



City of Gahanna
Department of Public Service and Engineering
200 South Hamilton Road • Gahanna, OH 43230
614.342.4050 Phone • 614.342.4100 Fax • www.gahanna.gov

INVITATION FOR BID

CLAYCRAFT FIBER NETWORK EXPANSION ST-1059

BID OPENING DATE: NOVEMBER 16, 2018 AT 11:00AM, LOCAL TIME

The Fishel Company

Company Name Submitting Bid

1600 Walcutt Road

Street Address

Columbus, OH 43230

City, State, Zip

614-850-4400

Telephone Number



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NOTICE TO BIDDERS

Sealed bids will be received by the City of Gahanna, Ohio ("Owner") until 11 am, local time, on November 16, 2018, at the Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230 [or] through the Owner's electronic bidding system for all labor, material, and services necessary for Claycraft Fiber Network Expansion ST-1059 (the "Project"), as more fully described in the Contract Documents prepared by Team Fishel ("Design Professional"). Bids received after this time will not be accepted. Bids will be opened publicly and read immediately thereafter. Subject to the right of the Owner to reject any or all bids, the Owner will award contracts to the bidder(s) submitting the lowest and best bid(s). Direct questions about the Project to the City of Gahanna Director of Public Service and Engineering at (614)-342-4050.

Engineer's Estimate: \$197,000.00

It is anticipated that the Project will consist of installation of more than 4,100' of four 1.25" HDPE conduits and 4,500' of 288 count fiber optic cable and all appurtenances. It is anticipated that the work will commence on December 19, 2018 and be completed by February 28, 2019.

Contract Documents are available for review in the office of the Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230. Copies may be purchased for a non-refundable fee of \$25.00, payable to Owner.

All bids must be accompanied by a Bid Guaranty and Contract Bond for the full amount of the bid (including all add alternates) as described in the Information and Requirements for Bidders. If State or Federal Labor Standards Provisions and State Wage Decisions are applicable to this project it will be a part of the contract documents.

No Bidder may withdraw its bid within sixty (60) days after the bid opening. The Owner reserves the right to waive irregularities in bids, to reject any or all bids, and to conduct such investigation as necessary to determine the lowest and best bidder for each contract.

Robert Priestas, Director of Public Service and Engineering

Advertise: November 1, 2018 and November 8, 2018

INFORMATION AND REQUIREMENTS FOR BIDDERS

Information and Requirements for Bidders Coversheet (the "Coversheet")

Each Bidder shall be responsible for submitting its Bid in accordance with the instructions in this Information and Requirements for Bidders, for the bid opening, before 11 AM (local time) on November 16, 2018 (the "Bid Deadline").

Sealed bids will be received by the Owner until the bid opening at the office of the Director of Public Service and Engineering or through the Owner's electronic bidding system. Bids received after this time will not be accepted.

If a bidder is submitting a paper bid, the bid must be enclosed and delivered in a sealed opaque envelope addressed to the Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230 with the bidder's name, bidder's address and title of the Contract plainly printed in the upper left hand corner. Each Bidder shall submit 1 copy of its bid to the Owner. Each Bidder shall be responsible for delivering its Bid to this office and address before the Bid Deadline.

If submitting through the Owner's electronic bidding system, the bid must be submitted via Bid Express at www.bidexpress.com. Vendors new to the City's electronic bidding system will need to register with Bid Express and create an account. Each Bidder shall be responsible for submitting its electronic Bid as instructed by the Owner, before the Bid Deadline.

The Design Professional (referred to as the "Design Professional" or "Engineer" in the Contract Documents) is:
Team Fishel
1366 Dublin Road
Columbus, Ohio 43215
Phone: 614-850-4400
Fax: 614-850-7170

The Design Professional's Representative is Matt Blackstone, mblackstone@columbusfiber.net

The Project and Work for the Project consists of all labor, materials, equipment, and services necessary for Claycraft Fiber Network Expansion ST-1059 (the "Project").

The Date for Substantial Completion is February 28, 2018.

The total estimated construction cost for the base bid Work on the Project for which bids are being solicited at this time is \$197,000.00.

A complete set of the Contract Documents is available for examination, without charge, at the Office of the Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230 during its normal business hours.

- A. BIDDER'S PLEDGE AND AGREEMENT
- B. EXAMINATION OF CONTRACT DOCUMENTS AND SITE CONDITIONS AND RELIANCE UPON TECHNICAL DATA
- C. OWNER & DESIGN PROFESSIONAL
- D. PROJECT
- E. WORK
- F. ESTIMATE OF COST
- G. CONTRACT DOCUMENTS
- H. PREPARATION OF BIDS
- I. METHOD OF AWARD
- J. EXECUTION OF CONTRACT
- K. SUBSTITUTIONS/NON-SPECIFIED PRODUCTS
- L. ALTERNATES
- M. UNIT PRICES
- N. ADDENDA
- O. INTERPRETATION
- P. STATE SALES AND USE TAXES
- Q. DATE FOR SUBSTANTIAL COMPLETION/LIQUIDATED DAMAGES
- R. OWNER'S RIGHT TO WAIVE DEFECTS AND IRREGULARITIES
- S. MODIFICATION/WITHDRAWAL OF BIDS
- T. COMPLIANCE WITH APPLICABLE LAWS
- U. FINDINGS FOR RECOVERY
- V. PREVAILING WAGES
- W. FEDERAL FUNDING
- X. OHIO PUBLIC WORKS COMMISSION FUNDING

A. BIDDER'S PLEDGE AND AGREEMENT

1. Each Bidder acknowledges that this is a public project involving public funds and that the Owner expects and requires that each successful Bidder adhere to the highest ethical and performance standards. Each Bidder by submitting a bid pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and the Design Professional, (b) it will use its best efforts to cooperate with the Owner and the Design Professional and all other Contractors on the Project and at all times will act with professionalism and dignity in its dealings with the Owner, Design Professional, and other Contractors, (c) it will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.

B. EXAMINATION OF CONTRACT DOCUMENTS AND SITE CONDITIONS AND RELIANCE UPON TECHNICAL DATA

1. Each Bidder shall have a competent person carefully and diligently review each part of the Contract Documents, including the Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work on which the Bidder is submitting its bid. By submitting its bid, each Bidder represents and agrees, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors, or omissions in the Contract Documents for which it has not notified the Design Professional in writing at least seven (7) days prior to the bid opening. If there are any such conflicts, inconsistencies, errors, or omissions in the Contract Documents, the Bidder (i) will provide the labor, equipment, or materials of the better quality or greater quantity of Work and/or (ii) will comply with the more stringent requirements. The Bidder will not be entitled to any additional compensation for any conflicts, inconsistencies, errors, or omissions that would have been discovered by such careful and diligent review, unless it has given prior written notice to the Design Professional.
2. Each Bidder shall have a competent person carefully and diligently inspect and examine the entire site and the surrounding area, including all parts of the site applicable to the Work for which it is submitting its bid, including location, condition, and layout of the site and the location of utilities, and carefully correlate the results of the inspection with the requirements of the Contract Documents. The Bidder's bid shall include all costs attributable to site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the site and the surrounding area, and the Bidder shall not be entitled to any Change Order, additional compensation, or additional time on account of such conditions.
3. The Bidder may rely upon the general accuracy of any technical data included in the Project Manual (e.g., soils exploration reports, soil boring logs, site survey, or abatement reports) in preparing its bid, but such technical data are not part of the Contract Documents. Except for the limited reliance described in the preceding sentence, Bidder may not, if awarded a contract for the Work, rely upon or make any Claim against the Owner or Design Professional, or any of their agents or employees, with respect to any of the following:
 - (a) the completeness of such reports and drawings for Bidder's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the successful Bidder and safety precautions and programs incident thereto;
 - (b) other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

- (c) any interpretation by the successful Bidder of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Bidder to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.
- 4. Each Bidder will be deemed to have actual knowledge of all information provided or discussed at the pre-bid meeting.

C. OWNER & DESIGN PROFESSIONAL

- 1. The Owner is:

City of Gahanna

Telephone: 614-342-4050

Fax: 614-342-4100

The Owner's Representative is Robert Priestas.

- 2. The Design Professional (referred to as the "Design Professional" or "Engineer" in the Contract Documents) is set forth in the Coversheet.

D. PROJECT

- 1. The Project and Work for the Project consists of all labor, materials, equipment, and services necessary for the Project as identified in the Coversheet, all in accordance with the Drawings and Specifications prepared by the Design Professional. The Project will be substantially complete by the Date for Substantial Completion, identified in the Coversheet.

E. WORK

- 1. The Project consists of the contract(s) for work on the Project identified in the Coversheet. Individual bid package estimates are provided for the Bidder's information only.

F. ESTIMATE OF COST

- 1. The total estimated construction cost for the base bid Work on the Project for which bids are being solicited at this time is set forth in the Coversheet.

G. CONTRACT DOCUMENTS

1. The Contract Documents consist of the Contract Documents listed in Section 1 of the Owner-Contractor Agreement.

A complete set of the Contract Documents is available for examination, without charge, at the Office of the Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230 during its normal business hours, as well as the following locations during normal business hours:

As identified in the Coversheet.

Bidders shall use complete sets of Contract Documents in preparing bids. Neither the Owner nor the Design Professional assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.

The Owner or the Design Professional, in making the Contract Documents available on the above terms, does so only for the purpose of obtaining bids on the Work and does not confer a license or grant for any other use.

H. PREPARATION OF BIDS

1. All bid documents must be completed and submitted at the time of the bid opening including but not limited to a Bid Guaranty. See Section H.6 and H.8 below. All bids must be submitted on the Bid Form furnished with the Contract Documents.
2. Fill in all blank spaces, in ink or typewritten, in words and figures, and in figures only where no space is provided for words: sign the Bid Form. The wording on the Bid Form shall be used without change, alteration, or addition. Any change in the wording or omission of specified accompanying documents may cause the bid to be rejected. If there is an inconsistency or conflict in the bid amount, the lowest amount shall control, whether expressed in numbers or words.
3. Bidders shall note receipt of all Addenda on the Bid Form. If the Bidder fails to acknowledge receipt of each Addendum, the Bid shall be deemed non-responsive, unless the Bid amount clearly and unambiguously reflects receipt of the Addendum or the Addendum involves only a matter of form and does not affect the price, quantity, or quality of the Work to be performed in any material manner.
4. Each Bidder shall submit the number of copies of its bid to the Owner as set forth in the Coversheet. The Bid Form shall be signed with the name typed or printed below the signature. A Bid shall not be submitted by facsimile transmission. A Bidder that is a corporation shall sign its bid with the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.
5. Each Bid shall be enclosed and delivered in a sealed opaque envelope with the Bidder's name and the title of the Project printed in the upper left hand corner and addressed as follows: Director of Public Service and Engineering, 200 South Hamilton Road, Gahanna, Ohio 43230. The Bidder shall be responsible for delivering its Bid to this office and address for the bid opening before the Bid Deadline identified in the Coversheet.

If the Bidder is using a third party, e.g., Federal Express, to deliver its bid, the Bidder must comply with this provision by including on the outside packing envelope the foregoing information (i.e., the Bidder's name, the title of the Project, and the following phrase: "this

package contains a bid – deliver immediately”). This information shall be printed in the upper left hand corner of the envelope.

If a bidder is submitting an electronic bid via the Owner’s electronic bidding system, the bid must be submitted via Bid Express at www.bidexpress.com. Vendors new to the City’s electronic bidding system will need to register with Bid Express and create an account.

The bid opening shall be extended one (1) week if any addenda is issued within a seventy-two (72) hour period prior to the bid opening, excluding Saturdays, Sundays and legal holidays, with no further advertising of bids required unless otherwise noted in the addendum. It is the sole responsibility of the bidder to ensure that their bid is received in the proper time before the bid deadline.

6. The completed Bid Form shall be accompanied by the following documents: Contractor’s Qualification Statement, Subcontractors List, Corporate Affidavit, Contractor’s Personal Property Tax Affidavit, Noncollusion Affidavit, Escrow Waiver, Bid Certification, Bid Guaranty and Contract Bond (including Power of Attorney, Surety Financial Statement and Certificate of Compliance for Ohio), Bid Form, Clarifications (if issued) and Addenda (if issued). Any change in the wording or omission of specified accompanying documents may cause the bid to be rejected.
7. The Bidder shall take the following precautions in preparing its bid:
 - a. Sign the bid and check to insure all blank spaces have been filled in with requested information and the specified accompanying documents (listed in Item 6 above) have been included in a sealed opaque envelope addressed as described in Item 5 above.
 - b. When the Bid Form provides for quoting either an addition or deduction for an Alternate item, indicate whether the sum named is an addition or deduction. If it is not indicated, it will be conclusively presumed that the amount is a deduction.
 - c. When the Bid Form provides for quoting a unit price, the Bidder should quote the unit price as set forth in the Bid Documents.
 - d. When applicable, make sure that the Bid Guaranty is properly executed and signed by:
 - 1) The Bidder
 - 2) The Surety or Sureties
 - e. The form of Bid Guaranty must be a Bid Guaranty and Contract Bond and the amount may be left blank; if an amount is inserted, it must equal the total of the base bid and all add alternates included. If an amount is inserted, the failure to state an amount equal to or greater than the total of the base bid and all add alternates that are accepted shall make the bid non-responsive.
 - f. Make sure that the appropriate bid package and scope of work is inserted in the correct space on the Bid Guaranty and Contract Bond Form. Failure to include work covered by the bid submitted may make the bid non-responsive.
 - g. Combination Bids. The Owner may provide the option of submitting a combination bid on the Bid Form.
 - (1) When there is an option for submitting a combination bid on the Bid Form, a Bidder desiring to submit a combination bid for two or more bid packages shall include both of the following on the Bid Form:
 - (a) the combination bid amount in the space provided, identifying the bid packages included in the combination bid amount; AND

- (b) separate base bids for each bid package, including alternates, included in the combination bid in the places provided on the Bid Form for the individual bid packages.

NOTE: The individual cost amounts of each base bid need not total the combination bid amount.

8. Bonds and Guarantees

- a. Bid Guaranty: Bidder shall furnish a Bid Guaranty, in the form of a bond for the full amount of the bid in the form of the Bid Guaranty and Contract Bond included in the Contract Documents. Failure to include the Bid Guaranty in such form may make the bid non-responsive. The Bid amount shall be the total of all sums bid, including all add alternates with no deduction for any deduct alternates. NOTE: AIA Bid Bond forms are not acceptable. Alternate bid guaranty forms are not acceptable.
- b. The bond must be issued by a surety company ("Surety") authorized by the Ohio Department of Insurance to transact business in the State of Ohio and acceptable to the Owner. The bond must be issued by a Surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be deemed to be met if the Surety currently has an A.M. Best Company Policyholders Rating of "A-" better and has or exceeds the Best Financial Size Category of Class VI. Other Sureties may be acceptable to the Owner, in its sole discretion.
- d. All bonds shall be signed by an authorized agent of an acceptable Surety and by the Bidder.
- e. Surety bonds shall be supported by credentials showing the Power of Attorney of the agent, a certificate showing the legal right of the Surety to do business in the State of Ohio, and a financial statement of the Surety.
- f. The Bid Guaranty, as applicable, shall be in the name of or payable to the order of the Owner.
- g. The name, address, and telephone and fax numbers of the Surety and the Surety's Agent should be typed or printed on each bond.

I. METHOD OF AWARD

- 1. All bids shall remain open for acceptance for sixty (60) days following the day of the bid opening, but the Owner may, in its sole discretion, release any bid and return the Bid Guaranty prior to that date. The Bid Guaranty shall be subject to forfeiture, as provided in the Ohio Revised Code, if a bid is withdrawn during the period when bids are being held.
- 2. The Owner reserves the right to reject any, part of any, or all bids and to waive any informalities and irregularities. The Bidder expressly acknowledges this right of the Owner to reject any or all bids or to reject any incomplete or irregular bid. The Owner will award a single contract for each of the bid packages listed above or one or more combined contracts for combinations of the Bid Packages, unless it determines to reject one or more bid packages. Bidders must furnish all information requested on or accompanying the Bid Form. Failure to do so may result in disqualification of the bid.
- 3. Determination of the Bidder Submitting the Lowest and Best Bid. Subject to the right of the Owner to reject any or all bids, the Owner will award the Contract for the Work to the Bidder submitting the lowest and best bid, taking into consideration accepted alternates. In evaluating bids, the Owner may consider the qualifications of the Bidders, whether or not the

bids comply with the prescribed requirements, and alternates and unit prices, if requested, on the Bid Form. The Owner may also consider the qualifications and experience of subcontractors and suppliers. The Owner may conduct such investigations as are deemed necessary to establish the qualifications and financial ability of the Bidder and its subcontractors and suppliers. The factors the Owner may consider in determining which Bidder submitted the lowest and best bid or which Bidders submitted the lowest and best bids include the factors set forth below. The Owner, in its discretion, may consider and give such weight to these criteria as it deems appropriate.

- a. The Bidder's work history. The Bidder should have a record of consistent customer satisfaction and of consistent completion of projects, including projects that are comparable to or larger and more complex than the Owner's Project, on time and in accordance with the applicable Contract Documents, and the Bidder's claims history. If the Bidder's management operates or has operated another construction company, the Owner may consider the work history of that company in determining whether the Bidder submitted the lowest and best bid.

The Owner may consider the Bidder's prior experience on other projects with the Owner and Design Professional, including the Bidder's demonstrated ability to complete its work on these projects in accordance with the Contract Documents and on time, and will also consider its ability to work with the Owner and Design Professional as a willing, cooperative, and successful team member.

The Bidder authorizes the Owner and its representatives to contact the owners and design professionals (and construction managers, if applicable) on projects on which the Bidder has worked and authorizes and requests such owners and design professionals (and construction managers) to provide the Owner with a candid evaluation of the Bidder's performance. By submitting its bid, the Bidder agrees that if it or any person, directly or indirectly, on its behalf or for its benefit brings an action against any of such owners or design professionals (or construction managers) or the employees of any of them as a result of or related to such candid evaluation, the Bidder will indemnify and hold harmless such owners, design professionals (and construction managers) and the employees of any of them from any claims whether or not proven that are part of or are related to such action and from all legal fees and expenses incurred by any of them arising out of or related to such legal action. This obligation is expressly intended for the benefit of such owners, design professionals (and construction managers), and the employees of each of them.

- b. The Bidder's financial ability to complete the Contract successfully and on time without resort to its Surety.
- c. The Bidder's prior experience with similar work on comparable or more complex projects.
- d. The Bidder's prior history for the successful and timely completion of projects, including the Bidder's history of filing and having claims filed against it.
- e. The Bidder's equipment and facilities.
- f. The adequacy, in numbers and experience, of the Bidder's work force to complete the Contract successfully and on time.
- g. The Bidder's compliance with federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act, the Ohio Prevailing Wage laws, and Ohio ethics laws.

- h. The foregoing information with respect to each of the Subcontractors and Suppliers that the Bidder intends to use on the Project.
 - i. The Bidder's participation in a drug-free workplace program acceptable to the Owner, and the Bidder's record for both resolved and unresolved findings of the Auditor of State for recovery as defined in Section 9.24 of the Ohio Revised Code.
 - j. The Owner's prior experience with the Bidder's surety.
 - k. The Bidder's interest in the Project as evidenced by its attendance at any pre-bid meetings or conferences for bidders.
 - l. The Bidder's ability to self-perform the work on the Project with the Bidder's own forces.
 - m. Depending upon the type of the work, other essential factors, as the Owner may determine and as are included in the Specifications.
4. Within three (3) business days after the Owner's identification of the apparent low bidder, if requested, the apparent low bidder will complete and submit to the Design Professional a completed Contractor's Qualification Statement (using the form included in the Project Manual), and thereafter will provide the Design Professional with such additional information as the Design Professional may request regarding the Bidder's qualifications. Additionally, upon request from the Design Professional, any other Bidder will promptly complete and submit to the Design Professional a completed Contractor's Qualification Statement and thereafter will provide the Design Professional with such additional information as the Design Professional may request regarding the Bidder's qualifications. A Bidder will submit any requested information within three (3) business days of the date of the request.
5. The failure to submit requested information on a timely basis may result in the determination that the Bidder is not the lowest and best bidder.
6. By submitting its bid, the Bidder agrees that the Owner's determination of which bidder is the lowest and best bidder shall be final and conclusive, and that if the Bidder or any person or association on its behalf challenges such determination in any legal proceeding, the Bidder shall indemnify and hold the Owner and its employees and agents harmless from any claims included in or related to such legal proceeding, whether or not proven, and from legal fees and expenses incurred by the Owner, its employees, or agents that arise out of or are related to such challenge.
7. Within three (3) business days of receipt of the bids or such longer time as may be permitted in writing by the Design Professional, the apparent low Bidder will submit a list of all proposed Subcontractors and Suppliers.
- After approval by the Owner and Design Professional of the list of proposed Subcontractors, Suppliers, and manufactures submitted by the successful Bidder, the list shall not be changed unless written approval of the change is authorized by the Owner and Design Professional.
8. Affidavit as to Personal Property Taxes. Each successful Bidder shall submit, prior to the time of the entry into the Contract, an affidavit in the form required by Section 5719.042, Ohio Revised Code, regarding the status of the Bidder's personal property taxes. A copy of the affidavit form is included with the Contract Documents.
9. No Bidder may withdraw its bid within sixty (60) days after the date bids are opened. The Owner reserves the right to waive any formalities or irregularities or to reject any or all bids.
10. The Owner reserves the right to disqualify bids, before or after opening, upon evidence of collusion with intent to defraud or other illegal practices on the part of the Bidder.

11. Award of Contract. The award of the Contract, when required, will only be made pursuant to a duly adopted resolution of the Owner.

J. EXECUTION OF CONTRACT

1. Within 10 days after award of the Contract, the successful Bidder shall execute and deliver to the Design Professional the required number of copies of the Owner-Contractor Agreement, in the form included in the Contract Documents, and all accompanying documents requested, including, but not limited to, a Contract Bond (if applicable), insurance certificates, and a valid Workers' Compensation Certificate. The award of Contract notwithstanding, the successful Bidder shall have no property interest or rights under the Owner-Contractor Agreement until such time as the Owner-Contractor Agreement is executed by the successful bidder and the Owner.

K. SUBSTITUTIONS/NON-SPECIFIED PRODUCTS

1. Certain brands of material or apparatus are specified. Each bid will be based on these brands, which may be referred to in the Contract Documents as Standards. The use of another brand (referred to as a substitution or proposed equal in the Contract Documents, when a bidder or the contractor seeks to have a different brand of material or apparatus than that specified approved by the Owner for use in the Project) may be requested as provided herein. Substitutions, however, will not be considered in determining the lowest and best bid.
2. The products specified in the Contract Documents establish a standard of required function, dimension, appearance, and quality.
3. Bidders wishing to obtain approval to bid non-specified products shall submit written requests to the Design Professional a minimum of ten (10) working days before the bid date and hour. To facilitate the submission of requests, a Substitution Form is included in the Bid Documents. The Bidder shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution, including the name of the proposed manufacturer and/or product and a complete description of the proposed product including manufacturer's name and model number or system proposed, drawings, product literature, performance and test data, color selections or limitations, and any other information necessary for evaluation. Include a statement including any changes in other materials, equipment, or other work that would be required if the proposed product is incorporated in the materials, equipment, or other work that would be required if the proposed product is incorporated in the work. The burden of proof of the merit of the proposed product is on the proposer. The Design Professional's decision on approval of a proposed product will be final.

The following will be cause for rejection of a proposed substitution:

- a. Requests submitted by subcontractors, material suppliers, and individuals other than Bidders;
- b. Requests submitted without adequate documentation;
- c. Requests received after the specified cut-off date.
4. When the Design Professional approves a product submission before receipt of bids, the approval will be included in an Addendum, and Bidders may include the pricing of this product in their bid. Bidders shall not rely on approvals made in any other manner.
5. In proposing a non-specified product or a substitution, the Bidder represents and warrants that each proposed product will not result in any changes to the Project, including changes to

- the Work of other contractors, or any decrease in the performance of any equipment or systems to be installed in the Project and agrees to pay any additional costs incurred by the Owner and the Owner's consultants as a result of a non-specified or substitute product that is accepted.
6. Following the award of the Contract, there shall be no substitutions for specified products, except pursuant to a Change Order. The Owner in its sole discretion may decline to consider a substitution for a Change Order.

L. ALTERNATES

1. The Owner may request bids on alternates. If the Owner requests bids on alternates, the Bidder should include the cost of the alternates requested on its Bid Form.
2. At the time of awarding the contract, the Owner will select or reject alternates as it determines is in its best interest. A Bidder's failure to include on its Bid Form the cost of an alternate selected by the Owner and applicable to the Bidder's work shall render the bid non-responsive and be grounds for the rejection of the bid. Otherwise, the failure to include the cost of an alternate will not be deemed material.
3. The Bidder acknowledges that although there is an estimate for the cost of the Project, the market conditions may and frequently do result in the estimate being different from the sum of the bids received, either higher or lower. The Bidder understands that the Owner may include alternates, which may include deduct alternates as well as add alternates, to give it flexibility to build the Project with the funds available. The Bidder further understands and acknowledges that use of add and deduct alternates is a long held customary practice in the construction industry in the State of Ohio. The Bidder also acknowledges that the Owner will not make a decision about the alternates on which to base the award of contracts until the bids are received, and the Owner can compare its available funds with the base bids and the cost or savings from selecting different alternates. The Bidder understands that the award to the Bidder submitting the lowest and best bid will be based on the lowest base bid plus selected alternates, and may result in an award to a Bidder other than the Bidder that submitted the lowest base bid.
4. If, during the progress of the Work, the Owner desires to reinstate any alternate not included in the Contract, the Owner reserves the right to reinstate the alternate at the price bid by the Contractor provided that such action is taken in sufficient time so as not to delay the progress of the work or cause the Contractor additional expense.

M. UNIT PRICES

1. Where unit prices are requested in the Bid Form for a Prime Contract on which the Bidder submits a bid, the Bidder should quote a unit price. Unless otherwise expressly provided in the Bid Documents, such unit prices shall include all labor, materials, and services necessary for the timely and proper installation of the item for which the unit prices are requested. The unit prices quoted in the bid shall be the basis for any Change Orders entered into under the Owner-Contractor Agreement, unless the Design Professional determines that the use of such unit prices will cause substantial inequity to either the Contractor or the Owner.

N. ADDENDA

1. The Owner reserves the right to issue Addenda changing, altering, or supplementing the Contract Documents prior to the time set for receiving bids. Addenda may be issued to clarify bidders' questions and/or to change, alter, or supplement the Contract Documents.

2. Any explanation, interpretation, correction, or modification of the Contract Documents will be issued in writing in the form of an Addendum, which shall be the only means considered binding; explanations, interpretations, etc., made by any other means shall NOT be legally binding. All Addenda shall become a part of the Contract Documents.
3. Bidders shall submit written questions to the Design Professional in sufficient time in advance of the bid opening to allow sufficient time for the Design Professional to respond. The Owner—after consultation with the Design Professional—shall in its sole discretion determine whether or not an Addendum will be issued. All Addenda will be issued, except as hereafter provided, and emailed (unless a different delivery method is requested) to persons who have obtained Contract Documents for the Project, at least seventy-two (72) hours prior to the published time for the opening of bids, excluding Saturdays, Sundays, and legal holidays. If any Addendum is issued within such seventy-two (72) hour period, then the time for opening of bids shall be extended one (1) week with no further advertising of bids required unless otherwise noted in the Addendum.
4. Copies of each Addendum will be sent only to the Bidders to whom Contract Documents have been issued and to Plan Rooms where copies of the Contract Documents are maintained. Receipt of Addenda shall be indicated by Bidders in the space provided on the Bid Form. Bidders are responsible for acquiring issued Addenda in time to incorporate them into their bid. Bidders should contact the Design Professional prior to the bid opening to verify the number of Addenda issued.
5. Each Bidder shall carefully read and review the Contract Documents and immediately bring to the attention of the Design Professional any error, omission, inconsistency, or ambiguity therein.
6. If a Bidder fails to indicate receipt of all Addenda through the last Addendum issued by the Design Professional on its Bid Form, the bid of such Bidder will be deemed to be responsive only if:
 - a. The bid received clearly indicates that the Bidder received the Addendum, such as where the Addendum added another item to be bid upon and the Bidder submitted a bid on that item; or
 - b. The Addendum involves only a matter of form or is one which has either no effect or has merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon.

O. INTERPRETATION

1. If a Bidder contemplating submitting a bid for the proposed Project is in doubt as to the true meaning of any part of the Contract Documents, it may submit a written request for an interpretation thereof to the Design Professional a minimum of five (5) business days prior to the Bid opening date. Any interpretation of the proposed documents will be made by Addendum only, duly signed by the Design Professional, and a copy of such Addendum will be delivered to each Bidder receiving a set of Contract Documents or that has asked to be added to the plan holders list. Addenda and clarifications will be sent via email, unless a different delivery method is requested. The Owner will not be responsible for any other explanation or interpretation of the proposed documents.
2. In interpreting the Contract Documents, words describing materials that have a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with the well-known meaning recognized by the trade.

3. Bidders are responsible for notifying the Design Professional in a timely manner of any ambiguities, inconsistencies, errors, or omissions in the Contract Documents. The Bidder shall not, at any time after the execution of the Contract, be compensated for a claim alleging insufficient data, incomplete Contract Documents, or incorrectly assumed conditions regarding the nature or character of the Work, if no request was made by the Bidder prior to the bid opening.

P. STATE SALES AND USE TAXES

1. The Owner is a political subdivision of the State of Ohio and is exempt from taxation under the Ohio Sales Tax and Use Tax Laws. Building materials that the successful Bidder purchases for incorporation into the Project will be exempt from state sales and use taxes if the successful Bidder provides a properly completed Ohio Department of Taxation Construction Contract Exemption Certificate to the vendors or suppliers when the materials are acquired. The Owner will execute properly completed certificates on request.

Q. DATE FOR SUBSTANTIAL COMPLETION/LIQUIDATED DAMAGES

1. Date for Substantial Completion. Each successful Bidder shall have its Work on the Project Substantially Complete (as Substantial Completion is defined in the Contract Documents) by the Date of Substantial Completion set forth in the Coversheet, or within the Contract Time, as applicable to the Bidder's scope of work.

The Contract Time shall run from the date of the Notice to Proceed or if there is no Notice to Proceed from the Effective Date of the Owner- Contractor Agreement. The Date for Substantial Completion Date and the Contract Time may be extended only by Change Order, by other Modification, or by a Claim that is Finally Resolved. By submitting its Bid, each Bidder agrees that the period for performing its Work is reasonable.

2. Liquidated Damages. If the successful Bidder does not have its Work Substantially Complete by its Date for Substantial Completion and/or Finally Complete within forty-five (45) days of achieving Substantial Completion, whichever may be applicable, the successful Bidder shall pay the Owner and the Owner may set off from amounts otherwise due the successful Bidder Liquidated Damages. The daily amounts of Liquidated Damages are set forth in the tables included in the Owner-Contractor Agreement. The total amounts of Liquidated Damages will be calculated based on the total number of calendar days beyond the Date for Substantial Completion that the Bidder's Work is not Substantially Complete and/or to the extent that its Work is not Finally Complete more than forty-five (45) after the Substantial Completion of its Work, i.e., number of late days times the per diem rate(s) for Liquidated Damages in the tables. In addition to such Liquidated Damages, the Bidder shall indemnify, defend, and hold the Owner and its employees and agents harmless from any and all claims, whether or not such claims are proven, and from all costs and expenses incurred as a result of such claims, including but not limited to attorneys' and consultants' fees and expenses, that arise out of or are related to the Bidder's failure to Substantially Complete its Work by its Date for Substantial Completion. The Bidder's obligations under this Section are joint and several.
3. The Bidder acknowledges and agrees, by submitting its bid for the Work and entering into a Contract with the Owner, that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Bidder's Work is not Substantially Complete by its Date for Substantial Completion and/or not Finally Complete by forty-five (45) days of the Date of Substantial Completion. The Bidder further acknowledges, agrees and understands that it may seek an extension of the Contract Time (and its Date for Substantial Completion) to

avoid or reduce Liquidated Damages by properly following the Claim procedures in the Contract Documents.

R. OWNER'S RIGHT TO WAIVE DEFECTS AND IRREGULARITIES

1. The Owner reserves the right to waive any and all irregularities provided that the defects and irregularities do not affect the amount of the bid in any material respect or otherwise give the Bidder a competitive advantage.

S. MODIFICATION/WITHDRAWAL OF BIDS

1. Modification. A Bidder may modify its bid by written communication to the Owner addressed to the Owner's Representative at any time prior to the scheduled closing time for receipt of bids, provided such written communication is received by Owner's Representative prior to the bid deadline. The written communication shall not reveal the bid price, but should provide the addition or subtraction or other modification so that the final prices or terms will not be known until the sealed bid is opened. If the Bidder's written instructions with the change in bid reveal the bid amount in any way prior to the bid opening, the bid may be rejected as non-responsive.
2. Withdrawal Prior to Bid Deadline. A Bidder may withdraw its bid at any time for any reason prior to the bid deadline for the opening of bids established in the Legal Notice. The request to withdraw shall be made in writing to and received by the Owner's Representative prior to the time of the bid opening.
3. Withdrawal after Bid Deadline.
 - a. All bids shall remain valid and open for acceptance for a period of at least 60 days after the bid opening; provided, however, that a Bidder may withdraw its bid from consideration after the bid deadline when all of the following apply:
 - (1) the price bid was substantially lower than the other bids;
 - (2) the reason for the bid being substantially lower was a clerical mistake, rather than a mistake in judgment, and was due to an unintentional and substantial error in arithmetic or an unintentional omission of a substantial quantity of work, labor, or material;
 - (3) the bid was submitted in good faith; and
 - (4) the Bidder provides written notice to the Owner, to the attention of the Owner's Representative, within two (2) business days after the bid opening for which the right to withdraw is claimed.
 - b. No bid may be withdrawn under this provision if the result would be the awarding of the contract on another bid for the bid package from which the Bidder is withdrawing its bid to the same Bidder.
 - c. If a bid is withdrawn under this provision, the Owner may award the Contract to another Bidder determined by the Owner to be the lowest and best bidder or the Owner may reject all bids and advertise for other bids. In the event the Owner advertises for other bids, the withdrawing Bidder shall pay the costs incurred in connection with the rebidding by the Owner, including the cost of printing new Contract Documents, required advertising, and printing and mailing notices to prospective bidders, if the Owner finds that such costs would not have been incurred but for such withdrawal.

T. COMPLIANCE WITH APPLICABLE LAWS

1. By submitting a bid for Work on the Project, the Bidder acknowledges that it is in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, the following:
 - a. Equal Employment Opportunity/Nondiscrimination. The Bidder agrees that if it is awarded a contract that in the hiring of employees for performance of work under the contract or any subcontract, neither it nor any subcontractor, or any person acting on its behalf or its subcontractor's behalf, by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform work to which the employment relates. The Bidder further agrees that neither it nor any subcontractor or any person on its behalf or on behalf of any subcontractor, in any manner, shall discriminate against or intimidate any employees hired for the performance of the work under the contract on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
 - b. Ethics Laws. The Bidder represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

U. FINDINGS FOR RECOVERY

1. By submitting its bid, each Bidder certifies for reliance of the Owner that it has no unresolved finding for recovery against it issued by the Auditor of the State of Ohio on or after January 1, 2001, except as permitted by Section 9.24 (F) of the Ohio Revised Code.

V. PREVAILING WAGES

1. For "Construction" projects as defined in Section 4115.03 of the Ohio Revised Code, the successful Bidder and all of its subcontractors, regardless of tier, will strictly comply with its obligation to pay a rate of wages on the Project not less than the rate of wages fixed for this Project under Section 4115.04 of the Ohio Revised Code. Additionally, for such "Construction Projects," the successful Bidder will comply with all other provisions of Chapter 4115 of the Ohio Revised Code. Where Federal prevailing wage rates apply the successful Bidder and all of its subcontractors, regardless of tier, will strictly comply with its obligation to pay a rate of wages on the Project not less than the rate of wages fixed for this Project under the applicable Federal law. See Appendix B.

W. FEDERAL FUNDING

1. If the Project is subject to terms as a result of federal funding, it will be indicated in the Contract Documents.

X. OHIO PUBLIC WORKS COMMISSION FUNDING

1. For projects funded in whole or in part by the Ohio Public Works Commission, the State of *Ohio Equal Employment Opportunity Requirements and Bid Conditions for OPWC-Assisted Construction Projects* shall apply and Bidders must conform to its requirements, including but not limited to furnishing the required certifications with Bidder's bid. These requirements are included in the bid documents.

REQUEST FOR INFORMATION (PRE-BID)

The person, firm, or corporation submitting a request for information shall be responsible for its prompt delivery and do so in a manner that will allow a sufficient period of time for the issuance and delivery of an Addendum under Section N of the Information and Requirements for Bidders prior to the receipt of bids. Please submit all pre-bid questions in writing to:

City of Gahanna
Department of Public Service and Engineering
200 South Hamilton Road, Gahanna, Ohio 43230
Fax: (614) 342-4100
Attn: Robert Priestas, Director of Public Service and Engineering

Name:	Phone:
Company:	Fax:
<u>Requested Information:</u>	

APPENDIX A

SUPPLEMENTARY SPECIFICATIONS

SUPPLEMENTARY SPECIFICATIONS

1. GENERAL. The City of Gahanna's technical specifications as set forth in the Contract Documents, plans, exhibits, reports, tests, drawings and specifications, as well as these Supplementary Specifications, together with the Codified Ordinances of the City of Gahanna and—if indicated in the Contract Documents—the current editions of the Ohio Department of Transportation (ODOT) and the City of Columbus (COC) Construction and Material Specifications (CMS) through March 31, 2017, as may be modified herein or otherwise within the Contract Documents, shall govern this improvement. Discrepancies in the Project Specifications shall be resolved in accordance with the Modified Standard General Conditions.

If the City of Gahanna chooses to apply all or part of either the ODOT CMS or the City of Columbus CMS—or both—by making such selection in Sections 1.36 or 1.37 of the Owner/Contractor Agreement or otherwise as incorporated in the Contract Documents, then those CMS shall apply as indicated. If any conflict arises between the Modified Standard General Conditions, these Supplementary Specifications, the ODOT Specifications, or the City of Columbus CMS, the conflict shall be resolved in the following order of hierarchy: 1) The Modified Standard General Conditions; then 2) The Supplementary Specifications; then 3) The ODOT Specifications; and finally 4) The City of Columbus CMS Specifications.

The Supplementary Specifications included herein are specifically applicable to this improvement, previous customs or practices to the contrary notwithstanding. In case there is an actual or apparent discrepancy or conflict between the Supplementary Specifications and other specifications contained within the Contract Documents, Contractor will provide the labor, equipment, or materials of the better quality or greater quantity of Work and/or will comply with the more stringent requirements.

2. DEFINITIONS. Whenever the "Owner" is used or implied in these Supplementary Specifications ("Specifications,") it shall refer to the City of Gahanna, Ohio (the "City").

Whenever the word "Council" is used or implied in these Specifications, it shall refer to the Council of the City.

Whenever the word "Director" is used or implied in these Specifications, it shall refer to the Director of Public Service and Engineering of the City.

Whenever the word "Engineer" is used or implied in these Specifications, it shall refer to the City Engineer, or his authorized assistants, acting within the scope of the duties assigned to them.

Whenever the word "Contractor" is used or implied in these Specifications, it shall refer to the Contractor, Partnership, or firm of Contractors or his or their agent or agents undertaking a contract under these Specifications.

3. AUTHORITY OF ENGINEER. The Engineer shall have full power and authority to do any or all of the following things:

(a) *Interpret Plans, etc.* To interpret the meaning of plans and specifications when necessary and to decide all questions that may arise relative to the fulfillment of the obligations under the Contract Documents.

(b) *Judge of Quality.* To be the sole judge of the quality and fitness of all material and workmanship; to supervise all tests; to inspect all Work and material either at the factory, on the

grounds of after placing in the ground; and to condemn any Work or material which, in his judgment, does not fully conform to the plans and specifications.

(c) **Power to Condemn.** He may so condemn faulty Work or material at any time prior to the final acceptance of the Work, notwithstanding that it may have been previously overlooked or may have become damaged after previous inspection, even though it may have been estimated or paid for. Any condemned Work shall be promptly taken out and replaced by the Contractor without payment and any condemned material shall be removed from the job by the Contractor and not returned to any part of the Work.

(d) **Judge Foundation Material.** To judge the suitability of all foundations and to order unsuitable foundation material excavated to such depth as he considers necessary and the excavation refilled in such manner and with such material as he may deem proper.

(e) **Fix Time and Place of Work.** To fix the time and place where Work shall be started and carried on, and to order the Work carried on simultaneously at two or more points if he deems necessary.

(f) **Length of Trench.** To determine the length of trench which shall be kept open at any time.

(g) **Precautions Against Damage.** To require additional precautions against damage to the Work or any public or private property. This power shall not, however, relieve the Contractor of any responsibility for providing proper safe guards, or for any such damage or accident.

(h) **Extra Work.** To sign and give orders for extra work, pursuant to the Contract Documents.

(i) **Cleaning Up.** To order all dirt, rubbish and other material cleaned up immediately after backfilling and to have such cleaning done at the expense of the Contractor in case such cleaning done at the expense of the Contractor in case such order is not complied with within three days.

(j) **Remove Employees.** To order the Contractor to remove from the project any employee who is disorderly or disrespectful or who persistently does careless or unsatisfactory work.

(k) **Reject Work.** To reject Work if any provision of the Contract Documents or Specifications is being violated.

(l) **Repair After Completion.** To notify the Contractor of any break, settlement or failure within one year after the date of the final acceptance of the Work, and to repair the same at the expense of the Contractor if not immediately attended to by the Contractor.

(m) **Assistants.** To depute assistants and inspectors to act for him in any of his powers and duties and such assistants and inspectors shall exercise all powers of the engineer within the limits of the specific authority given by him to each.

(n) **Lay Out Work.** To lay out all Work, set all stakes both for lines and grade, and locate all structures and appurtenances.

(o) **Amount and Quality.** To determine the amount and quality of the several kinds of work which are to be paid for thereunder, including extra work.

(p) *Monthly Estimates.* To prepare and sign approximate monthly estimates.

(q) *Final Estimate.* To examine the Work when notified of its completion and, if fully completed to his satisfaction, to make the necessary measurements and prepare and sign the final estimate.

(r) *Violation of Contract.* To notify the Owner in writing of any violation of the Contract.

(s) *Extension of Time.* To determine the proper length of any extension of time provided for under the Contract Documents.

(t) *Defective Work.* On the basis of on-site observations, shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent Work by the Contractor; but does not guaranty the performance of the Contractor and is not responsible for construction means, methods, techniques, sequence or procedures, time of performance, programs, or for any safety precautions in connection with the Work. The Engineer is not responsible for the Contractor's failure to execute the Work in accordance with the Contract Documents and shall not be responsible for defects or omissions in the Work result of the Contractor's or any Subcontractor's employees or that of any other person and entities responsible for performing any of the Work result as contained in the Contract Documents.

4. SAFETY REQUIREMENTS. The Contractor and its Subcontractors shall comply with all current federal laws and regulations, including but not limited to the Occupational Safety and Health Act during the conduct and performance of the Work. All federal OSHA standards must be enforced by Contractor.

The Contractor and Subcontractors shall be solely responsible for all federal, state, and local safety requirements, together with exercising precautions at all times for the protection of persons (including employees) and property. It is also the sole responsibility of the Contractor and Subcontractors to initiate, maintain and supervise all safety requirements, precautions and programs in connection with the Work.

5. LICENSING OF CORPORATIONS. The Contractor, Subcontractor, or person acting on behalf of any contractor or Subcontractor, shall abide by the statutory requirements of the State of Ohio relative to Licensing of Corporations organized under the laws of any other state.

6. LICENSES. The Contractor, Subcontractor, or person acting on behalf of any contractor or subcontractor, shall procure at its own expense and maintain in full force and effect during the life of the contract, all licenses required by the city, state and federal governments relative to the performance of the terms and conditions set forth herein.

7. CITY INCOME TAX TO BE WITHHELD. The Contractor shall withhold all City Income Tax due or payable under the provisions of Chapter 161 of the Codified Ordinances of Gahanna (as amended) for wages, salaries, and commission paid to its employees and further agrees that any of its Subcontractors shall be required to agree to withhold any such City Income Tax due under said Ordinance for services performed under the Contract Documents. In order to comply with this section and to avoid delay in receiving payment for Work performed under the Contract Documents, it will be necessary that said contractor complete and file an "Income Tax Business Registration Form", if it is not already registered with the Gahanna Finance Department.

8. NON-APPROPRIATION CLAUSE. In the event funds for the applicable Project are not appropriated by the Council of the City of Gahanna, then the Owner/Contractor Agreement will automatically be cancelled without recourse to the Owner.

9. PRE-CONSTRUCTION CONFERENCE. A Pre-Construction Conference involving the Owner, the Contractor, and all available Subcontractors will be held, if necessary, prior to the start of the Work.

10. ENGINEER TO GIVE INSTRUCTIONS. It is mutually agreed that wherever in the Contract Documents the words "as directed", "as required", "permitted", "approval", "suitable", "ordered", "proper", "satisfactory", or words of similar import are used, they shall be understood to refer to the instructions and judgment of the Engineer as applied to each particular case.

11. PLANS AND SPECIFICATIONS. The drawings referred to in these Specifications consist of such plans, profiles, details and drawings as may be furnished by the Engineer before or as the Work progresses. Work shown on the plans and not mentioned in the Specifications, or vice versa, shall be done as if shown on both, and should any actual or apparent conflicts, inconsistencies or errors be found, the Contractor shall notify the Engineer as soon as they are discovered and shall not proceed with any Work affected thereby until the matter has been properly clarified or corrected by the Engineer.

12. WORK TO BE COMPLETE. The intent of these Specifications is to provide for the work herein outlined to be full and complete in every detail for the purposes designated, and the Contractor hereby agrees to furnish everything necessary for such construction, notwithstanding any omissions or errors in the Contract Documents.

13. INSPECTION. Whenever any Work is in progress an inspector shall be appointed by the Engineer to inspect the same, and it will be the duty of such inspector to see that all materials used and Work performed shall be strictly in accordance with the Contract Documents.

14. NOT RELIEVED BY INSPECTION. The inspection of the Work shall not relieve the Contractor from any of the obligations under the Contract Documents and defective Work shall be made good, and unsuitable materials will be rejected notwithstanding such Work and materials have been previously overlooked by the Engineer and accepted or estimated for payment.

15. ABSENCE OF INSPECTORS. No Work shall be done in the absence of an inspector deputized by the Engineer.

Any Work done in the absence of the inspector shall be removed and replaced by the Contractor at its own expense. Blasting shall be done only in the presence of an Inspector.

16. OLD MATERIAL. All materials removed from old construction and all materials, or articles of value, found in the excavation or on the site of the Work shall be brought to the attention of the Engineer; and if he shall so order, shall be the property of the Owner and shall be placed conveniently for removal. If not claimed by the Owner, such material or articles shall be removed and disposed of by the Contractor at his own expense.

17. PERMITS, LAWS AND REGULATIONS. The Contractor shall keep himself fully informed of all existing and future ordinances or resolutions of the Owner, and of all municipal, state, and national laws in any manner affecting the Work herein specified and shall at all times comply with such resolutions or ordinances and laws. The Contractor shall take out all permits legally required at his own expense, and

shall pay all fees and charges incident to prosecution and completion of the Work. Contractor shall notify the Chiefs of Police and the appropriate Fire Department and the Engineer whenever a street or section of a street is about to be closed to traffic, also when it is to be reopened.

18. NIGHT, HOLIDAY, OR WEEKEND WORK. No Work shall be done during the Night or on Weekends or Holidays, except in case of emergencies and weather related delays encountered during the normal weekly work hours, or when written permission is given.

The Contractor agrees that all Work, including Work performed by any and all Subcontractors, shall be conducted only during the period from one-half hour before sunrise to one-half hour after sunset, as determined by the U. S. National Weather Service. Authorization of Work during any other time shall only be upon written permission of the Engineer. Whenever a valid reason exists, however, for the use of a regular night work force for continuous work, the same shall be authorized in writing by the Engineer.

The Contractor shall pay all inspection related costs, including inspector supervision on all Night, Holiday and Week-end work conducted during any hours over 40 hours per week. Inspection fees shall be paid at the overtime rate of one and one-half times the inspector's regular per diem rate.

19. SANITARY REGULATIONS. Such sanitary regulations as may be prescribed shall be obeyed and followed by the Contractor without extra charge. Suitable sanitary convenience and plenty of pure water shall be furnished by the Contractor for the use of employees. Offensive or unsanitary conditions will not be permitted and any objectionable matter found or deposited in the trenches or excavations or about the Work shall be removed by the Contractor at his own expense.

20. PUBLIC UTILITIES. The Contractor shall assume complete responsibility for, and make satisfactory arrangements with, the management of all utilities concerned or affected by the Work under the Contract Documents. In no case shall the services of any utilities be disrupted or interfered with without the consent of the Owner thereof, and in case any sewer, pipe, conduit, pole line, track, or other public utility property is damaged or has to be removed, the repair shall be done by the Owner of the affected utility. Call OUPS 1-800-362-2764.

21. PROTECTION OF EXISTING STRUCTURES. Special attention is called to the existing structures which are located adjacent to or across the Work to be constructed under the Contract Documents. The timbering and the method of excavating shall be such as to prevent any loss of the supporting ground under or around these existing structures or damage to these structures. If directed, the Contractor shall adopt and use such special timbering, methods of excavating or safety precautions as may be necessary or required.

Extreme care shall be taken at all times during the Work adjacent to or across the sewers, water mains, gas mains, telephone and electric conduits, and other utilities, to the end that they will not be disturbed in any way. Smoking or any kind of open flame shall be prohibited on or about the Work during the time any portion of the gas mains are exposed. The cost of this work shall be included in the lump sum price.

22. LINES, GRADES AND ELEVATIONS. Such lines, grades and elevations as may be deemed necessary will be given by the Engineer but this shall not be construed to mean all lines, grades and elevations. The Contractor shall provide all stakes and such other materials and give such assistance as may be required, and the marks shall be carefully preserved. He shall inform the Engineer a reasonable length of time in advance of the time and places at which he intends to work, in order that lines, grades and elevations may be furnished and so that necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer or delay to the Contractor. There shall be not

special compensation to the Contractor for the cost of any of the work or delay occasioned by giving lines, grades and elevations or making other necessary measurements or by inspection; but such costs shall be considered as having been included in the prices stipulated for doing the Work required under the Contract Documents.

23. **RIGHT OF WAY.** Where shown on the plans, permanent right-of-way agreements or temporary construction easements, or both, have been obtained or are in the process of being obtained from the owner of the property. Any additional temporary construction easements required by the Contractor shall be obtained by him at the Contractor's cost. Whenever Work is located in private property, it shall be done in conformity with all agreements between the Owner and the property owner or between the Contractor and the property owner as applicable.

24. **MAINTAINING TRAFFIC.** All lanes on all City streets are to remain open at all times. Ingress and egress to private driveways shall be maintained at all times. All traffic control devices, including lights, signs and barricades shall be constructed in accordance with the "Ohio Manual of Traffic Control Devices for Construction and Maintenance".

The cost of all lights, signs, and barricades necessary to maintain the aforementioned condition shall be included in the lump sum price.

25. **INTERFERENCE WITH TRAFFIC.** The Contractor shall so pile up his material as to interfere as little as possible with traffic on the roads, streets, alleys, crossing and sidewalks. When material is piled in gutter or ditches, suitable drains of sufficient size to carry all the storm water flowing in the gutters or ditches shall first be laid. Where the drainage from cross-streets or alleys is interfered with or cut off by reason of the nature of the Work, suitable crossings shall be provided for pedestrians. No material shall be piled within 20 feet of any fire hydrant and a clear way for traffic shall be provided at intersections.

In the event it becomes necessary to close any highway, street, alley or private drive to vehicular traffic, the Contractor shall, at least 24 hours in advance of such closure, notify the occupants of all premises which may be affected thereby.

26. **BARRICADES AND LIGHTING.** The Contractor shall place proper barricades along and around all excavations and obstructions to traffic where danger exists, and shall place and maintain sufficient red lights at night to prevent accidents. If the Engineer is of the opinion that sufficient barricades, warning signs and red lights have not been provided by the Contractor, at or along any of the Work, the Engineer may provide such additional barricades, signs and lights as may be deemed necessary and the Contractor shall pay all costs incurred by the Owner in connection therewith. This section and any procedure by the Engineer conforming thereto shall not relieve the Contractor from properly protecting its Work or from any of its obligations or responsibilities under the Contract Documents.

27. **PROTECTION OF PAVED SURFACES.** The Contractor shall so conduct his operations as to avoid damages to pavement surfaces. Mechanical equipment with lug or cleat equipped caterpillars will not be permitted on macadam, surface treated, asphalt, concrete, or other types of pavement surfaces which may be damaged thereby, unless the lugs or cleats are covered with rubber pads or otherwise protected. Any and all damage resulting from the Contractor's operations shall be satisfactorily repaired and maintained as directed by the Engineer and as herein provided at the expense of the Contractor.

28. **CONTIGUOUS WORK.** The Contractor shall permit the Owner, its agents, contractors for adjoining work, or contractors for additional work on the same site, to construct or install such work as

the Owner may desire. Such adjoining or additional work will be constructed or installed with as little hindrance or interference as possible to the Contractor. The Contractor hereby agrees not to interfere with or prevent the performance of any adjoining or additional work by the agent or agents of the Owner. Any dispute which may arise between Contractors in regard to their adjoining work shall be adjusted by the Engineer. Furthermore, no claims for extra payment shall be made as a result of delays which may occur due to work on any contiguous or adjoining work or project.

29. **SUSPENSION OF WORK.** Upon any stoppage of the Work for any reason, all material is to be piled up snugly, so as not to impede the travel on the sidewalk or traveled way, or the use of fire plugs, and all rubbish or surplus material is to be removed immediately thereafter from the site of the Work by the Contractor. The several parts of the Work done are to be covered and otherwise sufficiently protected, so that it will not be injured by the weather or any other cause or agency.

30. **RESTORATION AND CLEANUP.** It is the intent of the City to keep inconvenience to the property owners to an absolute minimum. All Work prescribed and described in these specifications is situated in improved areas. Any street signs or landscaping features removed during the Work by the Contractor must be restored by the Contractor in a timely manner. The cost for removing and replacing signs and landscaping features shall be included in the price bid for the various items as set forth in the proposal. All Work is to continue on a uniform basis and on schedule, particularly the restoration and cleanup of disturbed areas. Disturbed areas such as sidewalks and curb ramps must be clearly marked by the Contractor until the Work can be completed. This shall be included within the lump sum price.

31. **DAMAGE TO PROPERTY.** All damage caused by the carrying out the Work under the Contract Documents, to any pipes or conduits or other public or private property of any nature whatsoever, whether above or under the ground, including trees and crops, shall be made good to the satisfaction of the Owner of the same, at the expense of the Contractor.

32. **TEN PERCENT RETENTION & MAINTENANCE.** In addition to its other responsibilities under the Contract Documents, including but not limited to warranty obligations, the Contractor shall provide maintenance to the Work for one year following Final Completion of the Project, and pursuant to any maintenance specifications set forth in the Contract Documents. The Owner shall withhold 10% of the Contract Sum for one year, to secure such obligations of the Contractor to maintain its Work in good repair.

33. **FIBER OPTIC NETWORK EXPANSION COMPLETE** – This work shall include all necessary labor, materials, and equipment, including incidentals necessary for the completion of the Claycraft Fiber Network Expansion Plans ST-1059. This shall include but not be limited to all maintenance of traffic, restoration, roadway repairs, staking, clearing and grubbing, direction bore of conduits, new 4x4x4 manholes, slack coils, Fiber Optic Cable Altos Loose Tube, Gel Free Cable (or approved equal, see attached spec sheet for details). Splicing is not included as part of the project scope. Payment for this item shall be made as a lump sum payment.

ALTOS® Loose Tube, Gel-Free Cable

288 F, Single-mode (OS2)

CORNING

Corning Cable Systems ALTOS® All-Dielectric Gel-Free Cables are designed for outdoor and limited indoor use for campus backbones in lashed aerial and duct installations. The loose tube gel-free design is fully waterblocked using craft-friendly, water-swellable materials, which means cable access is simple and no clean up is required. The flexible craft-friendly buffer tubes are easy to route in closures and the SZ-stranded, loose tube design isolates fibers from installation and environmental rigors while allowing easy midspan access. The all-dielectric cable construction requires no bonding or grounding and these cables have a medium-density polyethylene jacket that is rugged, durable and easy to strip.

Features and Benefits

Gel-free waterblocking technology

Craft-friendly cable preparation

Medium-density polyethylene jacket

Rugged, durable and easy to strip while providing superior protection against UV radiation, fungus, abrasion and other environmental factors

All-dielectric construction

Requires no grounding or bonding

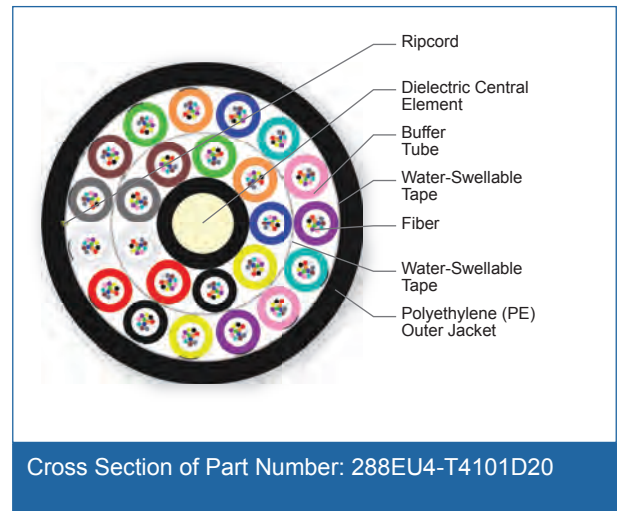
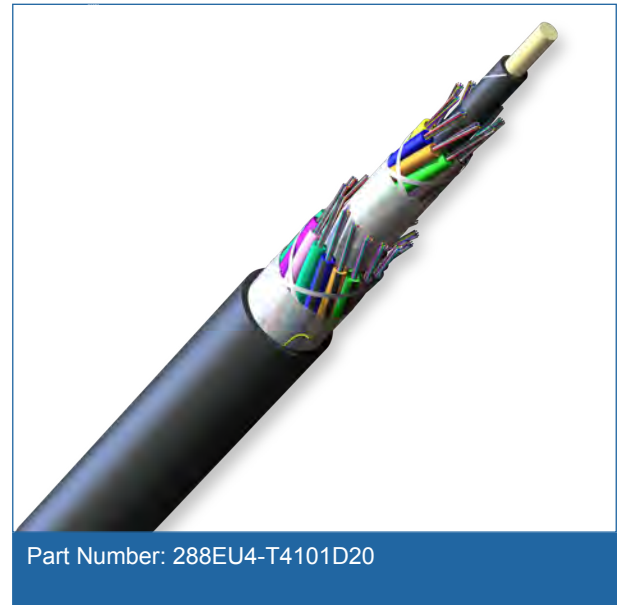
Standards

Common Installations

Outdoor lashed aerial and duct; indoor when installed according to National Electrical Code® (NEC®) Article 770

Design and Test Criteria

ANSI/ICEA S-87-640



ALTOS[®] Loose Tube, Gel-Free Cable

288 F, Single-mode (OS2)

CORNING

Specifications

General Specifications	
Environment	Outdoor
Application	Aerial, Duct
Cable Type	Loose Tube
Product Type	Dielectric
Fiber Category	Single-mode (OS2)

Temperature Range	
Storage	-40 °C to 70 °C (-40 °F to 158 °F)
Installation	-30 °C to 70 °C (-22 °F to 158 °F)
Operation	-40 °C to 70 °C (-40 °F to 158 °F)

Cable Design	
Central Element	Dielectric
Fiber Count	288
Fiber Coloring	Blue, Orange, Green, Brown, Slate, White, Red, Black, Yellow, Violet, Rose, Aqua
Fibers per Tube	12
Number of Tube Positions	24
Number of Active Tubes	24
Buffer Tube Color Coding, Layer 1	Blue, Orange, Green, Brown, Slate, White, Red, Black, Yellow
Buffer Tube Diameter	2.5 mm (0.1 in)
Tape	Water-swellaible
Buffer Tube Color Coding, Layer 2	Violet, Rose, Aqua, Blue*, Orange*, Green*, Brown*, Slate*, White*, Red*, Black*, Yellow*, Violet*, Rose*, Aqua*
Tape, Layer 2	Water-swellaible
Number of Ripcords	1
Outer Jacket Material	Polyethylene (PE)
Outer Jacket Color	Black

Notes: *Tubes 13 to 24 include a co-extruded stripe that is white for the black tube and black for all other tube colors

Mechanical Characteristics Cable	
Max. Tensile Strengths, Short-Term	2700 N (600 lbf)
Max. Tensile Strengths, Long-Term	890 N (200 lbf)

CORNING

ALTOS® Loose Tube, Gel-Free Cable

288 F, Single-mode (OS2)

CORNING

Mechanical Characteristics Cable

Weight	196 kg/km (131 lb/1000 ft)
Nominal Outer Diameter	18.2 mm (0.72 in)
Min. Bend Radius Installation	273 mm (10.7 in)
Min. Bend Radius Operation	182 mm (7.2 in)

Chemical Characteristics

RoHS	Free of hazardous substances according to RoHS 2002/95/EG
------	---

Fiber Specifications

Optical Characteristics (cabled)

Fiber Type	Single-mode
Fiber Core Diameter	8.2 µm
Fiber Category	OS2
Fiber Code	E
Performance Option Code	01
Wavelengths	1310 nm / 1383 nm / 1550 nm
Maximum Attenuation	0.4 dB/km / 0.4 dB/km / 0.3 dB/km
Serial 1 Gigabit Ethernet	5000 m / - / -
Serial 10 Gigabit Ethernet	10000 m / - / 40000 m

* ITU-T G.652 D compliant.

* Meets 0.75 ns optical skew when used in all Corning Cable Systems Plug & Play™/Pretium EDGE® Systems Solutions.

Notes: 1) Improved attenuation and bandwidth options available.
2) Bend-insensitive single-mode fibers available on request.
3) Contact a Corning Cable Systems Customer Care Representative for additional information.

Ordering Information

Part Number	288EU4-T4101D20
Product Description	ALTOS® Loose Tube, Gel-Free Cable, 288 F, Single-mode (OS2)

CORNING

ALTOS[®] Loose Tube, Gel-Free Cable

288 F, Single-mode (OS2)

The CORNING logo is a blue square with the word "CORNING" in white, uppercase, sans-serif font centered inside.

Notes



Corning Cable Systems LLC • PO Box 489 • Hickory, NC 28603-0489 USA

800-743-2675 • FAX: 828-325-5060 • International: +1-828-901-5000 • www.corning.com/cablesystems

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APPENDIX B

PREVAILING WAGE

AND

FEDERAL FUNDING

STATE OF OHIO REQUEST FOR PREVAILING WAGE RATES

Important: If you wish to retain a copy of this form for your records, please print it prior to clicking on the "Submit" button. When you click the "Submit" button, a prompt should appear which will allow you to obtain the necessary wage rates by clicking on the "view wage rates" button. Submitting this form notifies the Bureau of Labor and Worker Safety of your project. Wage rates will not be sent to you by mail as a result of the submission, rather you should obtain them by clicking on the "view wage rates" button.

Public Authority Information

Owner/Public Authority Name:	City of Gahanna	Date: 10/29/2018 This form must be filled out completely & correctly for us to process your request. Forms not completed correctly will be returned to the sender.
Department Division or Agency:	Public Service and Engineering	
Street Address:	200 S. Hamilton Rd.	
Address 2:		ODOC Date Stamp
City, OH	Gahanna	
ZIP:	43230	
Email:	jill.webb@gahanna.gov It is required that you list your e-mail address here.	
County of Public Authority:	FRANKLIN ▼	
P.A. Phone:	6143424050	

Project Information

Project Name:	Claycraft Fiber Network Expansion ST-1059	ODOC Date Stamp (Bld Tab)
Site Address:	200 S. Hamilton Rd.	
City, OH	Gahanna, OH	
ZIP:	43230	
County of Project:	FRANKLIN ▼	
Prevailing Wage Coordinator Name	Jill Webb	
Address:	200 S. Hamilton Rd.	
City,	Gahanna, OH	
ZIP:	43230	
Phone:	6143424050	
Issuing Authority of Bonds:		
Estimated Total Overall Project Cost:	\$197,000.00	
Type of Financing:	Local Funds	
Type of Construction:	<input type="radio"/> New Construction <input checked="" type="radio"/> Old Construction	
This Project is	<input type="radio"/> Residential <input checked="" type="radio"/> Commercial	

Expected Date of Contract Award:	12/19/18 example 05/31/98
Projected Completion Date:	02/28/18 example 05/31/98
Project Comments:	 (optional)

Important: If you wish to retain a copy of this form for your records, please print it prior to clicking on the "Submit" button. When you click the "Submit" button, a prompt should appear which will allow you to obtain the necessary wage rates by clicking on the "view wage rates" button. Submitting this form notifies the Bureau of Labor and Worker Safety of your project. Wage rates will not be sent to you by mail as a result of the submission, rather you should obtain them by clicking on the "view wage rates" button.

Submit

Please contact our Webmaster with questions or comments.

Prevailing Wage Determination Cover Letter

County: ▼
Determination Date: 10/29/2018
Expiration Date: 01/29/2019

THE FOLLOWING PAGES ARE PREVAILING RATES OF WAGES ON PUBLIC IMPROVEMENTS FAIRLY ESTIMATED TO BE MORE THAN THE AMOUNT IN O.R.C. SEC. 4115.03 (b) (1) or (2), AS APPLICABLE.

Section 4115.05 provides, in part: "Where contracts are not awarded or construction undertaken within ninety days from the date of the establishment of the prevailing wages, there shall be a redetermination of the prevailing rate of wages before the contract is awarded." The expiration date of this wage schedule is listed above for your convenience only. This wage determination is not intended as a blanket determination to be used for all projects during this period without prior approval of this Department.

Section 4115.04, Ohio Revised Code provides, in part: "Such schedule of wages shall be attached to and made a part of the specifications for the work, and shall be printed on the bidding blanks where the work is done by contract..."

The contract between the letting authority and the successful bidder shall contain a statement requiring that mechanics and laborers be paid a prevailing rate of wage as required in Section 4115.06, Ohio Revised Code.

The contractor or subcontractor is required to file with the contracting public authority upon completion of the project and prior to final payment therefore an affidavit stating that he has fully complied with Chapter 4115 of the Ohio Revised Code.

The wage rates contained in this schedule are the "Prevailing Wages" as defined by Section 4115.03, Ohio Revised Code (the basic hourly rates plus certain fringe benefits). These rates and fringes shall be a minimum to be paid under a contract regulated by Chapter 4115 of the Ohio Revised Code by contractors and subcontractors. The prevailing wage rates contained in this schedule include the effective dates and wage rates currently on file. In cases where future effective dates are not included in this schedule, modifications to the wage schedule will be furnished to the Prevailing Wage Coordinator appointed by the public authority as soon as prevailing wage rates increases are received by this office.

"There shall be posted in a prominent and accessible place on the site of work a legible statement of the Schedule of Wage Rates specified in the contract to the various classifications of laborers, workmen, and mechanics employed, said statement to remain posted during the life of such contract." Section 4115.07, Ohio Revised Code.

Apprentices will be permitted to work only under a bona fide apprenticeship program if such program exists and if such program is registered with the Ohio Apprenticeship Council.

Section 4115.071 provides that no later than ten days before the first payment of wages is due to any employee of any contractor or subcontractor working on a contract regulated by Chapter 4115, Ohio Revised Code, the contracting public authority shall appoint one of his own employees to act as the prevailing wage coordinator for said contract. The duties of the prevailing wage coordinator are outlined in Section 4115.071 of the Ohio Revised Code.

Section 4115.05 provides for an escalator in the prevailing wage rate. Each time a new rate is established, that rate is required to be paid on all ongoing public improvement projects.

A further requirement of Section 4115.05 of the Ohio Revised Code is: "On the occasion of the first pay date under a contract, the contractor shall furnish each employee not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of Labor with individual written notification of the job classification to which the employee is assigned, the prevailing wage determined to be applicable to that classification, separated into the hourly rate of pay and the fringe payments, and the identity of the prevailing wage Coordinator appointed by the public authority. The contractor or subcontractor shall furnish the same notification to each affected employee every time the job classification of the employee is changed."

Work performed in connection with the installation of modular furniture may be subject to prevailing wage.

THIS PACKET IS NOT TO BE SEPARATED BUT IS TO REMAIN COMPLETE AS IT IS SUBMITTED TO YOU. (Reference guidelines and forms are included in this packet to be helpful in the compliance of the Prevailing Wage law.)
wh1500

APPENDIX C

DOCUMENTS TO BE SUBMITTED WITH BID

CONTRACTOR'S QUALIFICATION STATEMENT

On a separate sheet, the bidder is required to state the following in full detail as will enable the Director of Public Service and Engineering and Council of the City of Gahanna to judge its responsibility, experience, skill and financial standing to meet the obligations of the Contract.

ORGANIZATION.

(a) Number of years your organization has been in business as a Contractor.

82 Years

(b) Number of years your organization has been in business under its present business name. List any other or former names your organization has operated under. 82 Years

(c) If your organization is a corporation, list the following: date of incorporation, state of incorporation, President's name, Vice President's name(s), Secretary's name and Treasurer's name. If not applicable, state "not applicable." 10/4/1946, State of Ohio.

John E Phillips, President Paul R Riewe, Vice President, CFO, Secretary and Treasurer

(d) If your organization is a partnership, list the following: date of organization, type of partnership (if applicable) and name(s) of general partner(s). If not applicable, state "not applicable."

Not Applicable

(e) If your organization is individually owned, list the following: date of organization and name of owner. If not applicable, state "not applicable." Not Applicable

(f) If the form of your organization is other than those listed above, describe it and name the principals. If not applicable, state "not applicable." Not Applicable

LICENSING.

(a) List jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable. Please see attached

(b) List jurisdictions in which your organization's partnership or trade name is filed. Please see attached

EXPERIENCE.

(a) List the categories of work that your organization normally performs with its own forces.

Please see attached

(b) List all details of any work your organization has failed to complete. If none, state "none."

None

(c) List any Claims that your organization or any of its officers have initiated, any Claims initiated against your organization or any of its officers, any mediation or arbitration proceedings or lawsuits related to any contract your organization or any of its officers have been involved in or is currently involved in, or any judgements or awards outstanding against your organization or any of its officers within the last five (5) years. Please attach details for each Claim, including the names and telephone numbers of the persons who are parties, the amount of the Claim, the type of Claim and basis for the Claim, and the outcome. If none, state "none."

Please see Attached

Note: As used in this document "Claim" means a Claim initiated under the Contract Documents for a contract.

(d) List any officer or principal of your organization that has ever been an officer or principal of another organization when it failed to complete a contract within the last five (5) years. Please attach details for each instance, including the names and telephone numbers of the persons who are parties to the contract, and the reason(s) the contract was not completed. If none, state "none." None

(e) List contracts your organization has in progress with an original contract sum of more than \$100,000.00, giving the name of contract, owner and its telephone number, design professional and its telephone number if applicable, contract amount, percent complete and scheduled completion date. State total amount of work in progress and under contract. If none, state "none." Please see attached

(f) Provide the following information for each contract your organization has had during the last five (5) years, including current contracts, where the contract sum is fifty percent (50%) or more of the bid amount for this Contract, including add alternates: name of contract, scope of work, contract sum, name of owner's representative and owner's telephone number. Please see attached

Note: If there are more than ten (10) of these contracts, only provide information on the most recent ten (10) contracts, including current contracts. Please see attached.

(g) Provide the following information for each contract your organization has had during the last five (5) years, which your organization believes is of comparable or greater size and complexity than the Owner's contract: name of contract, scope of work, contract sum, name of owner's representative and owner's telephone number.

Note: If there are more than five (5) of these contracts, only provide information on the most recent five (5) contracts, including current contracts.

(h) State the average annual amount of contracts your organization has performed during the last five (5) years.

(i) If any of the following members of your organization's management, president, chairman of the board, or any director, operates or has operated another company during the last five (5) years, identify the member of management and the name of the company. If none, state "none." none

(j) If your organization is operating under a trade name registration with the Secretary of State for the State of Ohio, identify the entity for which the trade name is registered. If none, state "none." none

(k) If your organization is a division or wholly-owned subsidiary of another entity or has another relationship with another entity, identify the entity of which it is a division or wholly-owned subsidiary or with which it has another relationship and also identify the nature of the relationship. If none, state "not applicable." Please see attached

(l) List the education, training and experience for each person who will fill a management role on the Contract, including without limitation the Contract Executive, Contract Manager and Contract Superintendent. For each person listed, include with the other information the last three contracts on which the person worked and the name and telephone number of the owner. Please see attached

REFERENCES.

(a) List all trade references.

(b) List all bank references.

(c) List the name of your surety bonding company along with the name and address of your surety agent.

FINANCING.

(a) Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items: current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses), net fixed assets, other assets, current liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes) and other liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus and retained earnings).

(b) List the name and address of the firm preparing attached financial statement, and date thereof.

(c) State if the attached financial statement for the identical organization is named on page one. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

(d) State if the organization whose financial statement is attached will act as guarantor of the Contract.

CERTIFICATION.

The undersigned certifies for the reliance of the Owner that after diligent investigation, to the best of the undersigned's belief, the information provided with this Contractor's Qualification Statement is true, accurate and not misleading.

The Fishel Company
Company Name

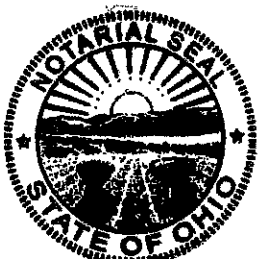
[Signature]
Signature

11/19/2018
Date

Paul Riewe, Vice President, CFO & Secretary
Printed Name and Title

Paul Riewe, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Sworn to and subscribed in my presence this 19th day of November, 2018.



MICHELLE R. DEMBEK
Notary Public, State of Ohio
My Commission Expires 04-12-2022

Michelle R. Dembek
Notary Public



**SERVICE
EXCELLENCE**

Trades Covered

Underground and Aerial Utility Construction. Installation of Fiber Optic, Telephone, Cable Television, Gas and Electric. Right-of-Way Services, Trenchless Technology and Technology Planning, Infrastructure Design, Structured Cabling, Network Electronics Installation and Service/Maintenance of Energy and Information Systems.

Underground Cable Construction Service Connection Drop Installation, Testing

Conduit Construction & Maintenance Maintenance Wiring

Buried Cable Placing - Plow Method Restoration

Buried Cable Placing - Trench Method Surveying

Cable Splicing - Copper Underground Structure Locating

Cable Splicing - Fiber Engineering Design/Planning

Manhole Construction & Maintenance, Poured CATV

Rebuilds Video Networks

Precast CEV Duct Rodding, Cleaning & Cable Pulling

Pole Line Construction, Inspection Electrical

Treatment Distribution Gas Line

Aerial Cable Placement Boring, Pipe Pushing & Tunneling

Aerial Wrecking Directional Boring

Coax Cable - Aerial Road, Pavement & Sidewalk

Coax Cable - Underground Tree Line Clearing & Brush Cutting

Structured Cabling Systems

trades00
06/27/02

CONTRACTOR'S LICENSE/DOT REQUALIFICATION									
Date Qualified/Registered	State	Contractor's License #	Classification	Renewal Date	Contract Limitation	Qualified Party			
1/19/1993	Alabama	18595	MU Municipal & Utility	9/30/2019	MU: Municipal and Utility	Not applicable			
6/7/2011	Alabama	48763 3810	J. J. Malone Contracting LLC Electrical Contractors Board	Inactive pending qualifier Inactive pending qualifier		Thomas M Pickren II Thomas M Pickren II			
9/10/1990	Arizona	93622	A-17 Electrical & Transmission Lines	4/30/2019	Not Specified	Richard D. Keeler			
4/15/1993	Arizona	97026	A General Engineering	3/31/2019		Richard D. Keeler			
3/31/2004	Arizona	R0C194876	Low Voltage Comm System EMS-Residential Only CR67	5/31/2020	Not Specified	Richard D. Keeler			
12/28/1993	Arkansas	2510419	Municipal & Utility, Cable TV Lines, Communication, Computer/Sound Systems, Cabling, Electrical, Transmission Lines, Substations.	4/30/2019	Unlimited	O. Randy Blair			
8/28/1990	California	678942	A. General Engineering	10/31/2019	Not Specified	Rick Keeler			
			B. General Building			Fernando Rocha			
			C-7 Low Voltage Systems (No prequal. Nec. w/Caltrans)			Richard D. Keeler			
6/28/2011			C-10			William Edridge			
8/28/1990	Colorado	Not applicable	N/A	N/A	N/A	N/A			
9/28/1998	District of Columbia	Not applicable	N/A	N/A	N/A	N/A			
7/11/2012	Florida	CUC1224936	NBR	8/31/2020	N/A	Charles Bass			
5/12/1992	Florida	EC13004125	Low Voltage Specialty Electrical Electrical Contractor (ALL ONE LISC)	8/31/2020	N/A	W. Scott Keeler			
7/22/2014	Florida	EC13006528	Certified Electrical Contractor	8/31/2020	N/A	Warren Scott Keeler			
8/29/1990	Georgia	UC300356	Utility Contractor	4/30/2015	Unlimited	C. Steve Hinton (UJW000576)			
2/11/2013	Georgia	EN214988	Electrical Contractor	Inactive pending qualifier	Not Restricted	Thomas Max Pickren, II			
			J.L. Malone Contracting LLC						
9/14/1990	Illinois	Not Required	N/A	N/A	N/A	N/A			
8/27/1990	Indiana	Not applicable	N/A	N/A	N/A	N/A			
			IN Public Works						
9/23/1991	Iowa	C085922	Contractor	8/15/2019	Not Specified	N/A			
5/6/1992	Kansas	Not Required	N/A	N/A	N/A	N/A			
8/27/1990	Kentucky	Not Required	N/A	N/A	N/A	N/A			
1/18/1993	Louisiana	27812	Communication Systems Lines	1/18/2021	Not Specified	O. Randy Blair			
	Louisiana	54438	"LUIC" ELECTRICAL TRANSMISSION	9/23/2018	Not Specified	James Robert Usey			
	Louisiana	57214	Team Power Group LLC	11/15/2019					
5/28/1998	Maryland	13142003	N/A	4/30/2019	N/A	N/A			
9/4/1990	Michigan	Not applicable	N/A	N/A	N/A	N/A			
4/28/1997	Minnesota	Not applicable	N/A	N/A	N/A	N/A			
7/21/1997	Mississippi	10954-SC	Cable Installation	08/30/2019	Not Specified	C. Steve Hinton			
3/21/1994	Missouri	Not applicable	N/A	N/A	N/A	N/A			
10/18/2009	Missouri	15442331	Transient Employer Notice Registration	10/20/2018	N/A	N/A			

CONTRACTOR'S LICENSE/DOT PREQUALIFICATION

Date Qualified/Registered	State	Contractor's License #	Classification	Contractor Registration	Renewal Date	Contract Limitation	Qualified Party
2/1/2013	Montana	149654		Contractor Registration	2/28/2019		
9/23/1981	Nebraska	21987		Contractor	10/1/2019	Not Specified	N/A
9/20/1990	Nevada	56048	A12-A19-A22-A17-Excavating-Electricity		7/31/2020	Not Specified	Herold Bowen, Scott Homberger
11/9/2006	Nevada	67200	C-2D-Low Voltage; C-2E Lines Elec		11/30/2018	Not Specified	Herold Bowen, Scott Homberger
1/12/2004	Nevada	19901037230	State of Nevada Dept. of Taxation		09/30/2019	Not Specified	Annual State Business Tax
9/4/1990	New Mexico	28255	GF-9 Utility Lines ES-6 Cable TV		11/30/2019	Unlimited	Herold Bowen
8/28/1990	New York	Not Required			N/A	N/A	N/A
8/29/1990	North Carolina	13094	PU-Communications, PU-Fuel Distribution, Soring & Tunneling		12/31/2018	Unlimited	
11/29/2012	North Carolina	29511-U	Electrical-Unlimited Classification		11/29/2018	Unlimited	W. Scott Keeler
5/20/2014	North Carolina	28829-U	Electrical Contractor J. Malone Contracting LLC		5/20/2018	Unlimited	Thomas Max Pickren II
10/1/1946	Ohio	Not Applicable			N/A	N/A	N/A
7/1/2016	Ohio	1705	Team Fishel Surveying/Engineering LLC Certificate for Engineering and Surveying		N/A	N/A	N/A
8/28/1990	Oklahoma	Not Applicable			N/A	N/A	N/A
9/5/1990	Oregon	Not Applicable			N/A	N/A	N/A
7/7/1994	Pennsylvania	Not Applicable			N/A	N/A	N/A
5/12/2014	South Carolina	M113054	J.L. Malone Mechanical Contractor EL4		10/31/2019	N/A	
3/27/2015	South Carolina	G118323	J.L. Malone Mechanical Contractor 2U5		10/31/2018	N/A	
3/20/1992	South Carolina	Not Applicable	N/A-Needs to be registered only.		N/A	N/A	
6/13/1994	South Dakota	Not Applicable			N/A	N/A	
8/27/1990	Tennessee	21380 21380	MU-A, C, D (Municipal & Utility) E-C, F, G (Low Voltage Electrical Only)		7/31/2020 7/31/2020	Unlimited	Richard D. Keeler Richard D. Keeler
8/30/1990	Texas	Not Applicable			N/A	N/A	N/A
12/15/1997	Utah	97-350361-5501	S-310 Excavation & Grading		11/30/2019	Unlimited	Richard D. Keeler
9/10/1990	Virginia	2701.021760A	H/H-Highway/Heavy		10/31/2020	Not Specified	Richard D. Keeler
12/31/2015	Virginia	407008648	Professional/Occupational (work out of Columbus)		12/31/2019	N/A	Jason Montgomery
02/29/2019	Virginia	411001190	Professional/Occupational (work out of Vawter Ave)		02/29/2020	N/A	Vincent Stewart
11/10/2014	Virginia	411001385	Professional/Occupational		02/29/2020	N/A	
11/10/2014	Virginia	411001384	Professional/Occupational		02/29/2020	N/A	

CONTRACTOR'S LICENSEDOT PREQUALIFICATION						
Date Qualified/ Registered	State	Contractor's License #	Classification	Renewal Date	Contract Limitation	Qualified Party
11/14/1997	Washington	601 826 621	(Registration Only)	10/31/2019	Not Specified	N/A
	Washington Cant	037R	Dept. of Labor & Indus const contractor	10/7/2019	Not Specified	N/A
9/28/1990	West Virginia	WV003102	Communication/Sound_Cable_Specialty	10/31/2019	Not Specified	N/A



1600 Walcutt Road
Columbus, OH 43228
(614) 850-4400

PROJECTS OF COMPARIBLE SIZE AND COMPLEXITY

Name of Project: City of Dublin -- Dublin Schools
Project Location: Dublin Ohio
Project Description: Construction of fiber optic connections between schools
Original Completion Date: 8/1/17
Final Completion Date: 11/13/17
Original Contract Amount: \$964,850.00
Final Contract Amount: \$949,982.00
Project Owner: City of Dublin/Dublin Schools
Owner's Contact Name: Tim Root
Owner's Contact Phone: 614-410-4740

Name of Project: ODOT Smart Mobility Phase 1
Project Location: Dublin Ohio to East Liberty Ohio
Project Description: Construction of fiber optic connection between Metro Data and TRC
Original Completion Date: 11/11/17
Final Completion Date: 11/11/17
Original Contract Amount: \$3,833,546.00
Final Contract Amount: \$3,944,171.00
Project Owner: ODOT
Owner's Contact Name: Kevin Fiant
Owner's Contact Phone: 740-833-8056

Name of Project: Project Parrot - CFN
Project Location: Dublin, Hilliard, New Albany OH
Project Description: Construction of fiber optic cable between Dublin, Hilliard, and New Albany
Original Completion Date:
Final Completion Date: 6/2017
Original Contract Amount:
Project Owner: CFN
Owner's Contact Name: Matt Blackstone
Owner's Contact Phone: 614-850-4400

teamfishel.com

Name of Project: City of Columbus – Spring Fiber
Project Location: Columbus OH
Project Description: Construction of fiber optic connections between 9 buildings
Original Completion Date: 5/31/19
Final Completion Date: Ongoing
Original Contract Amount: 728,000.00
Project Owner: City of Columbus
Owner's Contact Name: Sidney Hale
Owner's Contact Phone: 614-645-7491

Name of Project: Dublin Extension
Project Location: Dublin, OH
Project Description: Construction of conduit/manhole system in Dublin
Original Completion Date: 10/19/18
Final Completion Date: 10/19/18
Original Contract Amount: \$360,000.00
Project Owner: Dublink Development
Owner's Contact Name: Matt Blackstone
Owner's Contact Phone: 614-850-4400

Name of Project: MCI Metro – Akron Fiber
Project Location: Akron, OH
Project Description: Construction of fiber optic network in Akron OH
Original Completion Date: 12/31/19
Final Completion Date: Ongoing
Original Contract Amount: \$36,533,964.00
Project Owner: MCI Metro
Owner's Contact Name: Andrew Crouch
Owner's Contact Phone: 216-462-2275

Question: Is your company or any of its owners, officers, or major shareholders currently involved in any arbitration or litigation?

"The Fishel Company is involved in various claims and legal proceedings arising from the normal course of business. The Fishel Company believes that these matters should not have a material adverse effect on the financial statements of the Company."

THE FISHEL COMPANY ("TEAM FISHEL")			
E.I.N. 31-4360115			
			Date
CORPORATE OFFICERS:			of Hire
Diane F. Keeler	Chairman		3/26/2005
4750 Riverside Drive			
Columbus, OH 43220			
John E. Phillips	President and		11/7/1983
10000 N 55th Way	Chief Executive Officer		
Paradise Valley, AZ 85253			
O. Randall Blair	Vice President		6/1/1976
615 Indian Creek Drive			
Trophy Club, TX 76262			
Scott R. Homberger	Vice President		6/16/1975
5615 Taylor-Blair Road			
London, OH 43140			
William E. Pauley	Vice President		2/25/1976
7274 West Donald Drive			
Glendale, AZ 85310			
Paul R. Riewe	Vice President and		12/9/1991
4582 Ashview Court	Chief Financial Officer,		
Hilliard, OH 43026	Secretary & Treasurer		
Randall V. Mauldin	Vice President		10/31/1994
5812 County Road 707			
Webster, FL 33597			
Kenneth E. Katz	Vice President and		6/18/2001
1261 Clubview Blvd N	Chief Information Officer		
Columbus, OH 43235			
Warren S. Keeler	Vice President		8/1/1994
821 Cauble Stone Hill Drive			
Argyle, TX 76226			
Scott T. King	Vice President & CIO		9/12/2005
4584 Greyson Drive			
Powell, OH 43065			
Craig S. Mathes	Vice President, Safety and		10/9/2000
6014 Hayden Run Road	Human Resources		
Hilliard, OH 43026			

The Fishel Company

Credit Application Information

Corporate Office:

The Fishel Company
1366 Dublin Road
Columbus, OH 43215
T.I.N. 31-4360115
(614) 274-8100

Bank:

The Huntington National Bank
Huntington Center
41 South High Street
Columbus, OH 43215
Acct.# 01892194673 (EIN 31-4360115)
Viren Patel, Vice President
(614) 480-5546 Phone
(888) 527-6309 Fax
viren.patel@huntington.com

Line of Credit Capacity - \$29,000,000

Trade References:

Graybar Electric
1200 Kinnear Road
Columbus, OH 43212
Kate Sheskey
(614) 486-4391
(614) 486-0117 (Fax)
kate.sheskey@graybar.com

Ditch Witch of Central Ohio
2020 Integrity Drive
Columbus, OH 43209
Julia Mayhoff
(800) 527-4030
(614) 443-9219 (Fax)

Columbus Builders Supply
807 W. Third Avenue
Columbus, OH 43212
Sue Blackburn
(614) 294-4991
(614) 294-1694 (Fax)

Credit Information:

Federal Tax ID #: 31-4360115 **CCR/SAM Cage Code:** 6N021

USAC SPIN Number: 143048411

Ohio State ID #: 520230012 **SIC Code:** 1623

Dunn & Bradstreet: 04-7975867 **DOT #:** 95203
D&B Rating: 4A2

Bonding Company: Western Surety Company
Bond Agency: Haughn & Associates
Bonding Capacity: \$20,000,000 Single / \$100,000,000 Aggregate
Bond Rate: \$5.90
Years with Surety: 29 Years
Best Financial Rating: A
Financial: XI

Insurance Company (General Liability / Auto)
Arch Insurance Company
300 Plaza Three
Jersey City, NJ 07311

Insurance Agent:
W. Brad Ainsworth
McGriff, Seibels & Williams, Inc.
2211 7th Avenue South
Birmingham, AL 35233
205-581-9342 (office)
205-214-1435 (fax)

NAICS CODES:
237130 – Power & Communication Line
238210 – Electrical Contractor
bainsworth@mcgriff.com

EMR Rates: **Ohio Charter / Resolution #:** 197711

Current (2016-17)	0.62
2015:	0.78
2014:	0.89
2013:	0.96
2012:	0.94

CPA Firm:

Fiscal Year End: December 31st

Crowe Horwath LLP
10 West Broad Street
Suite 1700
Columbus, Ohio 43215
Ph: 614-469-0001

Bank Reference:

The Huntington National Bank
Huntington Center
41 South High Street
Columbus, OH 43215
Acct.# 01892194673
(EIN 31-4360115)

Viren Patel, Vice President
(614) 480-5546 Phone
(888) 527-6309 Fax
viren.patel@huntington.com

Line of Credit Capacity -
\$29,000,000

The Fishel Company and Subsidiaries

The Fishel Company

1366 Dublin Road

Columbus, OH 43215-1093

EIN: 31-4360115

Statutory Agent: Kathy C. Blackstone

Registered Agent: CT Corporation

Officers of the Company:

Diane F. Keeler, Chairman

John E. Phillips, President & CEO

O. Randall Blair, EVP & COO

Kenneth E. Katz, Vice President

Paul R. Riewe, V.P. & CFO, Secretary & Treasurer

Kenneth E. Katz & Joseph G. Blake II, Assistant Secretary in the absence of Paul Riewe.

Scott R. Homberger, Vice President

Warren Scott Keeler, Vice President

William E. Pauley, Vice President

Columbus Fibernet LLC (subsidiary of The Fishel Company)

1366 Dublin Road

Columbus, OH 43215

EIN: 31-1762185

Sole member: The Fishel Company

Statutory agent: Kathy C. Blackstone

Officers of the Company:

Diane F. Keeler, Chairman

John E. Phillips, President

Kenneth E. Katz, Vice President & Secretary

Paul R. Riewe, Vice President & CFO

Organized in the State of Ohio: 3/16/2001

Columbus Fibernet LLC – Commonwealth of Virginia

Registration ID: T064025-2, effective date of registration: 1/21/2016

Dublink Development Company, LLC (subsidiary of The Fishel Company)

1366 Dublin Road

Columbus, OH 43215

EIN: 31-1623864

Sole member: The Fishel Company

Statutory Agent: Kathy C. Blackstone

Officers of the Company:

Diane F. Keeler, Chairman

John E. Phillips, President

Kenneth E. Katz, Vice President & Secretary

Paul R. Riewe, Vice President & CFO

Organized in the State of Ohio: 11/13/1998

MetroDuct Systems, LLC (subsidiary of The Fishel Company)

1366 Dublin Road

Columbus, OH 43215

EIN: 14-1889969

Sole member: The Fishel Company

Statutory agent: Kathy C. Blackstone

Officers of the Company:

Diane F. Keeler, Chairman

John E. Phillips, President

Kenneth E. Katz, Vice President & Secretary

Paul R. Riewe, Vice President

Organized in the State of Ohio: 5/14/2003

MetroDuct Systems VA LLC – Commonwealth of Virginia (CLEC)

(Sole member is The Fishel Company) (MDS VA LLC is a Virginia Public Service Company)

Parent Entity address: 1366 Dublin Road, Columbus, OH 43215

Registered address: Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 150, Richmond VA 23219 (law firm of Woods Rogers PLC, attorney: John K. Byrum, Jr.)

Effective date of the certificate of organization is 4/11/2016. CLEC license effective 11/4/2016.

Officers of the Company: Diane F. Keeler, Chairman
John E. Phillips, President
Kenneth E. Katz, Vice President & Secretary
Paul R. Riewe, VP and CFO

Team Fishel Engineering of Virginia LLC

Effective date of registration with the Commonwealth of Virginia: 10/22/2014

EIN: 47-2029759

Sole member: The Fishel Company, jurisdiction of formation: Ohio

Registered Agent: CT Corporation, 4701 Cox Road, Suite 285, Glen Allen VA 23060

Officers of the Company: Diane F. Keeler, Chairman
John E. Phillips, President
Paul R. Riewe, Vice President & Secretary
Scott R. Homberger, Vice President

Team Fishel Surveying LLC – name changed to:

Team Fishel Surveying and Engineering LLC effective 7/20/11

(subsidiary of The Fishel Company)

1366 Dublin Road

Columbus, OH 43215

EIN: 73-1687007

Sole member: The Fishel Company

Statutory agent: Kathy C. Blackstone

Officers of the Company: Diane F. Keeler, Chairman
John E. Phillips, President
Paul R. Riewe, Vice President, Treasurer
Scott R. Homberger, Vice President

Underground Utilities Contractors, Inc. became a wholly owned subsidiary of

The Fishel Company on February 17, 2011

403 Commerce Park Drive

Cabot, AR 72023

EIN: 27-4356808

Sole member: The Fishel Company

Statutory agent: CT Corporation (Kathy C. Blackstone)

Officers of the Company: Diane F. Keeler, Chairman
John E. Phillips, President
O. Randall Blair, Executive Vice President
Paul R. Riewe, Secretary

Team Power Group, LLC became a wholly owned subsidiary of
The Fishel Company on October 27, 2011
1366 Dublin Road Field Office: 1847 E. Portland Avenue
Columbus, OH 43215 Dewey, OK 74029
EIN: 27-5360483

Sole member: The Fishel Company

Statutory agent: CT Corporation (Kathy C. Blackstone)

Officers of the Company: Diane F. Keeler, Chairman
 John E. Phillips, President
 O. Randall Blair, Executive Vice President
 Warren S. Keeler, Vice President
 Paul R. Riewe, Secretary

Kenneth E. Katz & Joseph G. Blake II, Assistant Secretary in the absence of Paul Riewe.

J.L. Malone & Associates LLC became a wholly owned subsidiary of
The Fishel Company on October 1, 2013, Organized in the State of Ohio 7/31/2012
1366 Dublin Road Field Office: 1846 W. Oakridge Drive
Columbus, OH 43215 Albany, GA 31707
EIN: 46-3651656

Sole member: The Fishel Company

Statutory agent: CT Corporation (Kathy C. Blackstone)

Officers of the Company: Diane F. Keeler Chairman
 John E. Phillips, President
 O. Randall Blair, Executive Vice President
 Paul R. Riewe, Secretary
 James K. ("Keith") Griffin, Vice President

Kenneth E. Katz & Joseph G. Blake II, Assistant Secretary in the absence of Paul Riewe.

BID GUARANTY AND CONTRACT BOND
(O.R.C § 153.571)

Know all persons by these presents, that we, the undersigned The Fishel Company
 (Contractor) as principal and Western Surety Company as surety are hereby
 held and firmly bound unto the City of Gahanna, as obligee in the penal sum of the dollar amount of the
 bid submitted by the principal to the obligee on November 20th, 2018, to undertake the
Claycraft Fiber Network Expansion ST-1059 (Project).

The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee,
 incorporating any additive or deductive alternates made by the principal on the date referred to above to
 the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of
 _____ dollars (\$_____).

(If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid,
 including add alternates. Alternatively, if the blank is filled in the amount stated must not be less than the
 full amount of the bid including add alternates, in dollars and cents. A percentage is not acceptable.) For
 the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves,
 our heirs, executors, administrators, successors, and assigns.

Signed this 20th day of November, 2018.

The condition of the above obligations is such that whereas the above named principal has submitted a
 bid for work on the Contract.

Now, therefore, if the obligee accepts the bid of the principal and the principal fails to enter into a proper
 contract in accordance with the bid, plans, details, specifications and bills of material; and in the event the
 principal pays to the obligee 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 obligee may in good faith
 contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee
 does not award the contract to the next lowest bidder and resubmits the contract for bidding, the
 principal pays to the obligee the difference not-to-exceed ten percent (10%) of the penalty hereof
 between the amount specified in the bid, or the costs, in connection with the resubmission, of printing
 new contract documents, required advertising, and printing and mailing notices to prospective bidders,
 whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if
 the obligee accepts 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 bills of
 material, 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 said principal
 to be done and performed according to the terms of said contract; and shall pay all lawful claims of
 subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying
 forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall
 be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then
 this obligation shall be void; otherwise the same shall remain in full force and effect; and surety shall
 indemnify the obligee against all damage suffered by failure of the principal to perform the contract
 according to its provisions and in accordance with the plans, details, specifications and bills of material
 therefor and to pay all lawful claims of subcontractors, materialmen, and laborers for labor performed or
 material furnished in carrying forward, performing, or completing the contract and surety further agrees
 and assents that this undertaking is for the benefit of any subcontractor, materialman, or laborer having a

just claim, as well as for the obligee; 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 therefore shall in any wise affect the obligations of said surety on its bond, and does hereby waive notice of any such modifications, omissions or additions to the terms of the contract or to the work or to the specifications.

Signed and sealed this 20th day of November, 2018.

The Fishel Company, 1366 Dublin Rd., Columbus, OH 43215

Principal



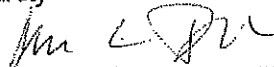
Signature

Paul R. Riewe, Vice President and CFO

Printed Name and Title

Western Surety Company

Surety



Signature

Abbie L. Doll, Attorney-in-Fact

Printed Name and Title

151 N. Franklin St., Chicago, IL 60606

Surety's Address

(800) 331-6053

Surety's Telephone Number

(605) 335-0357

Surety's Fax Number

Haughn & Associates, Inc.

Surety's Agent

6050 Tain Dr., Dublin, OH 43017

Surety Agent's Address

(614) 789-6800

Surety Agent's Telephone Number

(614) 789-6822

Surety Agent's Fax Number

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Barry C Fonarow, Brian F Haughn, Chad M Dougherty, Steven Gloeckner, Abbie L Doll, Rachel Stone, Brittany Wilson, Amber Sheffield, Individually

of Dublin, OH, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of April, 2018.

WESTERN SURETY COMPANY



Paul T. Brufat
Paul T. Brufat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 5th day of April, 2018, before me personally came Paul T. Brufat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2021



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 20TH day of NOVEMBER, 2018.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

1 2 3 4

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

WESTERN SURETY COMPANY
Sioux Falls, South Dakota
Statement of Net Admitted Assets and Liabilities
December 31, 2017

ASSETS

Bonds	\$	1,895,156,151
Stocks		28,408,086
Cash, cash equivalents, and short-term investments		24,679,133
Receivables for securities		7,500,016
Investment income due and accrued		22,426,771
Premiums and considerations		37,932,713
Amounts recoverable from reinsurers		1,562,035
Current federal and foreign income taxes recoverable from CNA		
Financial Corporation		3,481,084
Net deferred tax asset		10,688,834
Receivable from parent, subsidiaries, and affiliates		11,647,470
Other assets		10,215
Total Assets	\$	2,043,492,508

LIABILITIES AND SURPLUS

Losses	\$	201,046,845
Loss adjustment expense		57,918,199
Commissions payable, contingent commissions and other similar charges		10,047,343
Other expenses (excluding taxes, license and fees)		943,877
Taxes, License and fees (excluding federal and foreign income taxes)		3,447,669
Unearned premiums		223,752,269
Advance premiums		5,436,181
Ceded reinsurance premiums payable		1,720,726
Amounts withheld or retained by company for account of others		7,338,456
Provision for reinsurance		239,534
Payable to parent, subsidiaries and affiliates		12,934
Payable on security transactions		4,000,000
Other liabilities		367,837
Total Liabilities	\$	516,271,870

Surplus Account:		
Common stock	\$	4,000,000
Gross paid in and contributed surplus		280,071,837
Unassigned funds		1,243,148,801
Surplus as regards policyholders		\$ 1,527,220,637
Total Liabilities and Capital	\$	2,043,492,508

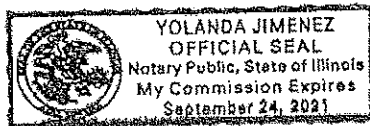
I, Troy Wray, Assistant Vice President of Western Surety Company hereby certify that the above is an accurate representation of the financial statement of the Company dated December 31, 2017, as filed with the various Insurance Departments and is a true and correct statement of the condition of Western Surety Company as of that date.

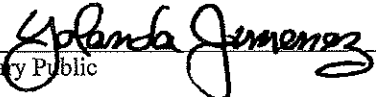
Western Surety Company

By 
Assistant Vice President

Subscribed and sworn to me this 8th day of March, 2018.

My commission expires:




Notary Public

Office of Risk Assessment
50 West Town Street
Third Floor - Suite 300
Columbus, Ohio 43215
(614)644-2658
Fax(614)644-3256
www.insurance.ohio.gov

Ohio Department of Insurance

John R. Kasich - Governor

Jillian Froment - Director

Certificate of Compliance



Issued 03/21/2018

Effective 04/02/2018

Expires 04/01/2019

I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

WESTERN SURETY COMPANY

of South Dakota is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Fidelity

Other Liability

Surety

WESTERN SURETY COMPANY certified in its annual statement to this Department as of December 31, 2017 that it has admitted assets in the amount of \$2,043,492,508, liabilities in the amount of \$516,271,870, and surplus of at least \$1,527,220,637.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Handwritten signature of Jillian Froment in cursive.

Jillian Froment, Director



CONTRACTOR'S PERSONAL PROPERTY TAX AFFIDAVIT
(O.R.C § 5719.042)

STATE OF Ohio

COUNTY OF Franklin, ss:

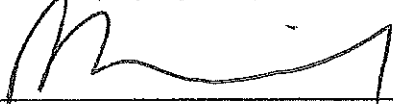
Paul Riewe, Affiant, being first duly sworn, deposes and says:

1. I am the Vice President and CFO (Title) of The Fishel Company (Contractor).
2. The Contractor's offices are located at 1366 Dublin Road, Columbus, OH 43215
3. I am the Contractor's duly authorized representative for making this affidavit.
4. Effective this 19 day of November, 2018, the Contractor:

() is charged with delinquent personal property taxes on the general list of personal property as set forth below:

County	Amount (include total amount, with penalties and interest thereon)
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____
_____ County	\$ _____

() is not charged with delinquent personal property taxes on the general list of personal property in any Ohio county.

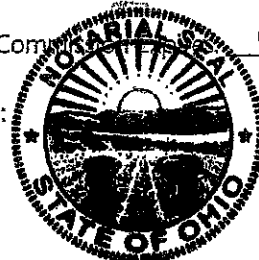

Affiant Signature

Sworn to and subscribed in my presence this 19th day of November, 2018.

Michelle R. Dembek
Notary Public

My Commission Expires 04-12-2022

Seal:



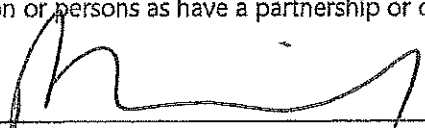
MICHELLE R. DEMBEK
Notary Public, State of Ohio
My Commission Expires 04-12-2022

NONCOLLUSION AFFIDAVIT

STATE OF Ohio

COUNTY OF Franklin, ss:

Paul Riewe, Contractor, being first duly sworn, deposes and says that he or she is Vice President, CFO & Secretary (sole owner, a partner, president, secretary, etc.) of The Fishel Company, the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization, or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that any one shall refrain from bidding; that said bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix any overhead, profit, or cost element of such bid price, or of that of any other bidder, or to secure any advantage against the Owner awarding the Contract to anyone interested in the proposed Contract; that all statements contained in such bid are true; and further, that said bidder has not, directly or indirectly, submitted its bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in its general business.



Signature

Sworn to and subscribed in my presence this 19th day of November, 2018.

Michelle R. Dembek

Notary Public

My Commission Expires: 04-12-2022

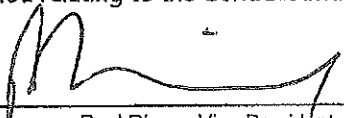
Seal:



MICHELLE R. DEMBEK
Notary Public, State of Ohio
My Commission Expires 04-12-2022

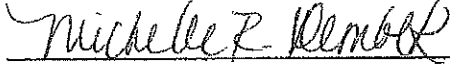
ESCROW WAIVER

The Fishel Company (Contractor), agrees to abide by City of Gahanna Ordinance No. 0077-2017. Pursuant to such ordinance and the City's home rule authority, Contractor waives the requirements of Sections 153.13, 153.14 and 153.63 of the Ohio Revised Code that an escrow account be established relating to the Contract and that interest be paid on retainage.



Signature Paul Rlewe, Vice President, CFO & Secretary

Sworn to and subscribed in my presence this 19th day of November, 2018.



Notary Public

My Commission Expires 04-12-2022

Seal:



MICHELLE R. DEMBEK
Notary Public, State of Ohio
My Commission Expires 04-12-2022

CORPORATE AFFIDAVIT

To be filled in and executed if the contractor is a corporation.

STATE OF Ohio

COUNTY OF Franklin, ss:

Paul Riewe, being first duly sworn, deposes and says that he or she is Secretary of The Fishel Company a corporation organized and existing under and by virtue of the laws of the state of Ohio and having its principal office at: 1366 Dublin Road (Address), Columbus (City), Franklin (County), Ohio (State).

Affiant further says he or she is familiar with the records, minutes, books and by-laws of the The Fishel Company (Name of Corporation). Affiant further says that Scott Homberger (Name of Officer), Vice President (Title) of the Corporation is duly authorized to sign the Contract for the Claycraft Fiber Network Expansion ST-1059 (Contract) for said Corporation by virtue of a resolution of the Board of Directors (state whether a provision of by-laws or a resolution of the Board of Directors), March 26, 2018 (if by resolution, give date of adoption).

[Signature]
Signature

Sworn to and subscribed in my presence this 19th day of November, 2018.

Michelle R. Dembek
Notary Public

My Commission Expires: 04-12-2022

Seal:



MICHELLE R. DEMBEK
Notary Public, State of Ohio
My Commission Expires 04-12-2022

BID FORM

Having carefully reviewed the Information and Requirements for Bidders, Drawings, Specifications and other Contract Documents for the Project including having also received, read, and taken into account any Addenda and likewise having inspected the site and the conditions affecting and governing the Project and confirmed the location of the site utilities and all existing structures, the undersigned hereby proposes to furnish all materials and to perform all labor, as specified and described in the said Specifications and/or as shown on the said Drawings for all Work necessary to complete the Project on a timely basis and in accordance with the Contract Documents regardless of whether expressly provided for in such Specifications and Drawings.

Before completing the Bid Form, the undersigned represents that it has carefully reviewed the Notice to Bidders, Information and Requirements for Bidders, this Bid Form, Form of Bid Guaranty and Contract Bond, Contractor's Affidavit (O.R.C. 5719.042), Owner-Contractor Agreement, General Conditions of the Contract (EJCDC C-700, 2013) (as modified), Drawings, Project Specifications, and all other Contract Documents. Failure to comply with provisions of the Contract Documents may be cause for disqualification of the bid.

If the undersigned is notified of bid acceptance, it agrees to furnish required bonds as indicated in the Information and Requirements for Bidders and agrees to execute the Owner-Contractor Agreement in the form included in the Contract Documents and to furnish all equipment, labor and materials to complete the said work as required by the Contract Documents. If the undersigned shall fail to furnish required bonds as indicated in the Information and Requirements for Bidders, then the Owner, in its sole discretion, may determine that the undersigned had abandoned the Contract and thereupon its bid shall be null and void and the bond accompanying its bid shall be forfeited to and become the property of the Owner, otherwise the bond accompanying its bid shall be returned to the undersigned on demand.

BIDDER CERTIFICATINS. The Bidder hereby acknowledges that the following representations in this bid are material and not mere recitals:

1. The Bidder acknowledges that this is a public project involving public funds, and that the Owner expects and requires that each successful Bidder adhere to the highest ethical and performance standards. The Bidder by submitting its bid pledges and agrees that (a) it will act at all times with absolute integrity and truthfulness in its dealings with the Owner and the Design Professional, (b) it will use its best efforts to cooperate with the Owner and the Design Professional and all other Contractors on the Project and at all times will act with professionalism and dignity in its dealings with the Owner, Design Professional and other Contractors, (c) it will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her, and (d) it has read, understands and will comply with the terms of the Contract Documents.
2. The Bidder represents that it has had a competent person carefully and diligently review each part of the Contract Documents, including the Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work on which the Bidder is submitting its bid. By submitting its bid, each Bidder represents and agrees, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors or omissions in the Contract Documents for which it has not notified the Design Professional in writing at least seven (7) days prior to the bid opening. If there are any such conflicts, inconsistencies, errors or omissions in the Contract Documents, the Bidder (i) will provide the labor, equipment or materials of the better quality or greater quantity of Work; and/or (ii) will

comply with the more stringent requirements. The Bidder will not be entitled to any additional compensation for any conflicts, inconsistencies, errors or omissions that would have been discovered by such careful and diligent review, unless it has given such prior written notice to Design Professional.

3. The Bidder represents that it has had a competent person carefully and diligently inspect and examine the entire site for the Project and the surrounding area, including all parts of the site applicable to the Work for which it is submitting its bid, including the location, condition and layout of the site and the location of utilities, and carefully correlate the results of the inspection with the requirements of the Contract Documents. The Bidder agrees that its bid shall include all costs attributable to site and surrounding area conditions that would have been discovered by such careful and diligent inspection and examination of the site and the surrounding area, and the Bidder shall not be entitled to any Change Order, additional compensation, or additional time on account of conditions that could not have been discovered by such an investigation.

4. The Bidder represents, understands and agrees that a) the Change Proposal and Claim procedures in the Modified Standard General Conditions are material terms of the Contract Documents, b) if it has a Change Proposal or Claim, it will have its personnel provide complete and accurate information to complete and submit the Change Proposal and / or Statement of Claim form on a timely basis, c) the proper completion and timely submission of a Change Proposal or Statement of Claim form is a condition precedent to any change in the Contract Sum or the Contract Time(s), and d) the proper and timely submission of the Change Proposal or Statement of Claim form provides the Owner and the Design Professional with necessary information so that the Owner may investigate the Claim and mitigate its damages.

5. The Bidder represents that the bid contains the name of every person interested therein and is based upon the Standards specified by the Contract Documents.

6. The Bidder and each person signing on behalf of the Bidder certifies, and in the case of a bid by joint venture, each member thereof certifies as to such member's entity, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices, Lump Sum Items, and any Alternate bids in the bid have been arrived at independently without collusion, consultation, communication or agreement, or for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices, Lump Sum Items, or Alternate bids with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices, Lump Sum Items, and any Alternate bids in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices, Lump Sum Items, or Alternate bids; (c) no attempt has been made or will be made by the Bidder to induce any other Person to submit or not to submit a bid for the purpose of restricting competition; and (d) the statements made in this Bid Form are true and correct.

7. The Bidder will execute the form of Owner/Contractor Agreement in the form included with the Contract Documents, if a Contract is awarded on the basis of this bid, and if the Bidder does not execute the Contract Form for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the Owner.

8. The Bidder certifies that upon the award of a Contract, the Contractor will ensure that all of the Contractor's employees, while working on the Project site, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

9. The Bidder agrees to furnish any information requested by the Design Professional or the Owner's authorized representative to evaluate that the Bidder is the best bidder and that the bid is responsive to the specifications.

10. The Bidder certifies that it has no unresolved findings for recovery issued by the Auditor of State.

11. The Bidder certifies that it is aware of and in compliance with the requirements of Ohio Revised Code Section 3517.13 regarding campaign contributions.

INSTRUCTIONS FOR SIGNING. The person signing for a sole proprietorship must be the sole proprietor or his or her authorized representative. The name of the sole proprietor must be shown below. The person signing for a partnership must be a partner or his or her authorized representative. The person signing for a corporation must be the president, vice president or other authorized representative; or he or she must show authority, by affidavit, to bind the corporation. The person signing for some other legal entity must show his or her authority, by affidavit, to bind the legal entity.

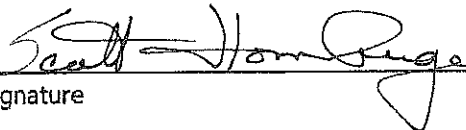
The Fishel Company
Legal Name of Bidder

Bidder is (check one): sole proprietor partnership corporation other legal entity

Scott Homberger, Vice President
Name and Title of Person Legally Authorized to Bind Bidder to a Contract

1600 Walcutt Road, Columbus, OH 43228
Address

614-850-4400 614-850-4419 31-4360115
Telephone Number Fax Number Federal Tax ID Number

 11-19-18
Signature Date

When the Bidder is a partnership or a joint venture, state name and address of each partner in the partnership or participant in the joint venture below:

Name and Address

Name and Address

BID FORM

Include the cost of all labor and material for the bid items listed below. Bidder is to fill in all blanks related to the bid items for which a bid is being submitted. If there is a difference between the total bid amount and the total of the individual amounts for labor and materials stated under a bid item, the total of the individual amounts shall be the amount deemed to be inserted in the blank for the total labor and materials for each bid item. If there is an inconsistency or conflict in the bid amount, the lowest amount shall control, whether expressed in numbers or words.

For items the City designates as alternate, enter a negative value if it is to be deducted from the Base Bid. Otherwise the item(s) will be included as an addition to the base bid. If opting out of bidding an alternate item, insert the words "No Bid" in the blank.

REF #	ITEM #	DESCRIPTION	UNIT	BID PRICE
1	1	HDPE Conduits, Fiber Optic Cable, and All Appurtenances	LS	\$175,922.88

*See "FIBER OPTIC NETWORK EXPANSION COMPLETE" item #33 in the Supplemental Specifications for further detail.

APPENDIX D

OWNER-CONTRACTOR AGREEMENT AND ADMINISTRATIVE PROJECT DOCUMENTS

(To be filled out after contract is awarded.)

OWNER-CONTRACTOR AGREEMENT

Contract Terms Sheet

<p>Owner: City of Gahanna 200 South Hamilton Road Gahanna, Ohio 43230 Phone: (614) 342-4005 Fax: (614) 342-4100 Owner's Representative: Robert Priestas</p>	<p>Contractor: _____ _____ _____ Phone: _____ Fax: _____ Contractor's Representative: _____</p>
---	---

Project Name: Claycraft Fiber Network Expansion ST-1059

Contract Effective Date: December 19, 2018

___ When this item is checked by the Owner, e.g., with an "X" or other mark, the State of Ohio Department of Transportation, Construction Specifications Manual, in the current version through March 31, 2017, will be a Contract Document, but only as modified by the document titled *ODOT Manual Supplement*, prepared by Owner.

___ When this item is checked by the Owner, e.g., with an "X" or other mark, the City of Columbus Construction and Material Specifications Supplement, in the current edition through March 31, 2017, will be a Contract Document, but only as modified by the document titled *City of Columbus Construction and Material Specifications Supplement*.

Non-Contract Documents. The following are the reports and tests of subsurface conditions at or contiguous to the Site, if any, that the Design Professional has used in preparing the Contract Documents. (None, if none are listed).

Non-Contract Documents. The following are those reports and drawings related to any Hazardous Conditions at the Site, if any. (None, if none are listed).

The Design Professional (also called the "Consulting Engineer") is:

Phone: _____
Fax: _____

The Design Professional's Representative is _____[name]_____, _____[email]_____.

The Date for Substantial Completion is the following date or the following Contract Time (in calendar days) _____.

The Coordinating Contractor shall be the _____ Contractor. (If this blank is not completed, then the Coordinating Contractor shall be the General Trades Contractor or, if there is only one contractor, the Contractor).

The Contract Sum (also called Contract Price) is _____[words]_____Dollars (\$____[numbers]_____). The Contract Sum includes the following:

Base Bid Amount: \$_____

Accepted Alternates, if any (none if none are listed):

Alternate No.	Description	Amount
_____	_____	\$_____

This document is an agreement between the Owner and the Contractor for the Work described in the Contract Documents related to the Contract identified above for the Project defined above and is effective as of the date set forth above ("Effective Date of this Agreement"), which if no date is entered shall be the date the Agreement was signed by the Owner.

The Owner and the Contractor agree as set forth in the following sections:

1. CONTRACT DOCUMENTS. The Contract Documents consist of the following documents:
 1. NOTICE TO BIDDERS;
 2. INFORMATION AND REQUIREMENTS FOR BIDDERS;
 3. REQUEST FOR INFORMATION (PRE-BID);
 4. SUPPLEMENTARY SPECIFICATIONS;
 5. PREVAILING WAGE RATES (as applicable);
 6. BID FORM;
 7. NONCOLLUSION AFFIDAVIT;
 8. CORPORATE AFFIDAVIT;
 9. CONTRACTOR'S PERSONAL PROPERTY TAX AFFIDAVIT (O.R.C. § 5719.042);
 10. CERTIFICATE OF INSURANCE;
 11. STATE OF OHIO DEPARTMENT OF TAXATION, SALES AND USE TAX CONSTRUCTION CONTRACT EXEMPTION CERTIFICATE;
 12. CONTRACTOR'S QUALIFICATION STATEMENT;
 13. SUB CONTRACTORS LIST;
 14. OWNER-CONTRACTOR AGREEMENT;
 15. FISCAL OFFICER'S STATEMENT OF AVAILABILITY;
 16. MODIFIED STANDARD GENERAL CONDITIONS;
 17. STATE OF OHIO BUREAU OF WORKER'S COMPENSATION INSURANCE CERTIFICATE;
 18. NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT;
 19. NOTICE OF AWARD TO CONTRACTOR;
 20. NOTICE OF AWARD TO SURETY AND SURETY'S AGENT;
 21. NOTICE TO PROCEED;
 22. CHANGE ORDER;
 23. PAYROLL INFORMATION;
 24. FINAL PAYROLL AFFIDAVIT;
 25. CONTRACTOR'S PAYMENT APPLICATION CHECKLIST;
 26. CONTRACTOR'S AFFIDAVIT WITH LIST OF SUBCONTRACTORS AND SUPPLIERS WITH ANY AMOUNTS WITHHELD;
 27. CONTRACTOR'S WAIVER & RELEASE AGREEMENT;
 28. SUBCONTRACTOR'S - SUPPLIER'S WAIVER & RELEASE AGREEMENT;
 29. STATEMENT OF CLAIM FORM;
 30. STATEMENT OF CLAIM FORM INSTRUCTIONS;
 31. DESIGN PROFESSIONAL'S CERTIFICATE OF SUBSTANTIAL COMPLETION;
 32. MODIFICATIONS ISSUED AFTER THE EXECUTION OF THE CONTRACT, INCLUDING:

- i. A written amendment to the Agreement signed by both parties;
 - ii. A Change Order;
 - iii. A Work Change Directive; or,
 - iv. A written order for a minor change of the Work issued by the Design Professional in accordance with the General Conditions; and
33. If selected as a Contract Document in the Contract Terms Sheet, the State of Ohio Department of Transportation, Construction Specifications Manual, in the current version through March 31, 2017, will be a Contract Document, but only as modified by the document titled *ODOT Manual Supplement*, prepared by Owner;
34. If selected as a Contract Document in the Contract Terms Sheet, the City of Columbus Construction and Material Specifications Supplement, in the current edition through March 31, 2017, will be a Contract Document, but only as modified by the document titled *City of Columbus Construction and Material Specifications Supplement*; and
35. THE PROJECT PLANS, DRAWINGS, AND EXHIBITS.

Note: NON-CONTRACT DOCUMENTS. The reports and tests of subsurface conditions at or contiguous to the Site, if any, that the Design Professional has used in preparing the Contract Documents, identified in the Contract Terms Sheet, are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and tests.

Note: NON-CONTRACT DOCUMENTS. The reports and drawings related to any Hazardous Conditions at the Site, if any, identified in the Contract Terms Sheet, are not Contract Documents. The General Conditions, as modified, contain additional terms related to these reports and drawings. (None if none are listed).

2. DESIGN PROFESSIONAL RELATIONSHIP. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Design Professional and the Contractor or any Subcontractor or Material Supplier to the Project. The Design Professional, however, shall be entitled to performance of the obligations of the Contractor intended for its benefit and to enforcement of such obligations, but nothing contained herein shall be deemed to give the Contractor or any third party any claim or right of action against the Design Professional that does not otherwise exist without regard to this Contract. The Contractor and its Subcontractors shall not be deemed to be beneficiaries of any of the acts or services of the Design Professional that are performed for the sole benefit of the Owner. The Contractor shall forward all communications to the Owner through the Design Professional and hereby acknowledges and agrees that any instructions, reviews, advice, approvals, orders, or directives that are rendered to it by the Design Professional are specifically authorized and directed by the Owner to the Contractor through the Design Professional acting on behalf of the Owner.

2.1 The Design Professional (also called the "Consulting Engineer"), if any, is identified in the Contract Terms Sheet.

3. TIME FOR COMPLETION AND PROJECT COORDINATION.

3.1 DATE FOR COMMENCEMENT. The date for commencement of the Work shall be the date established in a written Notice to Proceed issued by the Owner, through the Design Professional, to the Contractor. If no Notice to Proceed is issued, then the date for commencement shall be the Effective Date of this Agreement. The date for commencement of the Work shall be within sixty (60) days from the bid opening date, unless the Owner and the Contractor agree to a later date. If there is any other date for commencement of the Work in the bid documents, Contract Documents or elsewhere, it is agreed that

such other date is a tentative date and may not be relied upon by the Contractor. If the date for commencement of the Work is later than sixty (60) days from the bid opening date or, if applicable, the later date agreed to by the Owner and the Contractor, the Contractor may submit a Claim in accordance with the Contract Documents.

3.2 DATE FOR SUBSTANTIAL COMPLETION. The Contractor shall have its Work on the Project Substantially Complete by the following date or within the following Contract Time (in calendar days) set forth in the Contract Terms Sheet. The Date for Substantial Completion is the foregoing date or date calculated using the Contract Time. The Date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is Finally Resolved regardless of any dates in any schedule created by any person, including the Coordinating Contractor. The Contract Time shall run from the date of the Notice to Proceed or if there is no Notice to Proceed from the Effective Date of this Agreement.

3.2.1 Substantial Completion is the time at which the Work has progressed to the point where the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended. Final Completion shall mean that the Work is complete in accordance with the Contract Documents and the Contractor has submitted to the Design Professional all documents required to be submitted to the Design Professional for final payment. A Claim is "Finally Resolved" when the claim process is complete and not subject to further proceedings.

3.2.2 SHUTDOWN DATES. Due to events scheduled by the Owner and/or other Owner considerations, Contractor must only perform Work on the days and at the times allowed by the Ordinances of the City of Gahanna. Additionally, Contractor will not be able to perform Work on the Project on the dates and times delineated in the Supplementary Specifications to these Contract Documents.

Contractor's Construction Schedule for performing the Work shall account for Contractor not being able to perform Work on these dates and the contractual dates for Substantial Completion and Final Completion will not be changed due to Contractor not being able to perform Work on these dates.

3.3 CONSTRUCTION SCHEDULE. The Construction Schedule (also referred to as the "Progress Schedule") shall be developed by the Coordinating Contractor as provided in the Contract Documents.

3.4 COORDINATING CONTRACTOR. The Coordinating Contractor shall be the contractor identified in the Contract Terms Sheet (if none is identified, then the Coordinating Contractor shall be the General Trades Contractor or, if there is only one contractor, the Contractor). The Coordinating Contractor shall be responsible for coordinating the work of all contractors on the Project.

3.5 LIQUIDATED DAMAGES. If the Contractor does not have its Work on the Project Substantially Complete by its Date for Substantial Completion or Finally Complete within forty-five (45) days of achieving Substantial Completion, the Contractor shall pay the Owner (and the Owner may set off from sums coming due the Contractor) Liquidated Damages in the per diem amounts as set forth in the following tables, whichever may be applicable:

LIQUIDATED DAMAGES – DATE FOR SUBSTANTIAL COMPLETION

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 250.00
\$50,000.01 to \$150,000.00	\$ 500.00
\$150,000.01 to \$500,000.00	\$1,000.00
\$500,000.01 to \$2,000,000.00	\$1,500.00
\$2,000,000.01 to \$5,000,000.00	\$2,500.00
\$5,000,000.01 to \$10,000,000.00	\$3,000.00

LIQUIDATED DAMAGES – FINAL COMPLETION

<u>Contract Amount</u>	<u>Dollars Per Day</u>
\$1.00 to \$50,000.00	\$ 50.00
\$50,000.01 to \$150,000.00	\$ 100.00
\$150,000.01 to \$500,000.00	\$ 200.00
\$500,000.01 to \$2,000,000.00	\$ 300.00
\$2,000,000.01 to \$5,000,000.00	\$ 500.00
\$5,000,000.01 to \$10,000,000.00	\$ 600.00

In addition to such Liquidated Damages, the Contractor shall indemnify, defend and hold the Owner and its employees and agents harmless from any and all claims, whether or not such claims are proven, and from all costs and expenses incurred, as a result of or related to such claims, including but not limited to attorneys' and consultants' fees and expenses, provided that such claims arise out of or are related to the Contractor's failure to Substantially Complete its Work by its Date for Substantial Completion or its failure to Finally Complete its Work within forty-five (45) days of its Date for Substantial Completion. The Contractor's obligation to indemnify, defend and hold the Owner harmless under this Section 3.5 shall be joint and several. These Liquidated Damages are in addition to any other remedies available to the Owner under the Contract Documents.

The Contractor acknowledges that such amounts of Liquidated Damages represent a reasonable estimate of the actual damages for loss of or interference with the intended use of the Project that the Owner would incur if the Contractor's Work is not Substantially Complete by its Date for Substantial Completion or Finally Complete by the required date for Final Completion.

4. CONTRACT SUM (also called Contract Price). The lump sum Contract Sum to be paid by the Owner to the Contractor, as provided herein, for the satisfactory performance and completion of the Work and all of the duties, obligations, and responsibilities of the Contractor under this Agreement and the other Contract Documents is as set forth in the Contract Terms Sheet. The Contract Sum includes all federal, state, county, municipal, and other taxes imposed by law, including but not limited to any sales, use, commercial activity, and personal property taxes payable by or levied against the Contractor on account of the Work or the materials incorporated into the Work. The Contractor will pay any such taxes. The Contract Sum includes the Base Bid and Alternates, if any, identified in the Contract Terms Sheet.

If after Substantial Completion of its Work, the Contractor fails to submit its final payment application with all the documents required to be submitted with such application within ninety (90) days after written notice to do so from the Owner and without prejudice to any other rights and remedies the Owner may have available to it, the balance of the Contract Sum shall become the Owner's sole and exclusive property, and the Contractor shall have no further interest in or right to such balance.

5. RETAINAGE. Retainage applicable to the Contract by Ohio Revised Code Sections 153.12, .13, and .14 will be withheld as defined in the General Conditions. The Contractor agrees that the Retainage will not be held in escrow or in any interest bearing account, and that no interest will be paid on such retained funds.

6. LIMITATION ON LIABILITY. The Owner's total liability under this Agreement will be limited to the amount set forth in the Fiscal Officer's certificate accompanying this Agreement. Under no circumstances will the elected officials, officers, employees, board or council members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to this Agreement.

7. GENERAL.

7.1 MODIFICATION. Unless otherwise specifically set forth in this Agreement, no modification or waiver of any of the terms of this Agreement, or of any other Contract Documents, will be effective against a party unless set forth in writing and signed by or on behalf of a party. In the case of the Owner, the person executing the modification or waiver must have express authority to execute the Modification on behalf of the Owner pursuant to a resolution that is duly adopted by the Owner. Under no circumstances will forbearance, including the failure or repeated failure to insist upon compliance with the terms of the Contract Documents, constitute the waiver or modification of any such terms by the Owner. The parties acknowledge that no person has authority to modify this Agreement or the other Contract Documents or to waive any of its or their terms, except as expressly provided in this section.

7.2 ASSIGNMENT. The Contractor may not assign this Agreement without the written consent of the Owner, which the Owner may withhold in its sole discretion.

7.3 LAW AND JURISDICTION. All questions regarding the validity, intention, or meaning of this Agreement or any modifications of it relating to the rights and obligation of the parties will be construed and resolved under the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the state court of competent jurisdiction in the county in Ohio in which the Owner's principal office is located, and each party hereby expressly consents to the exclusive jurisdiction of such court. The parties expressly waive the right to remove any litigation arising out of this Agreement to federal court.

7.4 CONSTRUCTION. The parties acknowledge that each party has reviewed this Agreement and the other Contract Documents and entered into this Agreement as a free and voluntary act. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the other Contract Documents, or any amendments or exhibits to it or them.

7.5 APPROVALS. Except as expressly provided herein, the approvals and determinations of the Owner and Design Professional will be subject to the sole discretion of the respective party and be valid and binding on the Contractor, provided only that they be made in good faith, i.e., honestly. If the Contractor challenges any such approval or determination, the Contractor has the burden of proving that it was not made in good faith by clear and convincing evidence.

7.6 PARTIAL INVALIDITY. If any term or provision of this Agreement is found to be illegal, unenforceable, or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, this Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

7.7 COMPLIANCE WITH LAWS AND REGULATIONS. The Contractor, at its expense, will comply with all applicable federal, state, and local laws, rules, and regulations applicable to the Work, including but not limited to Chapter 4115 of the Ohio Revised Code and Sections 153.59 and 153.60 of

the Ohio Revised Code, which prohibit discrimination in the hiring and treatment of employees, with respect to which the Contractor agrees to comply and to require its subcontractors to comply.

- 7.7.1 NON-DISCRIMINATION. Contractor agrees:
1. That in the hiring of employees for the performance of Work under this Agreement or in any subcontract, neither the Contractor, subcontractor, or any person acting on behalf of either of them, shall by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color discriminate against any citizen of the state in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.
 2. That neither the Contractor, subcontractor, nor any person acting on behalf of either of them shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color.
 3. That there shall be deducted from the amount payable to the Contractor by the Owner under this Agreement a forfeiture of twenty-five dollars (\$25.00) as required by Ohio Revised Code Section 153.60 for each person who is discriminated against or intimidated in violation of this Agreement.
 4. That this Agreement may be canceled or terminated by the Owner and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this section of this Agreement.
- 7.7.2 PREVAILING WAGE RATES. The Contractor and its subcontractors, regardless of tier, shall strictly comply with their obligation to pay their employees working on the Project site at the applicable prevailing wage rates for the type of work, including any changes thereto, without increase in the Contract Sum.
- 7.7.3 ETHICS. By signing and entering into this agreement with the Owner, the Contractor represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements. The Contractor understands that failure to comply with the ethics laws is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the Owner.
- 7.8 JOB MEETINGS. The Contractor or one of its representatives with authority to bind the Contractor will attend all job meetings. The Owner anticipates that job meetings will be scheduled on a weekly basis during construction or as needed. The Contractor will ensure that its Subcontractors also hold regular job meetings at which safety issues and job matters are discussed as these relate to the Work being performed. Job meetings include, but are not limited to, pre-construction meetings, weekly job meetings, weekly safety tool box meetings, and monthly safety meetings.
- 7.9 PROPERTY TAX AFFIDAVIT. The Contractor's affidavit given under Section 5719.024, Ohio Revised Code, is incorporated herein.
- 7.10 PARTNERING. Contractor agrees that it will participate, as part of the Contract Sum, in any partnering sessions scheduled by Owner.
- 7.11 ENTIRE AGREEMENT. This Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and will supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject

matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

7.12 COUNTERPARTS. This Agreement may be executed in any number of counterparts each of which when so executed and delivered will be an original hereof, and it will not be necessary in making proof of this Agreement to produce or account for more than one counterpart hereof. This Agreement may be executed and delivered by facsimile or via electronic mail.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their properly authorized representatives and agree that this Agreement is effective as of the date first set forth above.

Owner: The City of Gahanna

Contractor (as identified on the Contract Terms Sheet)

By: _____

By: _____

Name: Thomas R. Kneeland

Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

Approved as to form of Contract and Contract Bond:

By: _____

Name: Shane Ewald, City Attorney

Date: _____

FISCAL OFFICER'S STATEMENT OF AVAILABILITY

(Section 5705.41, R.C.)

I Joann Bury, hereby certify that I am the Director of Finance for the City of Gahanna, Ohio and that the amount of money to wit _____ required to meet the cost of the attached Contract between the City of Gahanna, Ohio and _____, has been or will be, prior to the ordering of any materials, lawfully appropriated for the purpose of said Contract and the money so appropriated is on deposit or in process of collection to the credit of the appropriate fund free from any previous encumbrances. Moneys due in excess of the Contract Sum and any Contingency amount assigned thereto shall require an additional and separate Fiscal Officer's Statement of Availability which shall not be given unless the Contract adjustment is directly attributable to one of the express methods for increasing the Contract Sum under the Contract Documents; and, such process is completed in the manner required by the Contract Documents.

Date: _____, 20__

Signed: _____

By: Joann Bury

Title: Director of Finance

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.

THIS DOCUMENT HAS BEEN MODIFIED FROM ITS ORIGINAL VERSION

MODIFIED STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters or with all capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. 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 or Owner-Contractor Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 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. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Information and Requirements for Bidders, Bid Bond or other Bid security, if any, the Bid Form, and legal notice.
 8. *Change Order*—A document 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, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to

address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*— The Contract Documents are the Contract Documents identified in the Owner-Contractor Agreement ("Agreement")
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed by the Owner.
20. *Engineer*—Either the individual or entity named as the Consulting Engineer in the Agreement or the City Engineer, as appropriate to the Project.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice 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.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *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.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *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. If the Owner or Engineer prepares a Bid Schedule breaking the Work down into estimated quantities (pay items) for the purpose of bidding the Work, the Schedule of Values shall be the Bid Schedule. If there is any part of

the Work that is not identified in the Bid Schedule, such part shall be deemed incidental to Work identified in the Bid Schedule.

36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *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, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *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.
40. *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.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions. If additional supplements are included in the Contract Documents, they may be in the form of Supplementary or Special Conditions.
43. *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 a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *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 but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications,

fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *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; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs 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 Article 10 or any other provision of the Contract Documents.
- C. *Day:*
 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
 1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

- 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. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- 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. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds, insurance certificates, insurance endorsements, and other documents as Contractor may be required to furnish under the Contract Documents.
- B. *Evidence of Contractor's Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner's Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall, upon the Contractor's request, promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Notice to Proceed (or as otherwise specifically required by the Contract Documents), 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;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The total of the schedule of values prepared for the Work, as required by the General Conditions, shall not exceed the Bid submitted for the Work, unless such amount is adjusted as provided in the Contract Documents.
- B. The Contractor shall prepare the Progress Schedule within ten (10) days of the date of the Notice to Proceed. The Progress Schedule shall include and be consistent with any applicable Milestone Dates in the Construction Documents. The Contractor shall prepare all Progress Schedules in CPM format unless provided otherwise in the Contract Document or otherwise agreed in writing by the Owner. The Progress Schedule is for coordinating the timing, phasing, and sequence of the Work of the contractors and shall not change or modify the date for Substantial Completion. The date for Substantial Completion shall only be changed or modified by Change Order, other Modification, or a Claim that is finally resolved, regardless of the date in the Proposed Schedule.
1. The Contractor shall update the Progress Schedule each month. In preparing and updating the Progress Schedule, the Contractor shall take into consideration but not be bound by the scheduling and other information submitted by the other contractors and subcontractors.
 2. The Progress Schedule shall be manpower loaded and shall include a schedule of the submission of Shop Drawings, Product Data, and Samples.
 3. The Contractor shall, on a weekly basis, prepare and submit to the Engineer a written report describing the activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a look-ahead projection of all activities to be started or finished in the upcoming two (2) weeks, including without limitation the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested by the Engineer.
 4. The float in the Progress Schedule and any updates to it shall belong to the Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract date for Substantial Completion.
- C. The Contractor's obligation to furnish requested scheduling information is a material term of its Contract. If the Contractor fails to furnish requested scheduling information in writing within five (5) days of a request for such information from the Design Professional or Owner, the Contractor shall pay and the Owner may withhold from the Contractor Liquidated

Damages at the rate of Fifty Dollars (\$50.00) a day for each calendar day thereafter that the Contractor fails to furnish the requested information.

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

2.04 *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 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference the Contractor 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 and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *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 2.03.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 the component parts of the Work. Once approved by the Engineer, the Contractor will not change the allocation of the Contract Price to the component parts of the Work without the Engineer's written approval. The Engineer thereafter may from time to time require the Contractor to adjust such schedule if the Engineer determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Engineer within ten (10) days.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor may jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, 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, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract 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, reference standard, 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 part of the Contract Documents prepared by or for Engineer. 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 part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* In addition to its obligations under the Information and Requirements for Bidders, before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or 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) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) 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 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
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 knew or reasonably should have known thereof or Contractor failed to perform its obligations under the Information and Requirements for Bidders.
4. In addition to its obligations under the Information and Requirements for Bidders, if Contractor proceeds with work that Contractor had actual knowledge or should have known that a conflict, error, ambiguity, or discrepancy existed as indicated above, correction of work constructed without such notification to Engineer shall be at Contractor's expense, (except in an emergency as authorized pursuant to the terms of the contract).

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. Within the Contract Documents, requirements of the Agreement shall take precedence over the Modified General Conditions, which shall take precedence over the Specifications, which shall take precedence over the Drawings.
3. Within a particular Contract Document, figure dimensions on Drawings shall take precedence over general Drawings. Specific instructions or specifications shall take precedence over general instructions or specifications.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers 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 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; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- 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.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the Effective Date of the Contract 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 60 days after the date bids are received for the Project. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening unless mutually agreed to by the Owner and Contractor.

4.02 *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 such date.

4.03 *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.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 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 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. 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, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.
- C. The float in the Progress Schedule and any updates to it shall belong to Owner. Float shall mean the amount of time by which activities may be delayed without affecting the Contract Date for Substantial Completion.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, 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 Times and Contract Price provided the Contractor timely submits a Change Proposal as required by the Contract. 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.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier, of any tier, shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times provided the Contractor timely submits a Change Proposal as required by the Contract. 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. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event. Contractor's failure to timely submit a Change Proposal within this 30-day time period shall constitute an irrevocable waiver of Contractor's right to an adjustment of the Contract Times or Contract Price.
- H. Weather Delays. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, if a Change Proposal is made therefor as provided in the Contract, the Contract Times will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

Month	Workdays Lost Due To Weather
January	8

February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	5
November	5
December	6

- I. The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with the Owner may delay, interfere with and/or disrupt the Contractor's Work, and such actions shall not constitute a breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly pursuing a Change Proposal and Claim as permitted by these Modified General Conditions. Pending the final resolution of a Claim, the Contractor shall continue performance of the Work.
- J. If the Owner determines that the performance of the Work has not progressed such that it is likely that the Contractor will not substantially complete its Work by its Date for Substantial Completion based upon the Contractor's failure to achieve specific milestone dates contained within the Progress Schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the Work, including, without limitation: (i) working additional shifts or overtime; (ii) supplying additional manpower, equipment, and facilities; and (iii) other similar measures (collectively referred to as "Corrective Measures"). If the Owner orders the Contractor to take such corrective measures, and regardless of any claims, disputes or objections, the Contractor shall take and continue such Corrective Measures until the Owner is satisfied that the Contractor is likely to substantially complete its Work by its Date for Substantial Completion.
 - 1. The Contractor shall not be entitled to adjustment in the Contract Sum in connection with the Corrective Measures required by the Owner pursuant to Paragraph 4.05(J), unless the Contractor is able to establish that it is entitled to additional compensation under other terms of the Contract Documents.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 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.
- B. Upon reasonable request, Owner shall furnish Contractor with a Notice of Commencement prepared for the Project, conforming to the provisions of Ohio Revised Code Section 1311.252.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, 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 any such claim, and against all 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 directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent 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 and adjacent areas 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 of 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 structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Contract identifies:
1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on 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. It is possible that there may be other reports and/or tests of subsurface conditions at or contiguous to the Site. The Owner makes no representation about such reports and/or tests, assuming they exist. For example, all interpolations and extrapolations of data performed by Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site 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 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; 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, as a condition precedent to any increase in the Contract Price and/or an extension of the Contract Times, promptly and within no more than 48 hours after becoming aware thereof, and before further disturbing the subsurface or physical conditions

or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so. If Contractor fails to notify Owner and Engineer within the time required by this Paragraph 5.04.A, Contractor irrevocable waives any right to a Contract Price and Contract Time Adjustment under Paragraph 5.04.C.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing, with a copy to the Contractor, of Engineer's findings, conclusions, and recommendations.
- C. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, 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 fall within any one or more of the categories described in Paragraph 5.04.A;
 - 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 Paragraph 13.03; and,
 - c. 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.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew or should have known of the existence of such condition at the time Contractor made a 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 otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A and failed to submit a Change Proposal within 30 days of issuance of the Engineer's review.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor shall submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after issuance of the Engineer's review regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities.* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent 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 Modified General Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site protecting all Underground Facilities in a manner at least as cautious and protective of safety and of underground facilities as those methods identified in Ohio Revised Code Sections 3781.25 and 3781.30;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor.* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then 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 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review.* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing, with a copy to the Contractor, of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Possible Price and Times Adjustments:*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - 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 Paragraph 13.03;
 - c. 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; and
 - d. Contractor gave the notice required in Paragraph 5.05.B and submitted a Change Proposal no later than 30 days after issuance of the Engineer's review.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor shall submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Engineer's issuance of the Engineer's Review to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on 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 removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) 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 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs. If Contractor fails to notify Owner and Engineer within the time required by this Paragraph 5.06.E, Contractor waives any right to a Contract Price and Contract Time Adjustment.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. 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, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. 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, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the 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 (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence. Such obligation shall be limited to the limits of Owner's insurance coverage for such loss.
- J. 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 failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and payment bond, in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. Such bond shall be in the form that meets the requirements of the Ohio Revised Code. If the Contractor submitted a combined Bid Guaranty and Contract Bond with its bid for the Work, that form of Bond shall satisfy the Contractor's requirement to provide a Contract Bond. Contractor shall also furnish any other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Ohio Revised Code and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond 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 the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then 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 bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.
- G. *Material Default or Termination.* If the Owner notifies the Contractor's surety that the Contractor is in material default, the surety will complete its investigation of the claimed material default within 21 days. The surety is advised to start looking for a replacement contractor upon notice of material default. As part of its investigation, the surety shall promptly visit the offices of the Contractor, Engineer, and Owner to inspect and copy the available Project records. The Owner, Engineer, and Contractor, upon written request by the surety, shall make such records available during regular business hours for such inspection and copying. The Owner and Engineer's making such records available as provided herein shall satisfy the Owner's obligation to the surety to furnish documents for the investigation. The surety will provide the Owner with the results of its investigation, including any written report or documents.

If the Owner terminates the Contract and the surety proposes to takeover the Work, the surety shall do so no later than the later of the expiration of the 21-day investigation period or 10 days after the date the Owner terminates the Contract, whichever is later. If the Owner terminates the Contract, and the surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents. If the Contractor is terminated for cause, the replacement contractor shall not be the Contractor or its employees, unless the Owner agrees in writing. In the event the Surety takes over the Project, the surety's obligation shall not be limited to the penal sum of the Bond.

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

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

In the event of the Contractor's termination and if the surety does not takeover the Work as provided in this Paragraph, the Owner may take possession of and use all materials, facilities

and equipment at the Project Site or stored off-site for which Owner has paid in whole or in part.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision. Failure of Owner to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner shall, upon the Contractor's request, deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, 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.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other

party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.
- K. The minimum limits of liability for the required insurance policies listed in Paragraph 6.03 shall not be less than the following unless a greater amount is required by law:
 - 1. Commercial General Liability ("CGL"): Bodily injury (including death and personal injury) and property damage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. CGL shall include (i) Premises-Operations, (ii) Explosion and Collapse Hazard, (iii) Underground Hazard, (iv) Independent Contractors' Protective, (v) Broad Form Property Damage, including Completed Operations, (vi) Contractual Liability, (vii) Products and Completed Operations, (viii) Personal/Advertising Injury with Employment Exclusion deleted, (ix) Stopgap liability endorsement for \$1,000,000 limit, and (x) per project aggregate endorsement.
 - 2. Automobile Liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and personal injury) and property damage with a combined single limit of \$1,000,000 per person and \$1,000,000 each accident.
 - 3. Such policies shall be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount of \$1,000,000 for each occurrence and \$1,000,000 aggregate for contracts with a Contract Price of \$250,000 or less; \$2,000,000 each occurrence and \$2,000,000 aggregate for contracts with a Contract Price greater than \$250,000 but less than or equal to \$500,000; \$3,000,000 each occurrence and \$3,000,000 aggregate for contracts with a Contract Price greater than \$500,000 but less than or equal to \$1,000,000; and \$5,000,000 each occurrence and \$5,000,000 aggregate for contracts with a Contract Price greater than \$1,000,000.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).

- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. 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.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against 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. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; 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 (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. 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 Contractor, Owner, and Engineer and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that 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.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.
6. Contractor's insurance shall be primary and non-contributory.
 7. Insurance policies shall be written on an occurrence basis only.

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

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, 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.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. *Builder's Risk:* Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof. Insurance shall be completed value form. This insurance shall:
 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds." Insurance certificates shall specifically indicate by name the additional insureds which are to include Owner and Engineer as well as other individuals or entities so identified.
 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; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; 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. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner.
 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under

construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.

4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. cover the total value of materials and equipment supplied under the Contract from the time Contractor takes possession of them until they are installed and tested by Contractor and the project is accepted as complete by Owner under an endorsement to this policy or in the form of Installation Floater Insurance of the "all risk" type.
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* Contractor shall be responsible for any deductible or self-insured retention.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction

equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

- G. *Payment of Deductible:* Contractor shall pay all deductible provisions applicable to claims related to the Project made under and paid by insurance. If more than one Contractor is responsible for the incident giving rise to the insurance coverage, the Contractors shall be responsible on a pro rata basis, according to their responsibility for the occurrence or accident giving rise to the claim, for payment of the deductible. The 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.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, 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 insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the 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 Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, 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 or Contractor as trustee or fiduciary, 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 occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.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, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, 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 builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall have full authority to act on behalf of Contractor and who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *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, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor

may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *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, whether or not such items are specifically called for in the Contract Documents. The foregoing items and services shall all be included in Contractor's original bid and no additional payments shall be made for the provision of any of the foregoing items and services.
- B. All materials and equipment incorporated into the Work 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. Contractor warrants that all materials and equipment are suitable and fit for the intended use of such materials and equipment and are free from defects in material, workmanship, or design. The foregoing applies whether or not the materials or equipment are specified in the Contract Documents.
- 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.

7.04 *"Or Equals"*

- A. Substitutions prior to the receipt of bids shall be governed by the Instruction to Bidders. Substitutions after the entry into the Agreement shall be governed by these Modified General Conditions.
 - 1. If Engineer in its sole discretion determines that 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, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, 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;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.

- 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.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. 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:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,

- 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
- b. will state:
- 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) 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
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
- 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. 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. In the instance where the Engineer is the City of Gahanna Engineer, the foregoing work shall be charged at a rate of \$75.00 per hour for any City of Gahanna employee performing the tasks contemplated in this paragraph.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through

an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection. If Owner or Engineer, after due investigation, has reasonable objections to any proposed Subcontractor, Supplier, or other individual or entity, either may request Contractor submit an acceptable substitute without an increase in Contract Price, and the Contractor shall do so within ten (10) days.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days. The Owner's acceptance or failure to raise an objection shall not relieve the Contractor of its liability for the acts, omissions, or breaches of contract by its subcontractors or suppliers.
- E. Owner may require the replacement of any Subcontractor, Supplier, employee, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. Cause for removal shall include but not be limited to incompetent, unfaithful, or disorderly behavior, refusal to carry out any provision of the Contract Documents, careless or unsatisfactory work, or disrespectful, threatening or abusive language to any supervisor of the work or to the public.
- F. If Owner requires the replacement of any Subcontractor, Supplier, employee, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall not be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, employee, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. 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.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. 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.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. 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 money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- P. The Owner shall be an intended third-party beneficiary of Contractor's agreements with its consultants, subcontractors, and suppliers.

7.07 *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, 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.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, 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 the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work and other agencies or entities as may be required by the nature of the Work.

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Materials purchased for use or consumption in connection with the proposed Work will be exempt from the State of Ohio Sales Tax, as provided in Section 5739.02 of the Ohio Revised Code, and also from the State of Ohio Use Tax, as provided in Section 5741.01 of the Ohio Revised Code. The Owner will provide the Contractor with a Construction Tax Exempt Certificate upon request, made through the Engineer.
- C. Purchases by the Contractor of expendable items, such as form lumber, tools, oil, greases, fuel, or equipment rentals, are subject to the application of Ohio Sales or Use Taxes.
- D. In addition to any other taxes required to be withheld by the Contractor, the Contractor shall withhold any income taxes due to the Owner for wages, salaries and commissions paid to its employees for work done under this Agreement and further agrees that any of its subcontractors shall, by the terms of its subcontract, be required to withhold any such income taxes due for work performed under this Agreement.

7.10 *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 or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and 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 such

Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site two record copies of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents, samples, and shop drawings to the Engineer no later than the date for Substantial Completion for the Engineer's review and transmitted to the Owner.

7.12 *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, other work in progress, 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 Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- 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 7.12.A.2 or 7.12.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 at its expense (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 protection 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 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- B. Contractor shall keep at the Site at all times during the progress of the Work a competent person to comply with OSHA trenching and excavation requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

7.14 *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.

7.15 *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.

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. *Shop Drawing and Sample Submittal Requirements:*
 - 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the 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 and equipment 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 of that submittal, and that Contractor approves the 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 set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
 1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - 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 7.16.D.
 2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall 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 7.16.D.
 3. 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. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- 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 or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample 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 7.16.A.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 will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

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.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *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 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;
 - 6. the issuance of a notice of acceptability by Engineer;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, 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, but only to the extent caused by any breach of contract, 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 7.18.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.

7.19 *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 Laws and Regulations.
- 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, 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, 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 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior

to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.

- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. 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.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, 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.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When

applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. 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.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) 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 any such claims, and against all 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 damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

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

- 9.04 *Pay When Due*
- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.
- 9.05 *Lands and Easements; Reports, Tests, and Drawings*
- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 *Insurance*
- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 *Change Orders*
- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 *Inspections, Tests, and Approvals*
- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 *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. Contractor agrees that, without assuming any liability, Owner may bring to the Contractor's attention any hazardous or unsafe practice that the Owner may notice and Contractor shall immediately rectify the unsafe condition at its own expense.
- 9.10 *Undisclosed Hazardous Environmental Condition*
- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 *Evidence of Financial Arrangements*
- A. The Owner shall provide the Contractor with a certificate from its fiscal officer as to the availability of funds.
- 9.12 *Safety Programs*
- 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.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

10.01 *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.

10.02 *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 10.08. 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.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Contract Documents, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates a 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 will be subject to the Contract Documents, specifically including the requirement in the Agreement that any Change Order or other Modification be authorized by the Owner.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. 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, are set forth in Paragraph 7.19.

- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.
- B. Unit Price Work for which a typical cross section or other detail from the Contract Documents applies shall be paid only up to the quantity determined by using the dimensions provided in the typical cross section or other detail. By way of example, this provision means that if a typical trench width detail in the Drawings shows a maximum width of 30-inches, all pay quantities associated with the actual work of constructing the detail shall be calculated using a trench width not greater than 30- inches. This means that the actual pay quantity could also be less than that based upon a 30-inch wide trench, if the actual trench width is smaller and otherwise in conformance with the Contract Documents, but the Contractor would not be paid more if the actual trench width exceeds 30 inches. Contractor is responsible for determining what actual trench width may be required due to field conditions and applicable laws and regulations existing at the time of its bid.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, 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 15.06.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 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - c. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, without limitation, all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and Contract Times, unless the Contractor submits a Change Proposal and Claim in accordance with the Contract Documents.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes 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. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the

Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.
- B. Should the Contractor conclude that an unsafe condition exists, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner, and Engineer in writing. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a third-party to verify the presence or absence of the unsafe condition reported by the Contractor and, in the event such condition is found to be present, to cause it to be rendered harmless. If such third-party determines that a hazardous condition exists, the costs of such third-party along with the costs of rendering the condition harmless shall be at the Owner's expense. If such third-party determines that a hazardous or unsafe condition does not exist, the costs of the third-party shall be at the Contractor's expense, provided such unsafe condition was not caused by the Contractor or any of its consultants, subcontractors or suppliers, of any tier. Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the hazardous condition being rendered harmless; or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed using appropriate protective measures, as determined by a competent person employed by the Owner.

11.03 *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, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.
- B. Contractor shall not proceed with any change in the Work without the appropriate written authorization. The Contractor's failure to obtain prior written authorization for a change in the Work shall constitute a waiver by the Contractor of an adjustment to the Contract Price or Contract Time for the related Work.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. 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, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee*: When applicable, 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 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.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 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - 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 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.
 - 1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor's obligation to deliver a fully completed Change Proposal within such 10-day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages. Failure to provide a written Change Proposal within the time period specified herein shall constitute a waiver by the Contractor of its rights to an adjustment to the Contract Time or Contract Price for the Work that is the subject matter of the Change Proposal. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 10 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 - 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 - 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a

Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. 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;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *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 and the surety shall be obligated, with respect to any change, regardless of any failure to provide notice to the surety of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The Contractor shall deliver its claim directly to the Owner promptly (but in no event later than 10 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 10 days of the decision under appeal. The Contractor shall also furnish a copy to the Engineer, for its information only. The

responsibility to substantiate a Claim shall rest with the party making the Claim. For each Claim the Contractor shall deliver a fully completed Statement of Claim Form, a copy of which form is a Contract Document, to the Engineer and the Owner. The Contractor's obligation to deliver a fully completed Statement of Claim within such 10-day period is a material term of the Contract Documents and provides the Owner with the opportunity to mitigate its damages. Failure to provide written notice of a Claim as specified herein shall constitute a waiver by the Contractor of any Claim for adjustment to the Contract Time or Contract Price.

1. *False or Fraudulent Claim.* The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. Knowingly shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the Owner harmless from all costs and expenses, including Owner's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.
2. *Claim Documentation:* Within ten (10) days of written request from the Owner, Contractor shall make available to Owner or its representative any books, records, or other documents in its possession or to which it has access, including but not limited to Contractor's daily logs/reports, original estimates of Work and applicable agreements, correspondence with subcontractors and suppliers, internal correspondence (including e-mail), accounting records, and other information from which the Contractor's costs may be derived. To the extent permitted by law, the Owner shall keep the Project accounting records and estimate for the Project confidential. As requested by the Owner, the Contractor shall provide such documents and information in paper copies and/or computer format (including the format of the Contractor's accounting software and/or ASCII format). The Contractor's provision of the requested documents and information shall be a condition precedent to any further proceeding under the Contract Documents or to payment of an Application for Payment

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

- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.

- D. *Mediation:*
1. Any claim not resolved through direct negotiation of the parties, within 30 days of the date of the claim, shall be subject to mediation.
 2. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. Any Claim not resolved through mediation shall be subject to the procedure set forth in Article 17 for the final resolution of disputes.
- F. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.
- G. In the event that Contractor files a Claim or files an action against Owner, Owner shall be entitled to make an offer of settlement of the Claim to Contractor at any time up to the date of trial. Such offer of settlement shall not be admissible into evidence at the litigation except on the issue of entitlement to recovery of attorneys' fees, costs, and expenses. If at any stage of the litigation, including any appeals, Contractor's claim is dismissed or found to be without merit, or if the damages awarded to Contractor on its claim do not exceed Owner's offer of settlement, Contractor shall be liable to Owner and shall reimburse Owner for all attorneys fees, costs and expenses incurred by Owner from the date of the offer of settlement until the date of the final adjudication and resolution of Contractor's claim.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work 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 13.01.C, 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, and 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 13.01.
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 6.05), 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 communication 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 that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here 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 Paragraph 13.01.B.
- D. *Contractor's Fee:* When the Work as a whole 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, Change Proposal, Claim, set-off, or other 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 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, 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.

13.02 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*: Contractor agrees that:
 - 1. 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
 - 2. 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*: 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.

13.03 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. Contractor shall not be paid for any Unit Price Work that represents an actual quantity greater than 10% of the estimated quantity, without a Change Order. The Contractor shall maintain such records as the Engineer may require to track the quantities of Unit Price Work.
- 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. Payments to Contractor for Unit Price Work will be based on actual quantities.
- 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. 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 the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price 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;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that it 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 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction 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.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. 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.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- D. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- 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. Such uncovering shall be at Contractor's

expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall, at its own expense, correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to legal fees, the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages 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. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then 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, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages 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 pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15. Contractor shall not be entitled to any contract extension or additional payment resulting from such defective work.
 - 2. 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, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *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, then 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.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within two business days (or such longer time as may be stated in the Notice) of a written notice from the Owner or Engineer to correct, or take reasonable steps to commence to correct, defective Work, or to remove and replace, or take responsible steps to commence to remove and replace rejected Work as required by Engineer, 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, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor all the 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. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Contractor irrevocably designates the Owner as the Contractor's attorney-in-fact to execute the Change Orders provided for in this Paragraph.

- B. In exercising the rights and remedies under this Paragraph 14.07, 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, 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 incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. 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 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 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 during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period. The Engineer-approved version of the Application for Payment form, which includes information on completed Schedule of Values items, is to be used by the Contractor when making an Application for Progress Payment.
- B. *Applications for Payments:*
 - 1. Not more often than once every 30 days, Contractor shall submit to Engineer for review an Application for Payment (including a Schedule of Values described in Paragraph 2.05.A of the Modified General Conditions) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by a properly completed Contractor's Payment Application Checklist, all the documentation required to be submitted with such Checklist, and any other supporting documentation required by the Contract Documents or by the Engineer. The Application for Payment will be in the form and submitted with the number of copies of it and all related documents as 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, a warehouse bond, 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 a) a Waiver and Release Agreement for itself and a Subcontractors – Suppliers Waiver and Release Agreement for each of its subcontractors, and b) a Contractor's Affidavit with List of Subcontractors and Suppliers with Amounts Withheld.
3. The amount of retainage with respect to payments will be as stipulated in the Agreement. The Owner and the Contractor agree that there shall be no escrow account required in connection with the Project; nor, shall retainage earn interest.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, 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 13.03, 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; 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 money 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 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
 - f. The Contractor is in default of any other Agreement it has with the Owner.
- D. *Payment Becomes Due:*
1. Ten days after presentation of the Application for Payment, the Payment Application Checklist, and all required documentation to Owner with Engineer's recommendation and the approval of any agencies and/or lenders, the amount recommended and approved will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
- a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;

- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, 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, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *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 and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- 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 preliminary certificate of Substantial Completion which shall fix the date of Substantial

Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. 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 punch list.
- G. Time for Completion of Items on Tentative List and Remedies. The time fixed by the Engineer for the completion of all items on the list accompanying the tentative certificate of Substantial Completion shall not be greater than forty-five (45). The Contractor shall complete all items on the list within such 45-day period. If the Contractor fails to do so, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged to the Contractor. The Contractor irrevocably designates the Owner as the Contractor's attorney-in-fact to execute a Change Order deducting such cost from the balance of the Contract Price and also any additional costs or expenses incurred by the Owner arising out of or related to the failure of the Contractor to complete such items, including but not limited to attorneys', consultants', and Engineer's fees. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial Work, even if performed by others. If more than one inspection by the Engineer for purposes of evaluating corrected Work is required, it will be performed at the Contractor's expense.

15.04 *Partial Use or Occupancy*

- 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. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be 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 15.03.A through E for that part of the Work.
 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work 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 15.03 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 6.05 regarding builder's risk or other property insurance.
- B. Owner may at any time request Contractor in writing to permit Owner to take over operation of any part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer, and within a reasonable time thereafter, Owner, Contractor, and Engineer shall inspect that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Contractor does not object in writing to Owner and Engineer that such part of the Work is not ready for separate operation by Owner, Engineer will finalize the list of items to be completed or corrected and will deliver such lists to Owner and Contractor together with a written recommendation as to the division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that part of the Work which will become binding upon Owner and Contractor at the time when Owner takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, Owner shall allow Contractor reasonable access to complete or correct items on said list and to complete other related Work.

15.05 *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, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *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, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment; and
 - d. a list of all disputes that Contractor believes are unsettled;
3. Contractor's Waiver and Release Agreement for itself as of the date of the Final Application for Payment and Subcontractors – Suppliers Waiver and Release Agreements for each of its Subcontractors and Suppliers as of the date of the Final Application for Payment. 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, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

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 have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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 15.07. 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. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less

any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *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 Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 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 to 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. 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 repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- 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, 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 are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *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 written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's 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);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 3 days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated. Such termination shall be effective as of the date stated in the termination notice provided to Contractor; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. If Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.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 the cost to complete the Work, including all related claims, costs,

losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds 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.

- F. 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, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon three 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). Such termination shall be effective as of the date stated in the written notice:
 - 1. completed and acceptable Work as defined in the Contract Documents 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; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) 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 16.03.
- 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 are not intended to preclude Contractor from submitting a Change Proposal 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.

- C. Contractor shall require similar provisions contained in this Article 16 in each of its subcontracts to protect Contractor from claims by Subcontractors arising from the Owner's termination for convenience, or to minimize claims by such subcontractors. The remedy provided to Contractor under this Paragraph shall be the Contractor's sole remedy in the event of termination for convenience by Owner.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. Any Claim not resolved by mediation or within 60 days of the date of the Claim shall be subject to litigation. Any lawsuit which may be brought to enforce any provision of this Contract or any remedy with respect thereto, shall be brought in a state court of competent jurisdiction in the county in which the Owner is located and each party expressly consents to the jurisdiction of such court. Each party expressly waives its right to remove any such suit to federal court.

ARTICLE 18 – MISCELLANEOUS

18.01 *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, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract 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.

18.03 *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. 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.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.
- B. The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes but is not limited to:
 - 1. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, loss of bonding capacity and for loss of profit except anticipated profit arising directly from the Work.
- C. The waiver in Paragraph 18.04(B) is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the terms of the Contract. Nothing contained in this Paragraph 18.04 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

18.05 *No Waiver*

- A. The Owner's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

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

STATE OF OHIO BUREAU OF WORKER'S COMPENSATION INSURANCE CERTIFICATE ATTACHMENT
SHEET

INSURANCE CERTIFICATE ATTACHMENT SHEET

NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT

Section 1311.252, Ohio Revised Code

Notice is hereby given of the commencement of a public improvement as follows:

- 1. The public improvement is identified as:

Project Name: Claycraft Fiber Network Expansion ST-1059
Project Location: The City of Gahanna, Ohio

- 2. The public authority and Owner responsible for the public improvement is:

City of Gahanna
200 S Hamilton Rd
Gahanna, OH 43230

- 3. The principal contractor and its surety on the public improvement are as follows:

Principal Contractor: Surety:
< > < >

- 4. The date the City of Gahanna first executed a contract with a principal contractor for this public improvement is: < >

Date

- 5. The name and address of the representative for the City of Gahanna upon whom service may be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Robert Priestas
City Engineer
City of Gahanna
200 S Hamilton Rd
Gahanna, OH 43230

The foregoing is true and accurate to the best of my knowledge and the information available to me.

Signature Title

Printed Name

Sworn and subscribed before me this ___ day of _____, 20__.

Notary Public

NOTICE OF AWARD TO CONTRACTOR

To: <_____>

Date: <_____>

Project: <_____>

The Owner has considered the Bid submitted by you for the above-described work in response to the Legal Notice dated <_____>.

You are hereby notified that your bid has been accepted for items in the amount of \$<_____>.

You are required by the Information for Bidders to execute the Contract and furnish the required documents within ten (10) calendar days from the date of this notice to you.

If you fail to execute said Contract within ten (10) days from the date of this notice, Owner may—at its discretion—exercise its rights with respect to your bid guaranty and be entitled to such other rights as may be granted by Law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

Dated this <____ day of _____, > 20____

By:

<Printed Name/Title>

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged.

Contractor <_____>

This <____ day of _____, 20__>

By: _____

Name: <_____>

Title: <_____>

NOTICE OF AWARD TO SURETY AND SURETY'S AGENT

<Date>

SENT BY REGULAR U.S. MAIL

<Surety Name>

<Surety Address>

<Surety Address>

<Name of Surety's Agent (Including Name Of Agent Who Signed Bond)>

<Address of Surety's Agent>

<Address of Surety's Agent>

Re: Notice of Award of Contract

To Whom It May Concern:

You are notified that your principal, <Name>, has been awarded a contract for <Contract>, in the amount of \$<Amount>, by the City of Gahanna.

Thank you,

< _____ >

By: < _____ >
Name/Title:

NOTICE TO PROCEED

To: <_____>

Date: <_____>

Project: <_____>

Owner: City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

You are hereby notified to commence Work in accordance with the Agreement dated <_____> 201__, and you are to complete the Work in the time required by Section 3.2 of the Owner/Contractor Agreement and other Contract Documents. Within ten (10) days from this Notice to Proceed date, you will begin physical, on-site improvements. You are required to return an acknowledged copy of this Notice to Proceed, to the Owner, indicating Acceptance of this Notice to Proceed.

<Printed Name/Title>

ACCEPTANCE OF NOTICE TO PROCEED

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by <_____, this the day of _____, >20__.

By: <_____>

Title: <_____>

CHANGE ORDER

Order No: _____
Date: _____
Agreement Date: _____

Name of PROJECT: _____
OWNER: City of Gahanna, Ohio
CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification: _____

Change to CONTRACT PRICE: \$ _____

Original CONTRACT PRICE: \$ _____

Current CONTRACT PRICE adjusted by previous
CHANGE ORDER \$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased)
(decreased) by : \$ _____

The CONTRACT PRICE amount INCLUDING this CHANGE ORDER: \$ _____

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____
calendar days.

The date for completion of all WORK will be _____(Date)

CONTRACTOR AGREES THAT THIS CHANGE ORDER SHALL CONSTITUTE A FINAL SETTLEMENT OF ALL MATTERS RELATING TO THE CHANGE IN THE WORK THAT IS THE SUBJECT OF THIS CHANGE ORDER, INCLUDING, BUT NOT LIMITED TO, ALL DIRECT, INDIRECT, AND CUMULATIVE COSTS ASSOCIATED WITH SUCH CHANGE AND ALL ADJUSTMENTS TO THE CONTRACT SUM AND THE DATE FOR SUBSTANTIAL COMPLETION.

Contractor's Signature: _____
City Engineer: _____
City Manager: _____

Note: After all signatures are completed, copy goes to Finance and Engineer.

PAYROLL INFORMATION

Date _____

I, _____ (Name of Signatory Party), _____ (Title), do hereby certify:

1. That I pay or supervise the payment of the persons employed by _____ (Contractor) on the _____ (Project).

2. That during the payroll period commencing on the _____ day of _____, 20____, and ending on the _____ day of _____, 20____, all persons employed on said project have been paid in full weekly wages earned; that no rebates have been or will be made either directly or indirectly to or on behalf of said _____(Contractor) from the full weekly wages earned by such persons; and that no deductions have been made either directly or indirectly from the wages earned by such persons, other than permissible deductions which are described below:

3. That any payrolls otherwise under this Contract required for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in the specifications as supplied by the Department of Industrial Relations or any wage determination incorporated into the Contract and that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

4. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with the Ohio Apprenticeship Council.

5. That:

(a) Where fringe benefits are paid to approved plans, funds, or programs, in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits listed in the Contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 5(c) below; and

(b) Where fringe benefits are paid in cash, each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, and amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the Contract, except as noted in Section 5(c) below:

(c) Exceptions:

Exception (Craft) Explanation

Remarks

Name and Title _____

Signature

The willful falsification of any of the above statements may subject the Contractor or Subcontractor to fines as described in Section 4115.99 of the Ohio Revised Code.

FINAL PAYROLL AFFIDAVIT

I, _____(Name of person signing affidavit), _____ (title),
of the _____, do hereby certify that the wages paid to all
employees for the full number of hours worked in connection with the Contract to the Improvement,
Repair and Construction of: _____(Project) during the following period
from _____ to _____ is in accordance with the prevailing wages prescribed by the
Contract Documents. I further certify that no rebates or deductions for any wages due any person have
been directly or indirectly made other than those provided by law.

(Signature of Officer or Agent)

Sworn to and subscribed in my presence this _____ day of _____, 20__.

Notary Public

The above affidavit must be executed and sworn to by the officer or agent or the Contractor or
Subcontractor who supervised the payment of employees, before the Owner will release the surety
and/or make final payment due under the terms of the Contract.

CONTRACTOR'S PAYMENT APPLICATION CHECKLIST

THE CONTRACTOR MUST COMPLETE THIS CHECKLIST AND SUBMIT IT TO THE DESIGN PROFESSIONAL WITH ITS PAYMENT APPLICATION AND ALL REQUIRED DOCUMENTATION.

1. Contractor's Name: _____
2. Name, title, and telephone and fax numbers of Contractor's representative to contact regarding the Payment Application and required documentation:
Name: _____ Title: _____
Office Telephone No.: (____) _____ FAX No.: (____) _____
3. Payment Application Number and Date:
No. _____ Date: _____, 20____
4. The following is a list of required documentation that must accompany its Payment Application. The Contractor certifies that it has submitted the documentation listed below with its Payment Application. If the Contractor cannot do so, the Contractor should explain why in Paragraph 5. Such explanations shall not excuse the Contractor from the requirements for submitting this documentation.

- ____ .1 Five (5) copies of a properly completed and executed Application for Payment with a properly completed and executed Schedule of Values attached to each;
- ____ .2 Properly Completed Contractor's Affidavit with List of Subcontractors and Suppliers and Any Amounts Withheld;
- ____ .3 Contractor's Wavier and Release Agreement (beginning with the second Application for Payment);
- ____ .4 For each of its Subcontractors and Suppliers, a Subcontractor's – Supplier's Waiver and Release Agreement (beginning with the second Application for Payment);
- ____ .5 Schedule of all materials and equipment stored on-site;
- ____ .6 For materials and equipment stored off-site:
 - ____ A list of the materials and equipment consigned and stored off-site in connection with the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices and reasons why the materials and equipment cannot be delivered to the site;
 - ____ Certification that all items have been tagged for delivery to the Project and that they will not be used for any other purpose;
 - ____ A letter from the Contractor's surety bonding company indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of its responsibility to complete the facility;

- _____ Evidence of adequate insurance covering the material and equipment in storage, which shall name the Owner as additional insured;
- _____ Evidence that the Design Professional has visited the Contractor's place of storage and found that all the materials and equipment set forth in the payment request and represented to be stored off-site are stored at the place of storage (any costs incurred by the Design Professional to inspect material and equipment in off-site storage shall be paid by the Contractor); and
- _____ Itemization of the materials and equipment and their cost, which were approved on previous Pay Applications and which remain in off-site storage.
- _____ .7 Other documentation or information required by the Contract Documents or by the Design Professional or Owner.

5. Reason why required documentation is not submitted:

NOTE: The failure to submit required documentation, regardless of the reason, may result in non-payment, partial payment, and/or late payment.

Signature

Printed Name

Date

DESIGN PROFESSIONAL'S REVIEW

- _____ Checklist and documentation complete.
- _____ Checklist and documentation incomplete.

Signature

Printed Name

Date

CONTRACTOR: [insert name]

BY: _____

(Signature of authorized representative)

NOTARY PUBLIC

Subscribed and sworn to before me on this date by _____ on behalf of _____.

Signature of Notary Public

Notary Public: _____

My Commission Expires: _____

CONTRACTOR'S WAIVER & RELEASE AGREEMENT

("AGREEMENT")

Project: _____

The undersigned hereby acknowledges receipt of payment from the Owner for all Work on the Project through the date of its prior Application for Payment. The undersigned acknowledges and agrees that the terms in this Agreement shall have the same meaning as in the Contract Documents for the Project.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of its last Application for Payment to any and all Claims and liens related to the Project, including without limitation: Claims of payment, mechanic's liens, liens against funds, surety bond Claims, and Claims for breach of contract or unjust enrichment. The sole exception to this waiver and release is for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form. The undersigned acknowledges and agrees that this wavier and release is intended to be a comprehensive release of all Claims and liens related to the Project, including without limitation all Claims against the Owner, the Design Professional, any Construction Manager, and the employees, board members, agents and representatives of any of the foregoing persons. The undersigned further certifies that this Agreement covers Claims and liens by all persons with which it did business related to the Project, including without limitation subcontractors and suppliers, through the date of its last Application for Payment. The undersigned represents that all such persons have signed an agreement in the form of this Agreement releasing any and all Claims and liens related to the Project, except for any Claims made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Design Professional and the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

This Agreement is for the benefit of, and may be relied upon by the Owner, Design Professional and any Construction Manager. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing, the Project, work or improvement, and real property from any and all Claims, or liens that are or should have been released in accordance with this Agreement.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public: _____

My Commission Expires: _____

SUBCONTRACTOR'S/SUPPLIER'S WAIVER & RELEASE AGREEMENT
("AGREEMENT")

Project: _____

The undersigned hereby acknowledges receipt of payment for all Work on the Project through the date of the prior Application for Payment by the Prime Contractor ("Prime Contractor") with which it has a contract. The undersigned acknowledges and agrees that the terms in this Agreement shall have the same meaning as in the Contract Documents for the Project.

In return for said payment, and/or pursuant to certain contractual obligations of the undersigned, the undersigned hereby waives and releases any rights it has or may have through the date of the Prime Contractor's last Application for Payment and to any and all Claims and liens related to the Project, including without limitation: Claims of payment, mechanic's liens, liens against funds, surety bond Claims, and Claims for breach of contract or unjust enrichment. The sole exception to this waiver and release is for any Claims the undersigned has made by properly and timely submitting a Statement of Claim form, a copy of which the undersigned represents has been delivered to the Owner and the Design Professional. The undersigned acknowledges and agrees that this waiver and release is intended to be a comprehensive release of all Claims and liens related to the Project, including without limitation all Claims against the Prime Contractor, the Prime Contractor's surety, the Owner, the Design Professional, any Construction Manager, and the employees, board members, agents and representatives of any of the foregoing persons. The undersigned further certifies that this Agreement covers Claims and liens by all persons with which it did business related to the Project, including without limitation sub-subcontractors and suppliers, through the date of the Prime Contractor's last Application for Payment. The undersigned represents that all such persons have signed an agreement in the form of this Agreement releasing any and all Claims and liens related to the Project, except for any Claims made by properly and timely submitting a Statement of Claim form, a copy of which has been delivered to the Design Professional and the Owner. The undersigned hereby represents and warrants that it has paid any and all welfare, pension, vacation or other contributions required to be paid on account of the employment by the undersigned of any laborers on the Project.

The undersigned agrees that upon receipt of the payment from the Prime Contractor with respect to the Prime Contractor's current Application for Payment, it shall, upon request of the Prime Contractor, Owner, Design Professional, or any Construction Manager, execute a waiver and release agreement in the form of this Agreement, except that such Agreement shall be current through the date of the Prime Contractor's current Payment Application. The undersigned further agrees that, upon receipt of such payment, it shall execute any other documents requested to cause the prejudicial release of any and all Claims and liens through the date of the Prime Contractor's current Payment Application.

This Agreement is for the benefit of, and may be relied upon by, the Prime Contractor, the Prime Contractor's surety, the Owner, the Design Professional and any Construction Manager. The undersigned hereby agrees to indemnify, defend and hold harmless each of the foregoing: the Project, its Work, and real property from any and all Claims and/or liens that are or should have been released in accordance with this Agreement and from any liability, cost, or expense incurred as a result of any breach of this Agreement by the undersigned.

Company Name

Authorized Signature (Company Officer)

Title

Date

State of: _____ County of _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public: _____

My Commission Expires: _____

STATEMENT OF CLAIM FORM

Claim No. ___ for Contractor

1. Name of Contractor: _____

2. Date written claim given:_____.

3. Contractor's representative to contact regarding the claim:

Name:_____ Title: _____

Telephone No. _____ (office) FAX No. _____

E-mail: _____

4. General description of claim:

5. Contract Documents. If the claim is based upon any part or provision in the Contract Documents, including but not limited to pages in the Drawings and/or paragraphs in the Specifications, Owner-Contractor Agreement, General Conditions or Supplementary General Conditions, state upon which parts or provisions the claim is based:

6. Delay claims:

6.1 Date delay commenced: _____

6.2 Duration or expected duration of the delay, if known: _____

6.3 Apparent cause of the delay and part of critical path affected:

6.4 Expected impact of the delay and recommendations for minimizing such impact:

7. Additional compensation. Set forth in detail all additional compensation to which the Contractor believes it is entitled with respect to this claim:

8. Instructions for Completing the Statement of Claim Form ("Instructions"). The Instructions are incorporated in this Form.

9. Truth of Claim. By submitting this claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this State of Claim is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

CONTRACTOR: _____

By: _____

Name and Title: _____

Date: _____

CONTRACTOR'S ACKNOWLEDGMENT

State of _____,

County of _____, ss:

_____ first being sworn, states that after conscientious and thorough review, the statements made in attached Statement of Claim Form are complete and true to the best of his or her knowledge and belief.

Sworn to before me a notary public by _____ on _____, 20__.

Notary Public

WHEN COMPLETED, FORWARD A COPY OF THIS NOTICE AND STATEMENT OF CLAIM FORM TO THE OWNER AND DESIGN PROFESSIONAL.

STATEMENT OF CLAIM FORM INSTRUCTIONS

1. Completing the Statement of Claim Form ("Claim Form") is a material term of the Contract. The Claim Form tells the Owner and Design Professional that the Contractor is making a Claim and that they need to act promptly to mitigate the effects of the occurrence giving rise to the Claim. The Claim Form also provides them with information so that they can mitigate such effects. The Contractor acknowledges that constructive knowledge of the conditions giving rise to the Claim through job meetings, correspondence, site observations, etc. is inadequate notice, because knowledge of these conditions does not tell the Owner and Design Professional that the Contractor will be making a Claim and most often is incomplete.
2. If the space provided in the Claim Form is insufficient, the Contractor, as necessary to provide complete and detailed information, must attach pages to the Claim Form with the required information.
3. Paragraph 4. The Contractor must state what it wants, *i.e.*, time and/or compensation, and the reason why it is entitled to time and/or compensation.
4. Paragraph 5. The Contractor must identify the exact provisions of the Contract Documents it is relying on in making its Claim. For example, if the Claim is for a change in the scope of the Contractor's Work, the Contractor must identify the specific provisions of the Specifications, and the Plan sheets and details that provide the basis for the scope change.
5. Paragraph 6. This paragraph applies to delay claims, including delays that the Contractor believes result in constructive acceleration. The Contractor must identify the cause of the delay, party or parties responsible, and what the party did or did not do that caused the delay, *i.e.*, specific work activities. The Contractor acknowledges that general statements are not sufficient, and do not provide the Owner with sufficient information to exercise the remedies available to the Owner or to mitigate the effects of the delay.

For example, if the Contractor claims a slow response time on submittals caused a delay, the Contractor must identify the specific submittals, all relevant dates, and then show on the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Also for example, if the Contractor claims it was delayed by another Contractor, the Contractor must identify the delaying Contractor, specifically what the delaying Contractor did or did not do that caused the delay, and then show the applicable schedule, by circling or highlighting, the activities immediately affected by the delays. Further by example, if the Contractor seeks an extension of time for unusually severe weather, the Contractor must submit comparative weather data along with a record of the actual weather at the job site and job site conditions.

6. Paragraph 6.4. Time is of the essence under the Contract Documents. If there is a delay, it is important to know what can be done to minimize the impact of the delay. It therefore is important that the Contractor provide specific recommendations on how to do so.
7. Paragraph 7. The Contractor must provide a specific and detailed breakdown of the additional compensation it seeks to recover. For future compensation, the Contractor shall provide its best estimate of such compensation.

8. Paragraph 8 and Acknowledgment. By submitting this Claim, the Contractor and its representative certify that after conscientious and thorough review and to the best of his or her knowledge and belief a) the Contractor has complied fully with the Instructions, b) the information in this Claim Form is accurate, c) the Contractor is entitled to recover the compensation in paragraph 7, and d) the Contractor has not knowingly presented a false or fraudulent claim. The Contractor by its authorized representative must acknowledge this Statement of Claim before a notary public.

END OF INSTRUCTIONS

DESIGN PROFESSIONAL'S
CERTIFICATE OF SUBSTANTIAL COMPLETION

Project:
<Project Name>
<Project Address>

Contract For:
<Contract Scope>

Owner:
City of Gahanna
200 South Hamilton Road Gahanna,
Ohio 43230

CONTRACTOR:
<Contractor Name>
<Contractor Address>
<Contractor Address>

The Design Professional hereby certifies that the Date for Substantial Completion of the Contractor's Work as set forth in the Owner-Contractor Agreement is:

<Date for Substantial Completion>

The Design Professional hereby certifies that the Date for Substantial Completion in the Contractor's Agreement with the Owner (the "Agreement"), as extended by Change Orders and Claims submitted by the Contractor that have been resolved, as defined below, is:

1. Date for Substantial Completion in the Agreement (above): <____>
2. Additional days added to Date for Substantial Completion by Change Order: <____>
3. Additional days added by Claims that have been Finally Resolved: <____>
4. Date for Substantial Completion in the Contract Adjusted by days under No. 2 and No. 3 <____>

The Design Professional certifies that the Contractor's Work to the best of the Design Professional's knowledge, information, and belief was Substantially Complete, as Substantial Completion is defined in the Contract Documents, on <____>.

The Design Professional hereby certifies that the difference between (a) the Date for Substantial Completion adjusted by the days under No. 2 and No. 3 above and (b) the date the Contractor's Work was Substantially Complete is <____> days.

NOTICES OF DELAY. The Design Professional hereby certifies that all "NOTICES OF DELAY" submitted by the Contractor and described in the General Conditions are attached to this Certificate. This certification is solely for the purpose of identifying all "NOTICES OF DELAY" submitted by the Contractor and is not intended to imply that any of these NOTICES OF DELAY were properly submitted in accordance with Contract Documents or are valid.

STATEMENT OF CLAIM FORMS. The Design Professional hereby certifies that all Statement of Claim Forms described in the General Conditions and submitted by the Contractor are attached to this

Certificate. This certification is solely for the purpose of identifying all Statement of Claim Forms submitted by the Contractor and is not intended to imply that any of these Statement of Claim Forms were properly submitted in accordance with Contract Documents or are valid.

PUNCHLIST ITEMS. A list of items to be completed by the Contractor is attached to this Certificate. The failure to include items on this list does not change the responsibility of the Contractor to complete its Work in accordance with the Contract Documents. The Contractor shall complete all items on the Punchlist in accordance with the Contract Documents.

Security, maintenance, utilities, damage to the Work and insurance are the responsibility of the Owner and the Contractor based on their operations pursuant to final completion of the Work.

Copies of this Certificate were provided to the Contractor and the Owner on <____>

Design Professional: <____>

Signature: _____

Date: <____>