Sandblasting; & Waterblasting

GROUP 5: Elevated Tanks; Steeplejack Work; Bridge; & Lead Abatement

PAIN0012-010 05/01/2019

BROWN, CLERMONT, CLINTON, HAMILTON & WARREN

Rates	Fringes
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PAINTER

HEAVY & HIGHWAY BRIDGES-

GUARDRAILS-LIGHTPOLES-

STRIPPING

Bridge Equipment Tender and Containment Builder....\$ 21.95	10.20
Bridges when highest point of clearance is 60 feet or more; & Lead Abatement Projects.....\$ 26.30	10.20
Brush & Roller.....\$ 25.30	10.20
Sandblasting & Hopper Tender; Water Blasting.....\$ 26.05	10.20
Spray.....\$ 25.80	10.20

PAIN0093-001 12/01/2024

ATHENS, GUERNSEY, HOCKING, MONROE, MORGAN, NOBLE and
WASHINGTON COUNTIES

Rates	Fringes
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PAINTER

Bridges; Locks; Dams; Tension Towers; & Energized Substations.....\$ 36.44	24.46
Power Generating Facilities.\$ 33.29	24.46

PAIN0249-002 05/01/2025

CLARK, DARKE, GREENE, MIAMI, MONTGOMERY & PREBLE

Rates	Fringes
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PAINTER

GROUP 1 - Brush & Roller....\$ 29.15	13.97
GROUP 2 - Swing, Scaffold	
Bridges; Structural Steel;	
Open Acid Tank; High	
Tension Electrical	
Equipment; & Hot Pipes.....\$ 33.09	13.97
GROUP 3 - Spray;	
Sandblast; Steamclean;	
Lead Abatement.....\$ 29.90	13.97
GROUP 4 - Steeplejack Work..\$ 30.10	13.97
GROUP 5 - Coal Tar.....\$ 30.65	13.97
GROUP 6 - Bridge Equipment	
Tender & or Containment	
Builder.....\$ 37.86	13.97
GROUP 7 - Tanks, Stacks &	
Towers.....\$ 33.86	13.97
GROUP 8 - Bridge Blaster,	
Rigger.....\$ 40.86	13.97

PAIN0356-002 09/01/2009

KNOX, LICKING, MUSKINGUM, and PERRY

Rates	Fringes
-------	---------

PAINTER

Bridge Equipment Tenders	
and Containment Builders....\$ 27.93	7.25
Bridges; Blasters;	
andRiggers.....\$ 34.60	7.25
Brush and Roller.....\$ 20.93	7.25
Sandblasting; Steam	
Cleaning; Waterblasting;	
and Hazardous Work.....\$ 25.82	7.25
Spray.....\$ 21.40	7.25
Structural Steel and Swing	
Stage.....\$ 25.42	7.25
Tanks; Stacks; and Towers....\$ 28.63	7.25

PAIN0438-002 12/01/2023

BELMONT, HARRISON and JEFFERSON COUNTIES

Rates	Fringes
-------	---------

PAINTER

Bridges, Locks, Dams,	
Tension Towers & Energized	
Substations.....\$ 36.09	19.49
Power Generating Facilities.\$ 32.94	19.49

PAIN0476-001 06/01/2025

COLUMBIANA, MAHONING, and TRUMBULL COUNTIES

	Rates	Fringes
PAINTER		
GROUP 1.....	\$ 30.64	18.36
GROUP 2.....	\$ 40.27	18.36
GROUP 3.....	\$ 40.27	18.36
GROUP 4.....	\$ 31.14	18.36
GROUP 5.....	\$ 31.29	18.36
GROUP 6.....	\$ 35.27	18.36
GROUP 7.....	\$ 32.64	18.36

PAINTER CLASSIFICATIONS:

GROUP 1: Painters, Brush & Roller

GROUP 2: Bridges

GROUP 3: Structural Steel

GROUP 4: Spray, Except Bar Joist/Deck

GROUP 5: Epoxy/Mastic; Spray- Bar Joist/Deck; Working Above 50 Feet; and Swingstages

GROUP 6: Tanks; Sandblasting

GROUP 7: Towers; Stacks

PAIN0555-002 01/01/2025

ADAMS, HIGHLAND, JACKSON, PIKE & SCIOTO

	Rates	Fringes
PAINTER		
GROUP 1.....	\$ 33.32	21.54
GROUP 2.....	\$ 35.02	21.54
GROUP 3.....	\$ 36.72	21.54
GROUP 4.....	\$ 40.03	21.54

PAINTER CLASSIFICATIONS

GROUP 1 - Containment Builder

GROUP 2 - Brush; Roller; Power Tools, Under 40 feet

GROUP 3 - Sand Blasting; Spray; Steam Cleaning; Pressure Washing; Epoxy & Two Component Materials; Lead Abatement; Hazardous Waste; Toxic Materials; Bulk & Storage Tanks of 25,000 Gallon Capacity or More; Elevated Tanks

GROUP 4 - Stacks; Bridges

PAIN0639-001 05/01/2011

	Rates	Fringes
Sign Painter & Erector.....	\$ 20.61	3.50+a+b+c

FOOTNOTES: a. 7 Paid Holidays: New Year's Day; Memorial Day; July 4th; Labor Day; Thanksgiving Day; Christmas Day & 1 Floating Day
b. Vacation Pay: After 1 year's service - 5 days' paid vacation; After 2, but less than 10 years' service - 10 days' paid vacation; After 10, but less than 20 years' service - 15 days' paid vacation; After 20 years' service - 20 days' paid vacation
c. Funeral leave up to 3 days maximum paid leave for death of mother, father, brother, sister, spouse, child, mother-in-law, father-in-law, grandparent and inlaw provided employee attends funeral

PAIN0788-002 06/01/2024

ASHLAND, CRAWFORD, ERIE, HANCOCK, HURON, MARION, MORROW, OTTAWA (Allen, Bay, Bono, Catawba Island, Clay Center, Curtice, Danbury, Eagle Beach, Elliston, Elmore, Erie, Fishback, Gem Beach & Genoa), RICHLAND, SANDUSKY, SENECA & WYANDOT

	Rates	Fringes
PAINTER		
Brush & Roller.....	\$ 29.13	17.52
Structural Steel.....	\$ 30.73	17.52

WINTER REPAINT: Between December 1 to March 31 - 90%JR

\$.50 PER HOUR SHALL BE ADDED TO THE RATE OF PAY FOR THE CLASSIFICATION OF WORK:

While working swingstage, boatswain chair, needle beam and horizontal cable. While operating sprayguns, sandblasting, coblasting and high pressure waterblasting (4000psi).

\$1.00 PER HOUR SHALL BE ADDED TO THE RATE OF PAY FOR THE CLASSIFICATION OF WORK:

For the application of catalized epoxy, including latex epoxy that is deemed hazardous, lead abatement, or for work or material where special precautions beyond normal work duties must be taken. For working on stacks, tanks, and

towers over 40 feet in height.

PAIN0813-005 12/01/2008

GALLIA, LAWRENCE, MEIGS & VINTON

	Rates	Fringes
PAINTER		
Base Rate.....	\$ 24.83	10.00
Bridges, Locks, Dams &		
Tension Towers.....	\$ 27.83	10.00

PAIN0841-001 07/01/2025

MEDINA, PORTAGE (South of and including Ohio Turnpike), and
SUMMIT (South of and including Ohio Turnpike) COUNTIES

	Rates	Fringes
Painters:		
GROUP 1.....	\$ 31.93	18.15
GROUP 2.....	\$ 32.58	18.15
GROUP 3.....	\$ 32.68	18.15
GROUP 4.....	\$ 32.78	18.15
GROUP 5.....	\$ 33.18	18.15
GROUP 6.....	\$ 38.60	18.15
GROUP 7.....	\$ 33.18	18.15

PAINTER CLASSIFICATIONS:

GROUP 1 - Brush, Roller & Paperhanger

GROUP 2 - Epoxy Application

GROUP 3 - Swing Scaffold, Bosum Chair, & Window Jack

GROUP 4 - Spray Gun Operator of Any & All Coatings

GROUP 5 - Sandblast, Painting of Standpipes, etc. from
Scaffolds, Bridge Work and/or Open Structural Steel,
Standpipes and/or Water Towers

GROUP 6 - Public & Commerce Transportation, Steel or
Galvanized, Bridges, Tunnels & Related Support Items
(concrete)

GROUP 7 - Synthetic Exterior, Drywall Finisher and/or Taper,
Drywall Finisher and Follow-up Man Using Automatic Tools

PAIN0841-002 07/01/2025

CARROLL, COSHOCTON, HOLMES, STARK, TUSCARAWAS & WAYNE

Rates Fringes

PAINTER

Bridges; Towers, Poles &	
Stacks; Sandblasting	
Steel; Structural Steel &	
Metalizing.....\$ 33.18	18.15
Brush & Roller.....\$ 31.93	18.15
Spray; Tank Interior &	
Exterior.....\$ 32.78	18.15

PAIN1020-002 07/01/2025

ALLEN, AUGLAIZE, CHAMPAIGN, DEFIANCE, HARDIN, LOGAN, MERCER,
PAULDING, PUTNAM, SHELBY, VAN WERT, and WILLIAMS COUNTIES

Rates Fringes

PAINTER

Brush & Roller.....\$ 27.59	18.54
Drywall Finishing & Taping..\$ 28.34	18.54
Lead Abatement.....\$ 29.34	18.54
Spray, Sandblasting	
Pressure Cleaning, &	
Refinery.....\$ 28.34	18.54
Swing Stage, Chair,	
Spiders, & Cherry Pickers...\$ 27.84	18.54
Wallcoverings.....\$ 28.34	18.54

All surfaces 40 ft. or over where material is applied to or
labor performed on, above ground level (exterior), floor
level (interior) - \$.50 premium

Applying Coal Tar Products - \$1.00 premium

PAIN1275-002 05/01/2025

DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, MADISON, PICKAWAY, ROSS
& UNION

Rates Fringes

PAINTER

Bridges.....\$ 37.26	15.16
Brush; Roller.....\$ 30.20	15.16
Sandblasting;	
Steamcleaning;	
Waterblasting (3500 PSI or	

Over) & Hazardous Work.....	\$ 32.35	15.16
Spray.....	\$ 32.15	15.16
Stacks; Tanks; & Towers.....	\$ 34.46	15.16
Structural Steel & Swing		
Stage.....	\$ 30.50	15.16

PLAS0109-001 06/01/2025

MEDINA, PORTAGE, STARK, and SUMMIT COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 33.00	23.83

PLAS0109-003 06/01/2025

CARROLL, HOLMES, TUSCARAWAS, and WAYNE COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 33.00	23.83

PLAS0132-002 07/01/2025

BROWN, BUTLER, CLERMONT, HAMILTON, HIGHLAND, WARREN COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 31.35	17.65

PLAS0404-002 05/01/2018

ASHTABULA, CUYAHOGA, GEAUGA, AND LAKE COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 29.63	17.11

PLAS0404-003 05/01/2018

LORAIN COUNTY

	Rates	Fringes
PLASTERER.....	\$ 28.86	17.11

PLAS0526-022 05/01/2018

COLUMBIANA, MAHONING, and TRUMBULL COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 28.86	17.11

PLAS0526-023 05/01/2018

BELMONT, HARRISON, and JEFFERSON COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 28.21	17.11

PLAS0886-001 07/01/2025

FULTON, HANCOCK, HENRY, LUCAS, PUTNAM, and WOOD COUNTIES

	Rates	Fringes
PLASTERER.....	\$ 36.65	25.60

PLAS0886-003 07/01/2025

DEFIANCE, ERIE, HURON, OTTAWA, PAULDING, SANDUSKY, and SENECA

	Rates	Fringes
PLASTERER.....	\$ 36.65	25.60

PLAS0886-004 07/01/2025

ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, and VAN WERT

	Rates	Fringes
PLASTERER.....	\$ 35.29	23.07

PLUM0042-002 07/01/2025

ASHLAND, CRAWFORD, ERIE, HURON, KNOX, LORAIN, MORROW, RICHLAND
& WYANDOT

	Rates	Fringes
Plumber, Pipefitter, Steamfitter.....	\$ 43.02	26.45

PLUM0050-002 06/30/2025

DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING,
PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD

	Rates	Fringes
Plumber, Pipefitter, Steamfitter.....	\$ 51.00	32.56

PLUM0055-003 05/05/2025

ASHTABULA, CUYAHOGA, GEAUGA, LAKE, MEDINA (N. of Rte. #18 & Smith Road) & SUMMIT (N. of Rte. #303, including the corporate limits of the city of Hudson)

	Rates	Fringes
PLUMBER.....	\$ 44.86	30.03

PLUM0083-001 07/01/2023

BELMONT & MONROE (North of Rte. #78)

	Rates	Fringes
Plumber and Steamfitter.....	\$ 35.94	37.35

PLUM0094-002 05/01/2025

CARROLL (Northen Half), STARK, and WAYNE COUNTIES

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 47.48	27.14

PLUM0120-002 05/01/2025

ASHTABULA, CUYAHOGA, GEAUGA, LAKE, LORAIN (the C.E.I. Power House in Avon Lake), MEDINA (N. of Rte. #18) & SUMMIT (N. of #303)

	Rates	Fringes
PIPEFITTER.....	\$ 49.17	28.55

PLUM0162-002 06/01/2024

CHAMPAIGN, CLARK, CLINTON, DARKE, FAYETTE, GREENE, MIAMI, MONTGOMERY & PREBLE

	Rates	Fringes
Plumber, Pipefitter, Steamfitter.....	\$ 43.05	27.18

PLUM0168-002 06/01/2025

MEIGS, MONROE (South of Rte. #78), MORGAN (South of Rte. #78) & WASHINGTON

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 40.92	37.20

PLUM0189-002 06/01/2024

DELAWARE, FAIRFIELD, FRANKLIN, HOCKING, LICKING, MADISON,
MARION, PERRY, PICKAWAY, ROSS & UNION

	Rates	Fringes
Plumber, Pipefitter,		
Steamfitter.....	\$ 43.25	26.94

PLUM0219-002 06/01/2025

MEDINA (Rte. #18 from eastern edge of Medina Co., west to eastern corporate limits of the city of Medina, & on the county road from the west corporate limits of Medina running due west to and through community of Risley to the western edge of Medina County - All territory south of this line), PORTAGE, and SUMMIT (S. of Rte. #303) COUNTIES

	Rates	Fringes
Plumber and Steamfitter.....	\$ 46.87	28.39

PLUM0392-002 06/01/2025

BROWN, BUTLER, CLERMONT, HAMILTON & WARREN

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 43.30	27.40

PLUM0396-001 06/01/2025

COLUMBIANA (Excluding Washington & Yellow Creek Townships & Liverpool Twp. - Secs. 35 & 36 - West of County Road #427), MAHONING and TRUMBULL COUNTIES

	Rates	Fringes
PLUMBER/PIPEFITTER.....	\$ 40.55	29.25

PLUM0495-002 06/01/2025

CARROLL (Rose, Monroe, Union, Lee, Orange, Perry & Loudon Townships), COLUMBIANA (Washington & Yellow Creek Townships & Liverpool Township, Secs. 35 & 36, West of County Rd. #427),

COSHOCTON, GUERNSEY, HARRISON, HOLMES, JEFFERSON, MORGAN (South to State Rte. #78 & from McConnelsville west on State Rte. #37 to the Perry County line), MUSKINGUM, NOBLE, and TUSCARAWAS COUNTIES

	Rates	Fringes
Plumber, Pipefitter,		
Steamfitter.....\$ 39.32		37.60

PLUM0577-002 06/01/2025		

ADAMS, ATHENS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, PIKE, SCIOTO & VINTON

	Rates	Fringes
Plumber, Pipefitter,		
Steamfitter.....\$ 42.65		28.56

PLUM0776-002 07/01/2025		

ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY and VAN WERT COUNTIES

	Rates	Fringes
Plumber, Pipefitter,		
Steamfitter.....\$ 42.76		30.81

TEAM0377-003 05/01/2025		

STATEWIDE, EXCEPT CUYAHOGA, GEAUGA & LAKE

	Rates	Fringes
TRUCK DRIVER		
GROUP 1.....\$ 34.26		18.85
GROUP 2.....\$ 35.26		18.85

TRUCK DRIVER CLASSIFICATIONS

GROUP 1 - Asphalt Distributor; Batch; 4- Wheel Service; 4-Wheel Dump; Oil Distributor & Tandem

GROUP 2 - Tractor-Trailer Combination: Fuel; Pole Trailer; Ready Mix; Semi-Tractor; & Asphalt Oil Spraybar Man When Operated From Cab; 5 Axles & Over; Belly Dump; End Dump; Articulated Dump; Heavy Duty Equipment; Low Boy; & Truck Mechanic

TEAM0436-002 05/01/2025

CUYAHOGA, GEAUGA & LAKE

	Rates	Fringes
TRUCK DRIVER		
GROUP 1.....	\$ 34.92	19.30
GROUP 2.....	\$ 35.73	19.30

GROUP 1: Straight & Dump, Straight Fuel

GROUP 2: Semi Fuel, Semi Tractor, Euclids, Darts, Tank, Asphalt Spreaders, Low Boys, Carry-All, Tourna-Rockers, Hi-Lifts, Extra Long Trailers, Semi-Pole Trailers, Double Hook-Up Tractor Trailers including Team Track & Railroad Siding, Semi-Tractor & Tri-Axle Trailer, Tandem Tractor & Tandem Trailer, Tag Along Trailer, Expandable Trailer or Towing Requiring Road Permits, Ready-Mix (Agitator or Non-Agitator), Bulk Concrete Driver, Dry Batch Truck, Articulated End Dump

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the

Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a

weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

- 1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.

Washington, DC 20210.

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END OF GENERAL DECISION

"

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 Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 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 Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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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, 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 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 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 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.
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.
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.
30. *PCBs*—Polychlorinated biphenyls.
31. *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.
32. *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.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *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.
35. *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.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *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.
39. *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.
40. *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.

41. *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.
42. *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.
43. *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.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, 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. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *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 Subcontractor.
48. *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.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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.
51. *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 words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated 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 information in the Contract Documents and with the design concept of the 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:

- does not conform to the Contract Documents; or
- does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- 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 that 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.
- 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.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten 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 Engineer 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.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, 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.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer 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 Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer 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 Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

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

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 reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated 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 Engineer 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 Engineer, 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, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, 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 Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer 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 (a) any applicable Law or Regulation , (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer 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 Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

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, or code, or the instruction of any Supplier (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).

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. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier 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 its consultants, including electronic media editions; or

2. reuse any 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 adaptation by Engineer.
- B. The prohibitions 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. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, 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.
- 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:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 officers, directors, members, partners, employees, agents, consultants, or subcontractors 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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition 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 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 Engineer 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.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer 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 Engineer'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, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall 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 in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; 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;
 - 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 Engineer. Engineer 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 Engineer 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 be responsible for laying out the Work, 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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the 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 officers, directors, members, partners, employees, agents, consultants, or subcontractors 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.
- 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 Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- 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 written notice to Contractor: (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, members, 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 Engineer, and the officers, directors, members, 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.

- 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 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 or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- 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.

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 Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee 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.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary 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 Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein 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 Insurance*

A. Contractor shall purchase and maintain such 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 insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, 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 or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, 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 identified in the Supplementary 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);
5. 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
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary 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, members, 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 a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or 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 (other than that 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 loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, 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 a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this 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 loss payee 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. 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 this 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 Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, 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 loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, 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 Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, 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 Engineer, and the officers, directors, members, 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 Engineer, and the officers, directors, members, 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 loss payees, 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 superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

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 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 Engineer.

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 Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- 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 Engineer 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.

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.

1. *“Or-Equal” Items:* If in Engineer’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 Engineer 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; and
 - 3) it has a proven record of performance and availability of responsive service.
- 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 Engineer’s 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 Engineer to determine if 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 Engineer 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 by the General Requirements, and as Engineer 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 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 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; and

4) 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 Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer 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. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer 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. *Engineer's Cost Reimbursement:* Engineer will record Engineer'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 Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer 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.
- B. If the Supplementary 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 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 Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer 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 Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer 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 Engineer 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 Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee 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, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, 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 Engineer, 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, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, 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.

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 Engineer 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 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.

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 Engineer, and the officers, directors, members, 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, Engineer, 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 record copy 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.

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. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. 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. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. 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 Engineer 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).

F. 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.

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 Engineer 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 Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer 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 Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- 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 Engineer may require to enable Engineer 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 Engineer's 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:
 - a. 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;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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 Engineer 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 Drawings 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. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer'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. Engineer'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. Engineer'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 Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer'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 Engineer 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 Engineer 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. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors 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 Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer 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 Engineer;
 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, members, 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.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors 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 Engineer and Engineer's officers, directors, members, 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; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

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 Engineer 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 Engineer.
- C. Owner and Engineer 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 Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

- D. Pursuant to this Paragraph 6.21, Engineer'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. Engineer'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 through 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, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and 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 such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer 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 Engineer 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 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 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 wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

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 Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

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 with respect to 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 relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with 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 with 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. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer 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, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer'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, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, 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.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer 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 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 Engineer'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 Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer 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. 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.

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 believes 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.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

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.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer 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 Engineer 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 the provisions of any bond require notice to be given to a surety 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), 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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer 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 Engineer 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 Engineer and the other party to the Contract within 60 days after the

start of such event (unless Engineer 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 Times 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 Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer 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 Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer'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.
- 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.

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 not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
 - 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 on the Work. 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 Engineer, 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 engineers, 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 Engineer, 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, as 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, express and courier services, 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, expediters, 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.

- 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 Engineer 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 Engineer.
- 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 Engineer 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 Engineer 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 to 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.

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 Engineer 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 the 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 Paragraphs 12.01.C.2.a and 12.01.C.2.b 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 Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- 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. 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 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.
- B. If Owner, Engineer, 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, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors 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.
- 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.

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 Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, 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, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer 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.
- 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 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 Engineer 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 Engineer'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 Engineer.
- 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 Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer 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 Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer 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 engineers, 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 written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, 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 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 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 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 Engineer's recommendation of final payment, Engineer) 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 engineers, 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 Engineer as to reasonableness) and for 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 Engineer'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 Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer 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.
- 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 Engineer and Engineer'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 of 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 Engineer. 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 Engineer 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. 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.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. *Review of Applications:*

1. Engineer 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 Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer'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, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and 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 Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer 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 Engineer in the Contract Documents; or
 - b. 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 Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - 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. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer 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 Engineer'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. Engineer 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 Engineer'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 Engineer 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 Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) 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 remedies the reasons for such action.

3. Upon a subsequent determination 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 and subject to interest as provided in the Agreement.

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 Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer 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 Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer 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, Engineer considers the Work substantially complete, Engineer 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 Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer 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 Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer'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 remove its property and complete or correct items on the tentative list.

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, Engineer, 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, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer 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 Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer 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. 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, Engineer 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 Engineer, 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.6;
 - 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 might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. 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. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer 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 Engineer, less any sum Owner is entitled to set off against Engineer'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 Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, 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 Engineer 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 Engineer 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 repeated disregard of the authority of Engineer; 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 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.

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 Engineer as to their reasonableness and, when so approved by Engineer, 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 days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. 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 engineers, 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.

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) Engineer 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 Engineer, and provided Owner or Engineer 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 Engineer 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 Engineer, 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 Engineer 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.

- 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, Engineer'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 the 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.

17.06 *Headings*

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

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