CITY OF OBERLIN, OHIO

ORDINANCE No. 18-53 AC CMS

AN ORDINANCE ACCEPTING THE BID OF N & N CONSTRUCTION COMPANY, INC. OF WAKEMAN, OHIO, FOR LOR-OBERLIN BIKE PATH TRAILHEAD, ODOT PID 103853, IN THE CITY OF OBERLIN AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the bid of N & N Construction Company, Inc. of Wakeman, Ohio for the LOR-Oberlin Bike Path Trailhead, ODOT PID 103853, in the City of Oberlin, being the lowest and best bid received, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract accordingly, said bid being in the amount of \$385,540.76.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to accept a bid within the time limitations provided by law" and shall take effect immediately upon passage.

EFFECTIVE DATE: 07/02/2018

| 11155115. 1 Routing. July 2, 2010 (1) | ! |
|---------------------------------------|----------------------|
| 2 nd Reading: | |
| 3 rd Reading: | |
| ATTEST: | |
| Delinger ab. anders | Brun Burgen |
| BELINDA B. ANDERSON, MMC | BRYAN/BURGESS |
| CLERK OF COUNCIL | PRESIDENT OF COUNCIL |
| | |

PASSED: 1st Reading: July 2 2018 (F)

POSTED: 07/03/2018

PROJECT MANUAL

LOR – OBERLIN BIKE PATH TRAILHEAD ODOT PID 103853 FAN E160 (854)

291 SOUTH MAIN STREET OBERLIN, OHIO 44074

DBE GOAL: 6%

PREPARED FOR:

CITY OF OBERLIN

85 South Main Street Oberlin, Ohio 44074

PREPARED BY:

MOODY•NOLAN INC.

Cleveland, Ohio 44115 216-432-0696 216-432-0699

THORSON BAKER & ASSOCIATES, INC.

3030 West Streetsboro Road Richfield, Ohio 44286 330-659-6688 330-659-6675

CONSTRUCTION DOCUMENTS
January 15, 2018

00010 BIDDER IDENTIFICATION

Oberlin

85 South Main Street, Oberlin Ohio 44074

LOR-Oberlin Bike Path Trailhead ODOT PID 103853 FAN E160 (854) DBE Goal: 6%

PLEASE COMPLETE THE FOLLOWING FOR THE BID OPENING:

| Company: <u> </u> | N Constructi | on Co | Inc |
|-------------------|---|--|-----------------|
| ContactPerson:_\ | Mike Westor | | |
| Address: 14510] | Denman Rd | COLUMN TO THE REAL PROPERTY OF THE PERSON OF | |
| City: Wakeman | State: <u>_ </u> | _ Zip Code | e: <u>44889</u> |
| 6 | | | |
| County: <u></u> | | 440-965- | |

Bid Due: June 19, 2018

Prepared by:
Public Works Department
City of Oberlin
85 S Main Street
Oberlin, OH '44074

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LOR-Oberlin Bike Path Trailhead ODOT PID 103853

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00011 INVITATION TO BID

Sealed bids for LOR-Oberlin Bike Path Trailhead project will be received at the Public Works Office 85 South Main Street, Oberlin, Ohio 44074, until 10:00 a.m. on June 19, 2018, at which time and place said bids will be publicly opened and read aloud.

The bidding documents may be reviewed without charge during business hours at the following locations:

Moody Nolan, Inc. 1621 Euclid Ave. Suite 1150 Cleveland, OH 44115 Dodge Reports/SCAN Bank One Bldg., 3rd Flr 1255 Euclid Ave. Cleveland, OH 44115

City of Oberlin 85 South Main St. Oberlin, OH 44074 The Builders Exchange, Inc. 9555 Rockside Rd.

Suite 300

Valleyview, OH 44125

Contract Documents may be purchased from E-Arc, 3666 Carnegie Avenue, Cleveland, Ohio 44115. Telephone (888) 443-2583 / (216) 281-1234; Fax (216) 281-7607. Bidders may purchase complete sets of the Contract Documents by paying the cost of reproduction and handling. This cost is not refundable. All Contract Documents will be forwarded shipping charges collect.

All bids shall be signed and submitted on the forms bound in the contract documents. Bids shall be submitted in a sealed envelope marked "Bid for LOR-Oberlin Bike Path Trailhead" Each bid must be accompanied by a Bid Guaranty in accordance with Section 153.54 of the Ohio Revised Code which shall be either a certified check payable to the City of Oberlin, or a bid bond satisfactory to the City, in the sum of ten percent (10%) of the price bid. Bid security furnished in Bond form, shall be issued by a Surety Company or Corporation licensed in the State of Ohio to provide said surety.

There will be a non-mandatory prebid meeting in the Municipal Building, 85 South Main Street, Oberlin, Ohio 44074, at 2:00 p.m., June 5, 2018.

Each Proposal must contain the full name of the party or parties submitting the proposal and all persons interested therein. Each bidder must submit evidence of its experiences on projects of similar size and complexity. The owner intends and requires that this project be substantially completed no later than **November 15, 2018**. All contractors and subcontractors involved with the project will, to the extent practicable use Ohio Products, materials, services, and labor in the implementation of their project. This will be performed in accordance with the Equal Employment Opportunity Program of the City of Oberlin.

Bidders must comply with the **Davis-Bacon rates** - OH2 for Lorain County, Ohio as determined by the Department of Labor.

All questions about the meaning or intent of the Contract Documents are to be directed to Kelly Shaulis at Moody Nolan, 1621 Euclid Avenue, Cleveland, OH 44115 kshaulis@moodynolan.com. Interpretations or clarifications considered necessary by the City in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the City as having received the Bidding Documents. Questions received less than five days prior to the date for opening the Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

The City of Oberlin reserves the right to accept the lowest and/or best bid, to reject any or all bids, to waive any informalities in the bids received, and to enter into the contract which, in the sole judgment of the City, will best suit the City's needs.

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BID CHECKLIST

This checklist is intended as a reminder of certain important items.

Use of this checklist does not relieve the Bidder from the responsibility of meeting all requirements of the Standard Specifications concerning the preparation of an acceptable bid.

Bidders may use the boxes on the left to check off items when completed.

TO INCLUDE:

If a bidder fails to submit the following items in its bid, the bid may be considered non-responsive.

| V | Bid Form: |
|----|--|
| | Completely and properly filled out |
| | Signed |
| | Addenda acknowledged |
| V | Bid Guaranty and Bond (00015) |
| U | Delinquent Personal Property Tax Affidavit (00016) |
| O) | EEO Compliance Checklist (00022) |
| | Non-Collusion Affidavit (00023) |
| V | LPA DBE Utilization Form (on-line , to ODOT) |

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00012 INSTRUCTIONS TO BIDDERS

These Instructions to Bidders are intended to augment ODOT requirements. In the event of a conflict, the ODOT requirements shall prevail. Bidders shall notify the City immediately if a conflict is discovered.

12.1 Submission of Bids

- 12.1.1 Sealed bids for the LOR-Oberlin Bike Path Trailhead will be received at the Office of the Director of Public Works in the Municipal Building, 85 South Main Street, Oberlin, Ohio 44074, until 10:00 a.m., June 19, 2018 at which time they will be publicly opened and read aloud.
- 12.1.2 In order to receive consideration, bids shall be submitted in the following manner:
- 12.1.2.1 Bid proposals must be received prior to the time of bid opening. No proposals received after said time of bid opening will be considered, and the proposals will be returned unopened to any bidders failing to submit bids prior to the time of bid opening.
- 12.1.2.2 Each bidder shall file as part of the bid documents, the Equal Employment Opportunity compliance forms included in section 0022. Subcontractors (all tiers) shall also submit such contract employment reports to the City before approval by the City as subcontractor.
- 12.1.2.3 Bid proposals shall be submitted in a sealed envelope marked "BID FOR LOR-Oberlin Bike Path Trailhead". If forwarded by mail, the envelope shall be sent inside another envelope also marked "BID FOR LOR-Oberlin Bike Path Trailhead" and addressed to the Public Works Department.
- 12.1.2.4 All bids shall be signed and submitted on the blanks which are bound in the bidding documents. All blanks shall be completed in full.
- 12.1.2.5 All bid proposals shall be typewritten or filled in with pen and ink, and shall be signed with pen and ink. The proposal must be signed with the firm name and by an officer or employee having the authority to bind the company or firm by his/her signature.
- 12.1.3 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, and without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

12.2 Probable Construction Cost

12.2.1 The probable construction cost has been determined to be \$377,500.00.

12.3 Prebid Meeting

12.3.1 There will be a non-mandatory prebid meeting in the Municipal Building, 85 South Main Street, Oberlin, Ohio 44074, at 2:00 p.m., June 5, 2018.

12.4 "Notice To Proceed"

12.4.1 It is anticipated that a "Notice to Proceed" will be issued on or before <u>August 1, 2018.</u> The project must be completely installed in accord with the time period stated in the Bid Form.

12.5 Bidding Documents

- 12.5.1 Complete sets of Bidding Documents must be used in preparing Bids; the City assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 12.5.1.1 It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Bid Documents thoroughly, (b) consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work, (c) study and carefully correlate Bidder's observations with the Bid Documents, and (d) notify the Public Works Director of all conflicts, errors or discrepancies in the Bid Documents.
- 12.5.1.2 Information and data reflected in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to City and Engineer by and is accurate to the best of the knowledge and belief of the City. The City does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.
- 12.5.1.3 Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 12.5.1.4 On request in advance, City will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.
- 12.5.1.5 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by City unless otherwise provided in the Contract Documents.
- 12.5.1.6 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Section 2 and without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

12.6 Bid Guaranty\Performance Bond

- 12.6.1 Each bid shall be accompanied by a Bid Guaranty in the form of a certified check or a bid bond payable to the City of Oberlin and the Ohio Department of Transportation, in a sum not less than Ten Percent (10%) of the total amount bid, not including extra cost options. Bid bonds will returned to unsuccessful bidders within thirty days of bid opening. Bid bonds of successful bidders will be returned upon execution of a contract with the City and its performance secured.
- 12.6.2 The successful bidder shall furnish a performance and payment bond in accordance with Section 13.4 of the General Conditions.
- 12.6.3 IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Ohio.

12.7 Prices To Include:

- 12.7.1 The price bid for all items of work shall include all labor, materials, tools, equipment, etc., necessary to furnish and install in place, complete and in operating condition the items listed, shown and/or specified.
- 12.7.2 Where surface is not be to paved, Contractor shall finish grade and seed (ODOT 659) all areas disturbed by construction.
- 12.7.3 Excess materials removed from the site shall become the property of the Contractor and shall be disposed of by the Contractor.

12.8 Variation from Specifications

- 12.8.1.1 Any items which the bidder wishes the City to consider in evaluation of these bids shall be included in the bid package. Items submitted separately will not be considered by the City.
- 12.8.1.2 Items included with the bid and representations made therein shall be considered to be binding upon the bidder.

12.9 Taxes

12.9.1 The City of Oberlin is exempt from any sales or use taxes imposed by the State of Ohio and/or the United States Government. All bids shall reflect the savings that the bidder will realize by obtaining tax exempt status. Exemption certificates will be certified upon request by any prospective bidder.

12.10 Prevailing Wage Rates

- 12.10.1 Not used.
- 12.10.2 The City's Prevailing Wage Coordinator for this project is Sheri Runals, 85 S Main St, Oberlin, OH, (440) 775-7218.
- 12.10.3 If any principal contractor or subcontractor appears on a list of violators as filed with the Secretary of State pursuant to Ohio Revised Code Section 4115.133, they are not qualified to bid on this project if within two years of the date of your conviction.

12.11 Disclosure of Delinquent Personal Property Taxes

12.11.1 This contract is subject to the requirements of Section 5719.042 of the Ohio Revised Code. The successful bidder, after being notified of the award of the contract and prior to the time the contract is entered into, shall submit a statement to the City Auditor of the City of Oberlin, Ohio, affirmed under oath, disclosing whether or not the bidder, at the time the bid was submitted, was charged with any delinquent personal property taxes, and a copy of the statement shall be incorporated into the contract.

12.12 Equal Employment Opportunity

- 12.12.1 The bidder shall comply with the Oberlin Equal Employment Opportunity Program as provided for in Chapter 157 of the City of Oberlin Codified Ordinances and with the rules and regulations promulgated thereunder.
- 12.12.2 The Bidder shall provide to the City of Oberlin an assurance of compliance with the requirements of the program provisions by completing the Assurance of Compliance form and attaching it to the bid proposal. The Bidder shall also complete the five page Equal Employment Opportunity (EEO) Report and attach it to the Bid Proposal. The Bidder's Equal Employment Opportunity Statement of Policy shall also be attached to the Bid Proposal.

- 12.12.3 If awarded the purchase contract, the Bidder shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression.
- 12.12.4 The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression. As used herein the word "treated" means and includes without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off, and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.
- 12.12.5 The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression.
- 12.12.6 The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the Equal Employment Opportunity Clause of the City and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.12.7 The contractor shall furnish all information and reports required by the Code Administrator pursuant to Sections 157.01 to 157.10 inclusive, and shall permit access to his books, records and accounts by the contracting agency and by the Code Administrator for purposes of investigation to ascertain compliance with the program.
- 12.12.8 The contractor shall take such action with respect to any subcontractor as the City may direct as a means of enforcing the contractor becomes involved in or is threatened with litigation as the result of such direction by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the City's Equal Employment Opportunity Program and in the case of contracts receiving Federal assistance, the contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.
- 12.12.9 The contractor shall file and shall cause his subcontractors, if any, to file compliance reports with the City in the form and to the extent prescribed by the Code Administrator. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs, and statistics of the contractor and his subcontractors.
- 12.12.10 The contractor shall include the provisions of subsections (a) through (h) hereof, of this Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- 12.12.11 Refusal by the bidder to comply with any portion of this program as herein stated and described will subject the offending party to any or all of the following penalties:
- 12.12.11.1 Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract.
- 12.12.11.2 Refusal of all future bids for any public contract with the City of Oberlin or any of its departments or divisions until such time as the contractor or subcontractor demonstrates that he has established and shall carry out the policies of the program as herein outlined.
- 12.12.11.3 Cancellation of the public contract and declaration of forfeiture of the Performance Bond.
- 12.12.11.4 In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure as may be provided for by contract, appropriate proceedings may be brought to enforce these provisions, including the enjoining, within applicable law, of contractors, subcontractors, or other organizations, individuals or groups who prevent directly, indirectly, or seek to prevent directly or indirectly, compliance with the policy, as herein outlined.
- 12.12.12. The Equal Employment Opportunity Program is administered by Human Resources Administrator, Rosalind Watson.

 Questions regarding the day to day operations of the program should be directed to Diane Ramos, Administrative Assistant at (440) 775-7217.

12.13 Acceptance of Bids

- 12.13.1 The City of Oberlin, Ohio reserves the right to reject any and all bids; to waive minor irregularities in the bid and to award the contract or contracts which the City deems will best serve the City.
- 12.13.2 The City reserves the right to reject the Bid of any Bidder if City believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by City.
- 12.13.3 Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- 12.13.4 In evaluating Bids, City will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid form or prior to the Notice of

Award. The City shall check the Ohio Auditor of State's website to determine if there are unresolved findings against the Bidder(s). For Federal Aid projects, the City shall use the federal System for Award Management (SAM) database to ensure that the lowest and best bidder and its sub-contractors are not suspended or debarred from participating on Federal-aid projects. The City shall document its findings by printing the search results, signing, dating and placing same in the project file.

12.13.4.1 Not Used.

- 12.13.5 City may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. City also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 12.13.6 City may conduct such investigations as City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City's satisfaction within the prescribed time.
- 12.13.7 If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by City indicates to City that the award will be in the best interests of the Project.

12.14 Qualifications of Bidders.

- 12.14.1 To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days of City's request written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below (or in the Supplementary Instructions). Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract.
- 12.14.2 In determining the award of Contract, consideration will be given to:
- 12.14.2.1 The lowest and best bid.
- 12.14.2.2 The Bidder's record of experience in the construction of improvements of this type.
- 12.14.3 No bid will be accepted from, nor Contract awarded to, anyone who is in arrears to the City upon Debt or Contract, or who is a defaulter on surety or otherwise upon any obligation to said City, whose work heretofore has proven unsatisfactory or dilatory. No bid will be accepted from, nor Contract awarded to, any Contractor who has been suspended or debarred from State or Federal projects.

12.15 Withdrawal of Bid

12.15.1 Any bid may be withdrawn prior to the scheduled time of the bid opening, but only by submitting a request to withdraw the bid in writing and signed by the individual submitting the bid. No bidder may withdraw a bid for a period of sixty (60) days from the date of bid opening.

12.16 Conflict of Interest by the City

12.16.1 No elected official, staff member, or employee of the City shall become directly or indirectly interested personally in this contract or in any part thereof.

12.17 Requirements of the Successful Bidder

- 12.17.1 Pre-award Conference: The successful bidder(s), if called upon to do so by the City Manager, shall attend a pre-award conference to explain any variations from the Specifications or conditions herein, and to explain or provide additional documentation for the Equal Employment Opportunity, Minority Business Enterprise, and Prevailing Wage requirements of this project.
- 12.17.2 Demonstration: The successful bidder may be called upon to demonstrate to the City its ability to perform under the contract.
- 12.17.3 Notice of Award and Agreement: The successful bidder(s) shall be required to acknowledge the Notice of Award and to execute the Agreement on forms included herein, within ten (10) calendar days from the date of the Notice of Award.
- 12.18 Delivery, Liquidated Damages See Section 13.13 under General Conditions

12.19 Interpretations and Addenda

- 12.19.1 All questions about the meaning or intent of the Contract Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 12.19.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by City or Engineer.

12.20 Subcontracts

12.20.1 Bidders who proposed subcontracts must provide the following information to the City for each subcontractor.

- 12.20.1.1 Completed Equal Employment Opportunity Reports, Delinquent Personal Property Tax Affidavit, and Qualifications Statements.
- 12.20.1.2 A list of references who may be contacted regarding ability to perform projects of a similar nature.
- 12.20.1.3 The approximate dollar value of each sub-contract and its percentage of the total contract value. For Federal Aid projects, the prime contractor is required to retain at least 30% of the original bid contract amount.
- 12.20.2 The City reserves the right to review the information submitted and must approve in writing all subcontractors.

12.21 Signing of Agreement

12.21.1 When City gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within the time stipulated in the "Notice of Award" thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to City with the required Bonds. Within twenty days thereafter City shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

12.22 Disadvantaged Business (DBE) Requirement

- 12.22.1 DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs in accordance with 49 CFR, Part 26, and qualified to bid with ODOT under chapter 5525 of the Ohio Revised Code.
- 12.22.2 Prior to bid opening, all Prime Contractors are required to submit their LPA DBE Utilization Form which details their DBE Utilization Plan.

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00013 GENERAL CONDITIONS

These General Conditions are intended to augment ODOT requirements. In the event of a conflict, the ODOT requirements shall prevail. Bidders/Contractors shall notify the City immediately if a conflict is discovered.

13.1 Guarantee and Warranty

- 13.1.1 The Contractor shall guarantee and warrant his work for <u>one year from the date of the completion</u> of the installation, unless otherwise extended by bid item. All faulty installations shall be repaired within the warranty period by the contractor at no expense to the City.
- 13.2 Inspection and Technical Services During Construction by City
- 13.2.1 All work done under the contract shall be subject to the inspection and observation by the city or its designated agent(s) to be known hereinafter as its Technical Services Provider(s) and shall be subject to approval of the City. The Contractor agrees to furnish all information that is required by the City.
- 13.2.2 Such work may be on-site or it may be off-site as at a materials provider facility.
- 13.2.3 The Contractor shall notify the Technical Service Provider at least twenty-four (24) hours in advance of his on-site construction activity.
- 13.2.3.1 The construction schedule provided by the Contractor for the Pre-Construction Meeting shall be the basis for establishing the activities that will be inspected/observed by the Technical Services Provider.
- 13.2.4 The city shall be reimbursed by the Contractor for the cost of Technical Services including inspection costs that it incurs due to the Contractor working in excess of the regular forty (40) hour work week and for less than four (4) hours on a "regular" time workday. The hereinafter "Overtime Payment for Technical Services including Inspection" establishes the basis for such costs.
- 13.2.5 To terminate any scheduled day of Technical Services, the Contractor shall notify the Technical Service Provider at least one and one-half (1.5) hours before the scheduled time to start the affected workday at the site of its activity.

13.3 Payments

- 13.3.1 The contractor shall prepare and present to the City a Payment Request. Payment Requests may be submitted at anytime but not more often than once per month.
- 13.3.1.1 Each pay request shall be accompanied by either a check for reimbursement of overtime technical services costs as incurred by the city and as previously invoiced to the Contractor or a credit subtracted from the "Amount Due This Application" line of the payment summary.
- Said Payment Request shall be in such format and shall include supporting information as may be required by the City, 13.3.2 including but not limited to required wage, sub-contractor utilization, EEO and data reports. To ensure compliance with 12.20.1.3 for Federal Aid Projects, the Contractor shall submit a data report with each Payment Request which documents the comparative value of the work performed by the Prime Contractor and any/all sub-contractors. Payment Requests may include request for payment of labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing by the City), less the total amount of previous payments received from the City. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the City has title to such materials or equipment and that they are fully insured against loss or damage. Payment for stored material not yet incorporated into the work will be paid to the Contractor at the rate of ninety-two per cent of the invoice costs, not to exceed the bid price in a unit price contract. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The Engineer shall approve in writing the amount which, in the opinion of the Engineer, is properly owing to the Contractor.
- 13.3.3 The amount of each such payment shall be the amount approved for payment by the Engineer less retainage of 8% for the first 50% of work completed and less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Engineer's approval of the Contractor's Payment Requests shall not preclude the City from the exercise of any of its rights. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the City has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the City, also furnish to the City properly executed waivers of lien, in a form acceptable to the City, from all subcontractors, materialmen, suppliers or others having lien rights, shall acknowledge receipt of all sums due pursuant to all prior Payment

Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the City.

- 13.3.4 The unit price, as bid, shall be full compensation for all work performed according to these specifications.
- 13.3.5 If within thirty (30) days from the date payment to the Contractor is due, the City, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing ten (10) days' written notice of its intent to cease work to the City.
- 13.3.6 Any payment not made within thirty (30) days after the date due shall bear interest at the rate of percent (6%) per annum;
- 13.3.7 The City shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:
- 13.3.7.1 The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- 13.3.7.2 The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- 13.3.7.3 The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
- 13.3.7.4 The Contractor's failure to use Contract funds, previously paid the Contractor by the City, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- 13.3.7.5 Claims made, or likely to be made, against the City or its property;
- 13.3.7.6 Loss caused by the Contractor;
- 13.3.7.7 The Contractor's failure or refusal to perform any of its obligations to the City.
- 13.3.8 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 13.3, the Contractor shall promptly comply with such demand.
- 13.3.9 In the event the City becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided herein, the City shall have the right, but not the duty, to issue future checks and payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future;
- 13.3.10 Neither payment to the Contractor, utilization of the Project for any purpose by the City, nor any other act or omission by the City shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract
- 13.3.11 The City shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:
- 13.3.11.1 The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
- 13.3.11.2 The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
- 13.3.11.3 The Contractor's rate of progress being such that, in the City's opinion, substantial or final completion, or both, may be inexcusably delayed;
- 13.3.11.4 The Contractor's failure to use Contract funds, previously paid the Contractor by the City, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
- 13.3.11.5 Claims made, or likely to be made, against the City or its property;
- 13.3.11.6 Loss caused by the Contractor;
- 13.3.11.7 The Contractor's failure or refusal to perform any of its obligations to the City.
- 13.3.11.8 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 13.3, the Contractor shall promptly comply with such demand;

13.4 Bonds

- 13.4.1 Performance and Other Bonds
- 13.4.1.1 Contractor shall furnish performance and payment bonds payable to the City of Oberlin and the Ohio Department of Transportation in an amount equal to One Hundred Percent (100%) of the contract award amount as security for the faithful performance and payment of all Contractor's obligations under Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.. All bonds shall meet the requirements of O.R.C. Section 153.571, and as specified in these Contract Documents.
- 13.4.1.2 If the surety of any Bond furnished by Contractor is declared a bankrupt or becomes insolvent or its rights to do business

is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1 Contractor shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to City.

- 13.4.2 Bid Bonds
- 13.4.2.1 Bid security shall be in an amount not less than ten percent (10%) of the total amount bid.
- 13,4,2,2 See 13,4,1,1 above.
- 13.4.2.3 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, City may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom City believes to have a reasonable chance of receiving the award may be retained by City until the earlier of the seventh day after the Effective Date of the Agreement or the sixty-first day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.

13.5 Insurance

- 13.5.1 Contractor's Liability Insurance:
- 13.5.1.1 Contractor shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
- 13.5.1.2 Claims under worker's or workmen's compensation, disability benefits and other similar employee benefit acts;
- 13.5.1.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- 13.5.1.4 Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- 13.5.1.5 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason:
- 13.5.1.6 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;
- 13.5.1.7 Claims arising out of operation of Laws and Regulations for damages because of bodily injury or death of any person or for damage to property; and
- 13.5.1.8 Claims for damages because of bodily injury or death of any person or property damage arising out of use of any equipment, motor vehicle or vehicle regardless if owned or not.
- 13.5.1.9 The insurance required by this Section shall be underwritten by a company or companies lawfully authorized to do business in the State of Ohio with a Best's rating of no less than A-. Insurance required by this section will include the specific coverages and be written with limits of liability not less than One Million Dollars (\$1,000,000.00). The comprehensive general liability insurance shall include premises operations, products and completed operations, and broad form property damage insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to City by certified mail. All such insurance shall remain in effect during the term of the contract. In addition, Contractor shall maintain such products and completed operations insurance for at least two years after final payment and furnish City with evidence of continuation of such insurance at final payment and one year thereafter.
- 13.5.2 Contractual Liability Insurance:
- 13.5.2.1 The comprehensive general liability insurance required will include contractual liability insurance applicable to Contractor's obligations with limits of at least One Million Dollars (\$1,000,000).
- 13.5.3 City's Liability Insurance:
- 13.5.3.1 City shall be responsible for purchasing and maintaining City's own liability insurance and, at City's option, may purchase and maintain such insurance as will protect City against claims which may arise from operations under the Contract
- 13.5.3.2 City shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Contractor, Subcontractors or others in the Work. The risk of loss will be borne solely by Contractor, Subcontractor or others suffering any such loss.
- 13.5.4 Waiver of Rights:
- 13.5.4.1 City and Contractor waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to requirements herein and any other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, and all other parties named as insureds in such policies for losses and damages so caused. Each subcontract between Contractor and a Subcontractor will contain similar

- waiver provisions by the Subcontractor in favor of City, Contractor, and all other parties named as insureds. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by City as trustee or otherwise payable under any policy so issued.
- 13.5.4.2 City and Contractor intend that any policies provided in response to requirements herein shall provide primary coverage for all losses and damages caused by the perils covered thereby and that of the City, its' elected and appointed officials, employees and volunteers will not contribute to it. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by any Subcontractor, Contractor will obtain the same.
- 13.5.5 Receipt and Application of Proceeds:
- 13.5.5.1 Any insured loss under the policies of insurance required herein will be adjusted with City and made payable to City as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. City shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- 13.5.5.2 City as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to City's exercise of this power. If such objection be made, City as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, City as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.
- 13.5.6 Acceptance of Insurance:
- 13.5.6.1 If City has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by Contractor on the basis of its not complying with the Contract Documents, City shall notify Contractor in writing thereof within ten days of the date of delivery of such certificates to City. If Contractor has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by City on the basis of their not complying with the Contract Documents, Contractor shall notify City in writing thereof within ten days of the date of delivery of such certificates to Contractor. City and Contractor shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by City or Contractor to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

13.6 Coordination of Work

13.6.1 The Contractor shall comply with Section 153.64 of the Ohio Revised Code (H.B. 538). The Contractor shall notify the Underground Utilities Protection Service (UUPS) (1-800-362-2764) for all member utilities and any non-member utilities directly, at least two (2) working days prior to commencing construction. The Contractor shall be responsible for any damage to properly identified and located utilities and shall repair or pay for such repairs at no additional cost to the project. The owner of the utility shall determine the extent and amount of repairs required to correct such damages.

13.7 Existing Trees and Shrubbery

13.7.1 Contractor may remove only those trees, shrubs and other objects so authorized by the City. Contractor shall protect trees and shrubs endangered during construction and shall utilize method of excavation to minimize damage to roots of existing trees, shrubs or other existing plants. Contractor shall paint cut or scarred surfaces of trees or shrubs selected for retention with a suitable asphaltum base paint.

13.8 Health and Safety

- 13.8.1 The Contractor shall, at all times, so conduct his work as to assure the safety and convenience of the general public. The attention of the bidder is directed to the provisions of 5517.03, O.R.C.
- 13.8.2 The Contractor shall provide and maintain safeguards, safety devices and protective equipment and take any other needed actions as may be necessary to protect the public and property in connection with the work. The contractor shall conduct the work in accordance with applicable OSHA requirements.
- 13.8.3 Contractor shall be responsible, at contractor's expense for all traffic control, lights, signs, and barricades and must meet the specifications of O.D.O.T. Section 614
- 13.8.4 The presence of barricades, lights or other traffic control devices, provided and maintained by any party other than the Contractor, shall not relieve the Contractor of this responsibility.

13.9 Award of Contract.

City reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive, unbalanced or conditional Bids. Also, City reserves the right to reject the Bid of any Bidder if City believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by City. Discrepancies in the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in

favor of the correct sum.

- 13.9.2 In evaluating Bids, City will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid form or prior to the Notice of Award. The City shall check the Ohio Auditor of State's website to determine if there are unresolved findings against the Bidder(s). For Federal Aid projects, the City shall use the federal System for Award Management (SAM) database to ensure that the lowest and best bidder and its sub-contractors are not suspended or debarred from participating on Federal-aid projects. The City shall document its findings by printing the search results, signing, dating and placing same in the project file.
- 13.9.2.1 In evaluating Bids, City shall apply the Bid Discount specified in Chapter 158 of the City's Codified Ordinances and further described in Section 12.13 of the Instructions to Bidders.
- 13.9.3 City may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. City also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 13.9.4 City may conduct such investigations as City deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to City's satisfaction within the prescribed time.
- 13.9.5 If the Contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by City indicates to City that the award will be in the best interests of the Project.
- 13.9.6 If the Contract is to be awarded, City will give the Successful Bidder a Notice of Award within sixty days after the day of the Bid opening.

13.10 Proposal Quantities

13.10.1 The Contractor agrees that the proposal quantities are only for the purpose of comparing, on a uniform basis, the bids offered for the work under this Contract, and he further agrees that he is satisfied with and will at no time dispute the said proposal quantities as a means of comparing the bids as aforesaid; that he will make no claim for anticipated profits or loss of profits because of a difference between the quantities of the various classes of work actually furnished and the said proposal quantities; and he agrees that the City shall not be held responsible if, in the construction of the work, any of the said proposal quantities should be found to vary from the quantities shown, and that the Engineer may, without alteration or modification of this Contract, increase, decrease, or omit the amount of any class or portion of the work as may be deemed necessary.

13.11 Prevailing Wage Coordinator:

- 13.11.1 The City of Oberlin has designated Sheri Runals as the Prevailing Wage Coordinator for this project. Her office is at 85 South Main Street, Oberlin, OH 44074. The Prime Contractor shall deliver to the Prevailing Wage Coordinator a certified copy of its payroll which shall exhibit for each employee paid: name, current address, social security number, number of hours worked, rate of pay, job classification, fringe payments and any and all wage deductions The certification of each payroll shall be executed by the contractor, subcontractor or duly appointed agent thereof and shall state that the payroll is current and complete and that during the payroll period all persons employed on said project have been paid the full weekly wages earned, and that no rebates have been or will be made either directly or indirectly to, or on behalf of, said contractor and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions.
- 13.11.2 The Prime Contractor awarded the bid must pay the prevailing wage rates as issued either by the State of Ohio or the Federal Government (Davis-Bacon wages).
- 13.11.3 The Prime Contractor must submit a list of all their subcontractors including the name, address and telephone number of each subcontractor.
- 13.11.4 Prime Contractors are responsible for their subcontractor's compliance with requirements of the Prevailing Wage laws.
- 13.11.5 Overtime must be paid at time and one-half of the posted base hourly rate. Fringe benefits are paid at the posted straight time rate for all hours including overtime.
- 13.11.6 Prevailing Wage must be paid in full without any deduction for food, lodging, transportation, use of tools, etc.
- 13.11.7 Fringe benefits must be itemized for each and every employee.
- 13.11.8 Apprentices must be registered in an approved apprenticeship program. Contractors must provide the Prevailing Wage Coordinator a copy of the Apprenticeship Agreement for each apprentice on the project.
- 13.11.9 Prime Contractors and subcontractors must keep full and accurate payroll records available for inspections by any authorized representative of the City, State of Ohio or Federal Government.
- 13.11.10 Prevailing Wage Rate schedules must be posted on the job site, accessible to all employees. The Prevailing Wage Coordinator shall check to see that the prevailing wages are properly posted.
- 13.11.11 Prior to the start of work on the project, the Prime Contractor must submit employee job classification(s) to the Prevailing Wage Coordinator.

- 13.11.12 Not Used.
- 13.11.13 Before employees start work on the project, the Prime Contractor(s) must supply their employees and their subcontractors and subcontractors' employees with written notification of the job classification(s), prevailing wage rate(s), fringe benefit amounts, and the name of the Prevailing Wage Coordinator for the project. Copies of the completed signed notification for each paid employee on the project should be submitted to the Prevailing Wage Coordinator.
- 13.11.14 The reports shall be certified by the contractor, subcontractor, or duly appointed agent stating the payroll is correct and complete and that the wage rates shown are not less than those required by the appropriate State or Federal government.
- 13.11.15 The Prime Contractor shall send a Final Affidavit to the Prevailing Wage Coordinator upon the completion of the project.
- 13.11.16 The Prevailing Wage Coordinator shall spot check employees' pay checks in the field on the scheduled pay days for full compliance, with regard to the prevailing wage rates including the fringe benefits.
- 13.11.17 The Prevailing Wage Coordinator shall visit the project site to get names of employees performing work on the project site, to cross check with payroll reports submitted.
- 13.11.18 The Prevailing Wage Coordinator shall verify the subcontractors performing work on the project site with regard to whether they have been approved by the contracting authority.

13.12 Time of Completion

- 13.12.1 No on-site work shall begin and the City shall not be obligated to pay for any cost incurred by the Contractor prior to the issuance of a "Notice to Proceed", see "Notice To Proceed", Section 12.4.
- 13.12.2 The Contractor shall diligently continue its performance to and until final completion of the Project. Failure to meet Substantial Completion and Final Completion on the dates set forth herein will result in assessment of Liquidated Damages in accordance with Section 13.13 and may be grounds for termination.
- 13.12.3 All limitations of time set forth herein are material and are of the essence of this Contract.
- 13.12.4 Substantial Completion
- 13.12.4.1 The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Engineer, the Project is at a level of completion in strict compliance with this Contract such that the City or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 13.12.4.2 When Substantial Completion has been achieved, the Contractor shall notify the City and the Engineer in writing and shall furnish to the Engineer a listing of those matters yet to be finished. The Engineer will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Engineer will so notify the City and Contractor in writing and will therein set forth the date of Substantial Completion.
- 13.12.4.3 If the Engineer, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the City from any payment then or thereafter due to the Contractor.

 Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion.
- 13.12.5 Final Completion
- 13.12.6 When the Project is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will perform a final inspection of the Project. If the Engineer confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the City hereunder, the Engineer will furnish a final Approval for Payment to the City certifying to the City that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the City from the Contractor's final payment;
- 13.12.7 Upon Final Completion, the City shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less any amounts attributable to liquidated damages, together with the reasonable costs as determined by the City for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims.

13.13 Liquidated Damages

- 13.13.1 When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays.
- 13.13.2 The Contractor shall pay the City the sum of Two Hundred Fifty Dollars (\$250) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at the time of executing this Contract.
- 13.13.3 If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has

- withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.
- 13.13.4 If the Contractor fails to achieve final completion in accord with the terms of the "Notice to Proceed", the Contractor shall pay the City the sum of One Hundred Dollars (\$100) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract.

13.14 Substitute or "Or-equal" Items.

13.14.1 The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to the Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Section 1026.

13.15 Information and Material Supplied by the City

- 13.15.1 The City shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material as being in the possession of the City and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The City shall also furnish, if appropriate, the legal description of the Project site, and any required survey;
- 13.15.2 The City shall obtain all required authorizations, approvals, easements, and the like excluding the building permit and other permits or fees required of the Contractor by this Contract, or permits and fees customarily the responsibility of the Contractor; The City will provide the Contractor copies of the complete Contract.

13.16 Cease and Desist Order

13.16.1 In the event the Contractor fails or refuses to perform the work as required herein, the City may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the work may resume. In the event the City issues such instructions to cease and desist, and in the further event that the Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the City. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the City may have against the Contractor.

13.17 Duties, Obligations and Responsibilities of the Contractor

- 13.17.1 If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Engineer and City, the Contractor shall be responsible for such work and pay the cost of correcting same;
- 13.17.1.1 All work shall strictly conform to the requirements of this Contract;
- 13.17.2 The work shall be strictly supervised by the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor;
- 13.17.3 The Contractor hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Contractor's warranty;
- 13.17.4 The Contractor shall obtain and pay for all required permits, fees and licenses customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work;
- 13.17.5 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. The Contractor shall give written notice to the City of key supervisory personnel assigned by the Contractor to this Project.
- 13.17.6 The Contractor, within fifteen (15) days prior to commencing the work, shall provide to the City and the Engineer a Contractor's schedule for completing the work. Such schedule shall be in a form acceptable to the City. The Contractor's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the City and the Engineer. Strict compliance with the requirements of this Subparagraph shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of Contract;
- 13.17.7 The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Prior to final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.

- 13.17.8 Preconstruction Video Photography:
- 13.17.8.1 Preconstruction video shall be performed in accord with Section 1029 of these specifications.

13.18 Claims by the Contractor

- 13.18.1 Claims by the Contractor against the City are subject to the following terms and conditions:
- 13.18.1.1 All Contractor claims against the City shall be initiated by a written claim submitted to the City and the Engineer. Such claim shall be received by the City and the Engineer no later than seven (7) calendar days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;
- 13.18.1.2 The Contractor and the City shall continue their performance hereunder regardless of the existence of any claims submitted by the Contractor;
- 13.18.1.3 In the event the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within seven (7) calendar days after the first appearance to such party of the circumstances. As a condition precedent to the City having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the City and the Engineer written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Subparagraph shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition:
- 13.18.1.4 In the event the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall strictly comply with the requirements of this section and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation;
- 13.18.1.5 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall in no event include indirect cost or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction;
- 13.18.1.6 In the event the Contractor should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the City or someone acting in the City's behalf, or by City-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, final completion, shall be appropriately adjusted by the City upon the written claim of the Contractor to the City and the Engineer. A task is critical within the meaning of this Subparagraph if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the requirements of this section. If the Contractor fails to make such claim as required in this section, any claim for an extension of time shall be waived.

13.19 Change Orders

- 13.19.1 One or more changes to the work within the general scope of this Contract, may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions.
- 13.19.2 Change Order shall mean a written order to the Contractor authorized by City Council and executed by the City and the Engineer after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof;
- 13.19.3 Any change in the Contract Price resulting from a Change Order shall be determined as follows:
- 13.19.3.1 By mutual agreement between the City and the Contractor as evidenced by:
- 13.19.3.1.1 The change in the Contract Price being set forth in the Change Order,
- 13.19.3.1.2 Such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and
- 13.19.3.1.3 The Contractor's execution of the Change Order; or,
- 13.19.3.2 If no mutual agreement occurs between the City and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but shall not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the City or the Engineer requires.
- 13.19.3.2.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order;

- 13.19.4 The term "change order" is not to be used for work performed under the allowance items of the contract proposal.
- 13.19.5 Upon completion of the contract work, a contract close-out change order may be prepared and executed to establish the completed value of the contract based on final completed item quantities.
- 13.19.6 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the City, the Engineer, the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

13.20 Discovering and Correcting Defective or Incomplete Work

- 13.20.1 In the event that the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the City or the Engineer, such work shall be uncovered and displayed for the City's or Engineer's inspection upon request, and shall be reworked at no cost in time or money to the City.
- 13.20.2 If any of the work is covered, concealed or obscured in a manner not covered by the above it shall, if directed by the City or the Engineer be uncovered and displayed for the City's or Engineer's inspection. If the uncovered work conforms strictly with this Contract, the costs incurred by the Contractor to uncover and subsequently, replace such work shall be borne by the City. Otherwise, such costs shall be borne by the Contractor.
- 13.20.3 The Contractor shall, at no cost in time or money to the City, correct work rejected by the City or by the Engineer as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the City for all testing, inspections and other expenses incurred as a result thereof.
- 13.20.4 In addition to its warranty obligations set forth elsewhere herein, the Contractor shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months following final completion upon written direction from the City, unless extended by bid item or special warranties.
- 13.20.5 The City may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of the reasonable costs of removing and correcting the defective or nonconforming work, and the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming work.

13.21 Overtime Payment For Technical Services including Inspection

- 13.21.1 The City expects that the contractor has based his proposal on five (5) eight (8) hour workday periods (= 40 hours) each calendar week excluding weekends and holidays and that the Contractor's proposed progress schedule will be based on a five day forty hour work week. This shall be a regular 40 hour work week.
- 13.21.1.1 In the event the Contractor desires to work four (4) ten (10) hour workday periods (= 40 hours) each week excluding weekends and holidays; he shall prepare and submit for approval by the city a proposed progress schedule based on such a four day forty hour work week. This shall be an alternate 40 hour work week.
- 13.21.2 The City expects to assign technical personnel to inspect/observe the on-site construction work of the project. For budget and cost control purposes, the city expects such personnel to be on-site five (5) eight (8) hour workday periods (= 40 hours) each calendar week excluding weekends and holidays or, alternatively four (4) ten (10) hour workday periods (= 40 hours) each calendar week excluding weekends and holidays
- 13.21.3 In the event, the Contractor extends his work beyond forty (40) hours per calendar week and/or works on holidays and/or weekends, the OWNER shall charge to CONTRACTOR and may deduct from the periodical and final payment for the work all engineering and inspection expenses incurred by OWNER as a result of any overtime work. Charges for various personnel for any such overtime during the regular specified construction period beyond the regular 40 hour work week or the alternate 40 hour work week
- 13.21.4 The Construction Schedule that the contractor submits and maintains for the project in accordance with the hereinafter Section 1025 of the Contract Documents shall establish and indicate both the work day basis and the work week basis for his schedule.
- 13.21.5 Such schedule and its subsequent modifications, as approved by the City, will establish the basis for the City to charge the Contractor for increased costs as incurred due to on-site activity requiring more than the regular or the alternate forty hour basis work week.
- 13.21.6 For any time worked in excess of the approved work day and/or in excess of the approved work week, the hourly rates to be charged will be 1.5 times those shown in the hereinafter "Hourly Rate Schedule for Technical Services" when such schedule appears excluding time worked on Saturday, Sunday or any legal holiday.
- 13.21.6.1 For any time worked on Saturday, Sunday or any legal holiday, the hourly rates to be charged may be 2.0 times those shown in the hereinafter "Hourly Rate Schedule for Technical Services" when such schedule appears.
- 13.21.6.2 The minimum amount to be billed for Saturday, Sunday or any legal holiday on which the Contractor works including emergency call-out for which the City deems on-site construction observation is to occur shall be four (4) hours.
- 13.21.7 The following Hourly Rate Schedule for Technical Services shall be the basis for computing payment excess hours worked:

| Personnel Class | Charge/Hour |
|-----------------------------|-------------|
| Inspector (RPR) | \$55.05 |
| Contract Administrator (CA) | \$84.03 |
| Construction Engineer (CE) | \$99.33 |

13.21.7.1 In the event the actual invoice rate for technical personnel assigned to the project is less than the above listed rates, the actual invoice values shall apply.

13.22 Drug Free Workplace Program

- 13.22.1.1 Contractors are hereby advised that the City of Oberlin has adopted a policy establishing a drug free workplace for itself and as a requirement for Contractors doing business with the City, to ensure the safety and health of employees working on City contracts/projects.
- 13.22.1.2 The Contractor shall require a drug free workplace for all employees working under the contract. Specifically, all Contractor and Sub-contractor employees who are working under this contract shall be notified in writing by the Contractor that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. The Contractor agrees to prohibit the use of intoxicating substances by all employees and shall ensure that employees do not use or possess alcohol or illegal drugs while in the course of performing their duties.
- 13.22.1.3 The Contractor is required to submit a copy of their company's Drug-Free Workplace Policy.
- 13.22.1.4 Failure to require a drug free workplace in accordance with the Policy may result in termination of the contract and possible debarment from bidding on future City of Oberlin contracts/projects. This section was included to comply with the City of Oberlin's Drug-Free Workplace Program Policy (April 1, 2009) as well as the Drug-Free Workplace Act of

BID FORM

1.01 Deliver To:

City of Oberlin 85 South Main Street Oberlin, Ohio 44074

- 1.02 Having read the Specifications and examined the Drawings for the LOR-Oberlin Bike Path Trailhead project and having also received, read and taken into account Addenda through number _____ and likewise having inspected the site and the conditions affecting and governing said Project, 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.
- 1.03 Before completing the Bid Form, the Undersigned represents that it has carefully reviewed the Invitation to Bid, Instructions to Bidders, Owner-Contractor Agreement, General Conditions, Supplementary Conditions, and Specifications, and understands these documents. Failure to comply with provisions of the Contract Documents may be cause for disqualification of bid.
- 1.04 Bonds and Contract:

If the Undersigned is notified of bid acceptance, it agrees to furnish required bonds as indicated in Instructions to Bidders.

1.05 Completion of Work:

In submitting a bid, the undersigned agrees to execute and complete the Owner-Contractor Agreement included in the Contract Documents and to **Substantially Complete** its work within **120 consecutive calendar days** and **Final Completion** within **150 consecutive calendar days** after the receipt of Notice to Proceed.

- NOTE A THE WORDING OF THE BID FORM SHALL BE USED THROUGHOUT, WITHOUT CHANGE, ALTERATION, OR ADDITION. ANY CHANGE MAY CAUSE IT TO BE REJECTED.
- NOTE B

 THE BIDDER IS INTENDED TO BID ON THE EXACT BRANDS OF MATERIALS SPECIFIED. ANY EXCEPTIONS MUST BE SO NOTED ON THE BID FORM. BID MUST BE ACCOMPANIED BY A COMPLETE SUBMITTAL DOCUMENTING THE "OR EQUAL" STATUS OF ANY PROPOSED EXCEPTION.
- NOTE C
 THE QUANTITIES INCLUDED ON THE BID FORM ARE AN ESTIMATE. IT IS
 THE CONTRACTOR'S RESPONSIBILITY TO CONFIRM ALL QUANTITIES AND
 MAKE NOTE ON THE BID FORM IF THERE IS A DISCREPANCY. COSTS
 SHALL REFLECT THE QUANTITIES DETERMINED BY THE CONTRACTOR.

2.01 LOR- Oberlin Bike Path Trailhead ODOT PID 103853 FAN E160 (854)

| 1 | GENERAL REQUIREMENTS | Quantity 5 | <i>Unit</i> months | Unit Cost | Total |
|---|---|----------------------|--------------------|----------------|-----------------|
| 2 | SITE CONDITIONS | N/A | | | |
| 3 | CONCRETE | | | | |
| | 2' x 2'-8" Continuous Footings | . 40 | | 7-1- | 27111- |
| | 2' x 3'4" continuous footing | 46 | LnFt | 3/ | 2346 |
| | 1'4" x 8" thickened slab | 137 | LnFt | <u> 63~</u> | 8631- |
| | 1'-4" x 9" Turned down slab edge | 19 | FT | <u> </u> | 278- |
| | 2'-0" x 6'-0" deep drilled pier | 169 | LnFt | | <u> 2018 – </u> |
| | 5" frost slab | 12 28 | Each | 1100- | 13200 - |
| | 4" Concrete Slab on Granular Fill | | SqFt . | 15- | 420 |
| | Saw Cut Joints | 2,043 238 | SqFt . | 10- | 20430 |
| | Steel Reinforcing, Mesh and dowels | 230 3,400 | LnFt . | | 476 |
| | Visqueen Vapor Barrier | 5,400 550 | lbs | `` | 6800 - |
| | | 550 | SqFt _ | | 550 |
| 4 | MASONRY | | | | |
| | 8" grouted solid CMU Foundations | 148 | SqFt | 21- | 7140- |
| | single course 8" split face CMU Foundations | 107 | SqFt _ | 2/ 5 | 22/08 |
| | | 101 | oqi t | ₩/ <u>~</u> | 1291- |
| 5 | METALS | | | | |
| | 1-5/16" form deck for frost slabs | 28 | SqFt _ | 10- | 280 |
| 6 | WOOD | | | | |
| | 6" x 6" Wood Columns x 15'-0" | 12 | Each | 13.5 | |
| | 12" x 6" Wood Beam | 137 | _ | da | 2700- |
| | T2-T3 Wood Trusses | 49 | LnFt LnFt | | 3425- |
| | Heavy T-1 Timber Trusses | 4 | Each | <u> 380-</u> ~ | 18620 - |
| | 8" x 6" ridge timbers @ t-1 trusses | 14 | LnFt _ | · - | 32000 |
| | Wood Blocking | 315.62 | FT | 700 | 2800 - |
| | Truss Stiff Backs | 431.87 | FT | 2- | 129561 |
| | 2 x 6 truss braces | 624 | LnFt | 36 | 1560- |
| | 2 x 6 sub facia | 207.09 | FT | 350 | - (7)73 |
| | OCC66 Simpson Ties | 8 | EA | 200 | 2060 |
| | HU46 Simpson Ties | 4 | EA - | 3.00 | 2060 |
| | H2.5 Simpson Ties | 96 | EA | 70 - | 107 |
| | GBC Simpson Ties At braces | 144 | EA | 5- | 720 - |
| | A35 Simpson Ties | 160 | EA | J | 300 |
| | 2 x 6 Wood Framing | 1,942 | SqFt | _ | |
| | 5/8" exterior plywood sheathing | 1,873 | SqFt | 130 | 20000 |
| | Fiber cement siding over sheathing | 1,873 | SqFt | 7 3 35 | 2635 |
| | Fiber Cement Trim | 566 | SqFt | <u> </u> | 3396- |
| | FRP Panels over Gypsum Board | 1,457 | SqFt | 7- | 427/- |
| | Wood Soffit Brackets | 12 | LnFt | 5= | 60- |
| | Roof Sheathing & felts | 3,224 | SqFt | | 6448 |
| | Mop Sink Counter w/SS Splash Panels & access door | 1 | Each | 4000- | 4000- |
| | Plastic Laminate Counter Tops & Aprons | 50 | SqFt | 110- | 5500- |
| | Solid Surface Lavatory Counter Tops | 35 | SqFt | 120- | 4200- |
| | Mop sink storage shelving | 35 | SqFt | 70- | 1450- |
| | | | | | |

| 7 | THERMAL & MOISTURE PROTECTION Wall Insulation Ceiling Insulation Roof Shingles Prefinished Aluminum Gutter Rain Chain & Area Drains | 510 131 3,224 208 8 | SqFt SqFt SqFt LnFt Each | 1.23 3- 4- - - - - - - - - - - - - - - - - | 393 - 12896 - 3120 - 4800 - |
|----|--|--|--|--|---|
| 8 | OPENINGS Single FRP Doors, HM Frames, Hardware Paired FRP Doors, HM Frame, Hardware | 2. 1 | Each pair | 2000- 3000- | 5000- |
| 9 | FINISHES Gyp Board Walls Gyp Board Ceiling Fiber Cement Board Ceiling & Soffit Paint Doors, Frames Vinyl Base Sealed Concrete | 1,457 389 2220.4 2 146 2,015 | Each _ LnFt _ | 3.50 | 508950 1556 11 10245 600 3650 10 075 |
| 10 | SPECIALTIES Toilet Accessories Toilet Partitions Urinal Screens | 1 3 1 | LpSm _ Each _ Each _ | 3000- 1500- 100- | 7500 |
| 11 | EQUIPMENT | N/A | | | |
| 12 | FURNISHINGS | N/A | • | | |
| 13 | SPECIAL CONSTRUCTION | N/A | | | |
| 14 | CONVEYING EQUIPMENT | N/A | . | | |
| 21 | FIRE PROTECTION | N/A | \ | | |
| 22 | PLUMBING Water Closet Lavatory Urinal Drinking Fountains Bottle filler Mop Sink Hose Bibb Floor Drains Trap Primer Cleanouts Electric Water Heater Back Flow Preventer | 3 4 1 2 1 1 1 3 3 3 | Each Each Each Each Each Each Each Each | 1500 1500 1500 1500 1500 2500 2500 2500 | 5400 7200 1300 5000 2500 2000 300 450 500 1200 2000 |
| 2: | Exhaust Fan 1 Exhaust Fan 2 Electric Unit Heater Transfer Duct w/motorized damper Ductwork | : | 1 Each 1 Each 2 Each 1 Each 1 LpSm | 2500 | 2000 2000 3600 2500 5000 Page 14-25 DIVISION 00 |

| | · | | | - | |
|----|---|-------|------------|-----------------|-----------|
| 20 | 6 ELECTRICAL | | | | |
| | Power Pole | | | | |
| | Trenching for Under Ground 3" Conduit for Service | 1 | Each | 600 - | 600 ~ |
| | Meter Panels | 111 | LnFt | 10- | 1110- |
| | Distribution Panels | 1 | Each | 1400- | 1400- |
| | Relay Panel | 1 | Each | 6600 | 6600 |
| | Underground receptacle conduit at shelter | 1 | Each | 2400- | 2400 |
| | A Fixtures | 251 | LnFt | 8- | 2008 |
| | B Fixtures | 6 | Each | 550- | 3300 |
| | SC Fixtures | 2 | Each | 650- | 1300 |
| | SE Fixtures | 19 | Each | 750- | 14280 |
| | Occupancy Sensors | 5 | Each | 600 - | 3000 |
| | Connect Exhaust Fan 1 | 2 | Each | 600- | 1200- |
| | Connect Exhaust Fan 1 Connect Exhaust Fan 2 | 1 | Each | 700- | 700 |
| | | 1 | Each | 700 - | 700 - |
| | Connect Electric Water Heater | 1 | Each | 700 | 200 ~ |
| | Duplex receptacles | 10 | Each | 120- | 1750 |
| | Switches | 3 | Each | 750 | |
| | Connect Electric Unit Heater and Thermostat | 2 | Each | 500- | 1080 |
| 24 | FARTINA | | | 360- | 1000 |
| 31 | EARTHWORK | | | | |
| | silt fence | 331 | FT | 7 - | 112- |
| | Clear & Prep for Building Pad & Walks | 342 | SqYd | | 662 |
| | 4" Granular Fill | 34 | tons | 255 | 684- |
| | Fine Grade Building & Walk Pads | 342 | SqYd | 2 2_ | 850 |
| | Excavate 2' x 2'-8" Continuous Footings | 183 | LnFt - | | 684- |
| | Excavate 1'-4" x 9" turned down slab edge | 169 | LnFt _ | | 128/- |
| | Drill Piers | 12 | Each _ | | 845 |
| | Excavate for Concrete Frost Slab | 28 | SqFt - | 100- | 1200 |
| | Excavate Pad | 202 | CuYd - | 10- | 280 |
| | Engineered Fill | 202 | | 10- | 2020 |
| | | 202 | CuYd _ | 15- | 3030 ~ |
| 32 | SITE IMPROVEMENTS | | | | |
| | Site Accessories | | | | |
| | Bike Racks | 40 | - . | 2 | |
| | Benches | 12 | Each | 270- | 300C ~ |
| | Concrete Walks | 2 | Each | 2000 ~ | 4000 |
| | | 1,033 | SqFt _ | 7- | 9297 - |
| 33 | UTILITIES | | | | |
| | 2" Water Line & Valve Box | _ | | | |
| | 6 " Sanitary | 5 | LnFt | 40 | 200 - |
| | • | 92 | LnFt | 30- | 2760- |
| | Subtotal | | | | |
| | Contractor Overhead & Profit @ 5% | | | - | 36/18/ 00 |
| • | | | | | 18359 00 |
| | BASE ESTIMATE OF PROBABLE COST | | | | 26 |
| | | | | • | 385.5401 |
| | | | | | |
| | ALTERNATE ROOFING | | | | |
| | Provide Faux Slate in lieu of Lifetime Asphalt | 3,224 | C~F* | 10- | 48 360- |
| | · oprior | 5,224 | SqFt | 15 | 10.000 |
| | | | | | • |

| 3.01 | Bid: | |
|-------|-----------|--|
| • | BASE E | BID PRICE |
| | Total M | aterials and Labor for the sum of \$ Three HUNDRED Eight five Thousand |
| | Five) | aterials and Labor for the sum of \$ Three HUNDRED Eight five Thousand NUMBRED BORTY + 760 Dollars (\$ 385.540) 76 (Words) (Figures) |
| | ALTER | NATE BIDS |
| | Alterna | te No. 1 – NOT USED |
| | | te No. 2 – Synthetic Slate Shingles: If this Alternate No. 2 is accepted, <u>ADD TO</u> the BASE BID the following: |
| | Total N | laterials and Labor for the sum of \$ SonTY Eight Thousand Three |
| | 1401 | Dollars (\$ 48.30) (Words) Dollars (\$ 18.30) |
| 4.01 | Instruc | tions for signing: |
| | Α. | The person signing for a sole proprietorship must be the sole proprietor or his authorized representative. The name of the sole proprietor must be shown below. |
| | B. | The person signing for a partnership must be a partner or his authorized representative. |
| | C. | The person signing for a corporation must be the president, vice president or other authorized representative; or he must show his authority, by affidavit, to bind the corporation. |
| | D. | The person signing for some other legal entity must show his authority, by affidavit, to bind the legal entity. |
| | | COMPANY NAME: (Type/Print) No N Construction Co Inc |
| · ADD | RESS (T | ype/Print): 14510 Denman Rd |
| | | Wakeman OH 44889 |
| NAM | IE: (Type | /Print): Mike Nestor |
| SIGN | NATURE: | The Wat |
| TITL | E (Type/I | Print): President |
| | | BER. 440-653-0622 Cell |
| | | MUN - 91.5-7016 Office |

FAX NUMBER: 440-965-7016

DATE SIGNED: 6-19-18

SEAL (IF BY CORPORATION):

00016 DELINQUENT PERSONAL PROPERTY TAX AFFIDAVIT

| State of Ohio |
|---|
| County of Lorain / Erie |
| Bid Identification |
| Contractor Betsy Hopkins Nestor being first duly sworn, deposes and sayshe is |
| V.P/Treasurer |
| of Construction Co Inc. of Local Construction Co Inc. of Local Construction Co Inc. the party making the forging bid; hereby affirms under oath, pursuant to Section 5719.042 of the Ohio Revised Code that, at the time the Bid was submitted the company (was) twas not) charged with delinquent personal property taxes of the General Tax List of Personal |
| Property for Lorain Erie County, Ohio. |
| If such charge for delinquent personal property taxes exists on the General Tax List of Personal Property for County, Ohio, the amount of such due and unpaid delinquent taxes, including due and unpaid penalties shall be set forth below. |
| A copy of this statement shall be transmitted by the Fiscal Officer to the County Treasurer within thirty (30) days of the date it is submitted. |
| Delinquent Personal Property Tax \$ |
| Penalties \$ |
| Interest \$ |
| Signed: |
| Bets Hopkers Nestor Name and Title V. P/ Trea. |
| 1942 day of Whene 2018 |
| Subscribed and sworn to before me thisday ofday of |
| Seal of Notary Notary Public Authority |
| Nov. 15 2032 |

00017 NOTICE OF AWARD

| To: N&N Construction Co., Inc. |
|---|
| 14510 Denman Rd. |
| Wakeman, OH 44889 |
| The City of Oberlin, Ohio, having considered the Bid submitted by you for LOR-Oberlin Bike Path Trailhead |
| ODOT PID 103853 in response to the Advertisement for Bids dated May 26, 2018 |
| and in the amount of \$385,540.76 |
| does hereby notify you that your Bid has been accepted by City Ordinance No. 18-53 AC CMS. |
| The following variations from the Specifications and Bid Instructions have been allowed: |
| N/A |
| |
| |
| |
| All bids remain available for acceptance for the period of time stated in the Instructions to Bidders. |
| You are required to execute the Agreement within ten (10) calendar days from the date of this Notice to you. If you fail to execute said Agreement within ten (10) calendar of the date of this Notice, the City of Oberlin will be entitled to consider all your rights arising out of the City's acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The City of Oberlin will also be entitled to such other rights as may be granted by law. |
| City of Oberlin, Ohio By: Mrt Milli |
| Title: City Manager Date: 8-7-7018 |
| Acceptance of Notice of Award |
| Receipt of the above Notice of Award is hereby acknowledged by ${\cal N}$, this ${\cal S}$ day of |
| By: 20/8. |
| Title: Pnes |

BLANK PAGE INTENTIONAL



Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year (In words, indicate day, month and year.)

BETWEEN the Owners

(Name, legal status, address and other information)

City of Oberlin 85 South Main St. Oberlin, OH 44074

and the Contractor:

(Name, legal status, address and other information)

N&N Construction Co., Inc. 14510 Denman Rd. Wakeman, OH 44889

for the following Project: (Name, location and detailed description)

> LOR-Oberlin Bikepath Trailhead ODOT PID 103853

The Architect:

(Name, legal status, address and other information)

Moody Nolan Architects 1621 Euclid Ave., Suite 1150 Cleveland, OH 44115

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- CONTRACT SUM
- 5 **PAYMENTS**
- 6 **DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 **ENUMERATION OF CONTRACT DOCUMENTS**
- 10 **INSURANCE AND BONDS**

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. (Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

per Notice to Proceed

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

- § 3.2 The Contract Time shall be measured from the date of commencement.
- § 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 107) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents. (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents. \$385,540.76

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

n/a

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item Per Bid **Units and Limitations**

Price Per Unit (\$0.00)

§ 4.4 Allowances included in the Contract Sum, if any: None (Identify allowance and state exclusions, if any, from the allowance price.)

ltem

Price

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported

lnit.

1

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by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201TM-2007, General Conditions of the Contract for Construction;
- Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- Subtract the aggregate of previous payments made by the Owner; and .3
- Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment 4 as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract · Documents, insert here provisions for such reduction or limitation.)

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

1

ARTICLE 6 DISPUTE RESOLUTION § 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

| [] | Arbitration pursuant to Section 15.4 of AIA Document A201–2007 |
|-------|--|
| [x] | Litigation in a court of competent jurisdiction |
| [] | Other (Specify) |

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

User Notes:

§ 8.3 The Owner's representative: (Name, address and other information)

Quality Control Inspection, Inc. Attn: Margaret Robinson, P.E. 40 Tarbell Ave. Bedford, OH 44146 (440) 359-1900

§ 8.4 The Contractor's representative: (Name, address and other information)

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document Title Date **Pages** As published with the bid

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section Title Date **Pages**

As published with the bid

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number Title Date

As published with the bid

§ 9.1.6 The Addenda, if any:

Number #3 Date May 29, 2018 Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

AIA Document E201TM-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

Init. 1

AIA Document A101 - 2007. Copyright @ 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, 1987, 1991, 1997 and 2007 by The American Institute of Architects. All rights reserved, WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:19:39 on 02/09/2011 under Order No.1262090122_1 which expires on 03/30/2011, and is not for resale. User Notes:

Other documents, if any, listed below: (List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

Ohio Farmers Insurance Co.

\$385,540.76

This Agreement entered into as of the day and year first written above.

Rob Hillard, City Manager

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

00019 CITY OF OBERLIN, OHIO - FISCAL OFFICER'S CERTIFICATE

| Project Identification: | |
|--|---|
| LOR-Oberlin Bikepath Trailhead | |
| | |
| I, I.Salvatore Talarico, Finance Director hereb | y certify that I am the qualified and acting |
| fiscal officer of the City of Oberlin, Ohio, and t | hat the amount of money, to wit |
| \$385,540.76 | |
| required to meet the cost of the attached Agre | eement between the City of Oberlin and |
| N&N Construction Co., Inc. | |
| | (Contractor) has been |
| lawfully appropriated for the purpose of said A | Agreement and the money so appropriated |
| is on deposit (in process of collection) to the o | credit of the appropriate fund free from any |
| previous encumbrances. | |
| | Date I. Salvatore Talarico, Finance Director |

00020 CITY OF OBERLIN, OHIO - LEGAL OFFICER'S CERTIFICATE

| Project Identification: | |
|---|--------------------------------------|
| LOR-Oberlin Bikepath Trailhead | |
| The foregoing Agreement between the City of Oberlin, Ohio, (City) and _ | N&N Construction Co., Inc. |
| - Ole I in | (Contractor) is approved as to form. |
| Date | Jon D. Clark, Law Director |

CITY OF OBERLIN, OHIO

ORDINANCE No. 18-53 AC CMS

AN ORDINANCE ACCEPTING THE BID OF N & N CONSTRUCTION COMPANY, INC. OF WAKEMAN, OHIO, FOR LOR-OBERLIN BIKE PATH TRAILHEAD, ODOT PID 103853, IN THE CITY OF OBERLIN AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the bid of N & N Construction Company, Inc. of Wakeman, Ohio for the LOR-Oberlin Bike Path Trailhead, ODOT PID 103853, in the City of Oberlin, being the lowest and best bid received, is hereby accepted, and the City Manager is hereby authorized and directed to enter into a contract accordingly, said bid being in the amount of \$385,540.76.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to accept a bid within the time limitations provided by law" and shall take effect immediately upon passage.

| rassed. I Reading. July 2, 2016 (E) | |
|--|-----------------------------------|
| 2 nd Reading: | |
| 3 rd Reading: | |
| ATTEST: (MMM) (A), MALLOY BELINDA B. ANDERSON, MMC CLERK OF COUNCIL | BRYANBURGESS PRESIDENT OF COUNCIL |
| POSTED: 07/03/2018 | EFFECTIVE DATE: 07/02/2018 |

DACCED: 1st Dooding: July 2 2019 (E)

00021 NOTICE TO PROCEED

| To: N&N Construction Co., In | ıc. | Date: | | | |
|---|-------------------|---|-----------|--------------------|----|
| Project: LOR-Oberlin Bikepath | Trailhead | | | | |
| You are hereby to commence WORK in accordan | nce with the Agre | ement dated | , 20 | _, on or before | |
| , 20 and you a thereafter. | re to complete th | ne WORK within $_107$ | 7 consecu | tive calendar days | |
| The date of completion of all WORK is, therefore, | | | , 20 | | |
| | Owner: By: | City of Oberlin, Ohi Rob Hillard, City N | Telle | | |
| ACCEPTANCE OF NOTICE | | | | | |
| Receipt of the above NOTICE TO PROCEED is h | nereby acknowle | dged by \mathcal{N} |) | | - |
| | | | | this day o |)f |
| AUS | 20 | | | | |
| | Ву: | PRES PRES | | | |
| | Title: | Pres | | | |

00022 EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE PACKAGE

- 22.1 THE EQUAL OPPORTUNITY COMPLIANCE PACKAGE IS INSERTED HEREINAFTER.
- 22.1.1 Contractor shall use the included forms or other forms as may be provided by the City during the course of the contract.

City of · **Oberlin** 85 South Main Street, Oberlin Ohio 44074

CONTRACTOR'S EEO COMPLIANCE PACKAGE CHECKLIST

NAME OF PROJECT:

BID OPENING DATE:

| PAGETITLE | INSTRUCTIONS |
|--|--|
| E.E.O. Report | This page must be filled out completely with the appropriate signatures. |
| Policies and Practices | Please mark each item appropriately. If you mark C piease state the reason on separate sheet with the item number. |
| Employment Data | This sheet must be filled out completely with the correct numbers. If you have filled this sheet out before and there is a difference in the numbers, then please indicate the reason. |
| Additional Information | Please make sure that you at least have the appropriate signatures. |
| Equal Opportunity Employment Assurance of Compliance | Please make sure that this sheet is signed also. |
| EEO Policy | If you do not have one, please develop one along the lines of what is stated in these forms. Also please post this in an area that all employees can see and submit a copy to the City of Oberlin. |
| Affirmative Action Plan | Please do the same as above. |

CITY OF OBERLIN 85 SOUTH MAIN STREET OBERLIN, OHIO 44074

EQUAL EMPLOYMENT OPPORTUNITY REPORT

INSTRUCTIONS

EQUAL EMPLOYMENT OPPORTUNITY REPORT REQUIREMENT: This form is designed to provide an evaluation of your policies and practices relating to the extension of equal employment opportunity to all persons without regard to race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression.

Chapter 157 of the City of Oberlin Codified Ordinances and the rules and regulations pursuant thereto provide for contract compliance inspection of personnel policies and practices related to any contract with the City including contacts for work, labor, services, supplies, equipment, materials, leases, concession agreements and permits.

BIDDER PERFORMANCE: Completion of this Bidder Employment Practices Report is one of the steps which demonstrates compliance with the City's Equal Employment Opportunity Program. Responsibility for demonstrating compliance with this program by the contractor and his subcontractors rests with the contractor or subcontractor. Such demonstration is a prerequisite for continued eligibility for bidding on City of Oberlin contracts.

FILING THIS REPORT: Return this completed report, along with all other bid documents, to the Office of the Code Administrator, 85 South Main Street, Oberlin, Ohio, 44074.

BIDDER INFORMATION

| Reporting Status: | |
|--|--------------|
| Prime Contractor Supplier Other (specify) | |
| N+N Construction Co Inc 14510 Denman Rol Wakeman | 440-965-7016 |
| Name, address and phone number of bidder covered by this report | 11 |
| Mike Nestol | |
| Name, address and phone number of principal official, bidder, etc. | |
| Same as above | |
| Name and address of main office of bidder | |
| City of Oberlin | |
| Contracting city agency (or agencies) | |
| 13th O Hal = h. te U.P/Treas. | |
| Signature and title of bilder's authorized Equal employment Opportunity Representative | |
| ι | |
| Date 6-19-18 | |
| | |
| EVALUATION (For office use only) | |
| Compliance Non-compliance Follow-Up Required | |
| POLICIES AND PRACTICES | |

The bidder will indicate his willingness or unwillingness to comply with requirements of the Equal Employment Opportunity Program of the City of Oberlin by encircling the applicable letter to the left of each item below. The letters are to be interpreted as follows:

- A This is now a practice of the company.
- B The company will adopt this policy.
- C The company cannot or will not adopt this policy. (If C is circled, state reason. Use separate sheet if additional space is needed.)

It is understood that the company's willingness to participate in the Equal Employment Opportunity Program will be evaluated by the Office of the City Manager. This evaluation will directly influence our decision on the qualifications of each bidder and is an integral part of your bid.

| ONE C B | | STATE REASON IF (C) IS CIRCLED |
|--|---|---|
| | | ITEMS |
| , | | The company will adopt a policy of non-discrimination on the basis of race, religion, color, sex, ancestry, national origin, rininaly status, familial status, disability, sexual orientation, or gender identity or expression with regard to recruitment, hiring, training, status, familial status, disability, sexual orientation, or gender identity or expression with regard to recruitment, hiring, training, training, promotion and discipline of employees or applicants for employment. |
| 2 | | The company will assign responsibility to officials to develop procedures which will assure that this policy is understood and carried out by managerial, administrative and supervisory personnel. |
| (A) (B) (B) | | Official's Name 1 Title V. T. / / / / / / / / Official's Name 1 |
| 3 | | The company will state its non-discriminatory policy in writing, post it conspicuously and communicate it to the following. |
| (d) m (d) | | a. all employees and recruitment sources b. all subcontractors c. all relevant employee organizations, including labor unions d. The City of Oberlin |
| \(\text{\begin{align*} \text{\begin{align*} | | The company will use recruitment sources such as employment agencies, unions and schools which have a policy of referring applicants on a nondiscriminatory basis. |
|) § m (| | The company will sponsor or finance educational or training programs for the benefit of employees or prospective employees without regard to race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or without regard to race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or |
| | | gender definity of expression. Company recruiters will seek a recruitment base in order that a representative cross-section of applications might be obtained; and will refrain from a hiring policy which limits job applicants to persons recommended by company personnel. |
| U 4 6 C | | The company will take steps to integrate any positions, departments or plant locations which have no minority persons or are almost completely staffed with one particular ethnic or racial group. |
| | 8 | In order to achieve an integrated workforce, the company will employ minority workers, including African Americans, in all departments, positions and trades and implement an affirmative action program satisfactory to the Office of the City Manager, City of Oberlin. This affirmative action plan must be submitted to the City of Oberlin. |
| B | 6 | The company will review its qualifications for each job to determine whether such standards eliminate unemployed persons who could, if hired, perform the duties of the job adequately. The following qualifications should be reviewed: |
| n () | | a, education |

Page 22-51 of 66 DIVISION 00

> LOR-Oberlin Bike Path Trailhead ODOT PID 103853

| Page 22-52 of 66 | 00 NOISIAID |
|------------------|-------------|
| | |

| b. experience | Residence in a particular geographical area will not be a qualifying or disqualifying criterion for employment with the company. | The company will provide that all bargaining agreements with employee organization including labor unions, have non-discrimination clauses requiring equal employment opportunity. |
|---------------|--|--|
| | 10 | 11 |
| | €° a o | 1 3 2 3 2 3 3 3 3 3 3 3 3 3 3 |

EMPLOYMENT DATA

Please note that this data may be obtained by visual survey or post-employment records. Neither visual surveys nor post-employment records are prohibited by any Federal, State or local law. All specified data is required to be filled in by law.

| | | | | AMERICA | CAN MINORITY MALES | NALES | | AMERICA | AMERICAN MINORITY FEMALES | EMALES | |
|-------------------------------------|--------------|---------------|-----------------|---------|--------------------|--------------------|-------|---------|---------------------------|--------------------|-------|
| SUM JOB CATEGORIES TOTAL | SUM TOTAL | TOTAL MALE | TOTAL FEMALE | BLACK | SPANISH | NATIVE AMERICAN | ASIAN | BLACK | SPANISH | NATIVE AMERICAN | ASIAN |
| Officials, Managers, Supervisors | B | 1 | 1 | | | | | | | | |
| Professionals | | | | | | | | | | | |
| Technicians | | | | | | | | | | | |
| Sales Workers | | | | | | | | | | | |
| Office & Clerical | / | | / | | | | | | | | |
| Skilled Craftsmen | 1 | 4 | , | | | | | | | | |
| Semi-skilled Operatives | • | | | | | | | | | | |
| Unskilled Laborers | | | | | | | | | | | |
| Service Workers | | | | | | | | | | | |
| Apprentices | | | | | | | | | | | |
| GRAND TOTALS | | | | | | | | | | | |

NOTE: Explain major changes in employment, changes in composition of reporting units, and other pertinent data which differs from that given in last report.

Page 22-53 of 66 DIVISION 00

LOR-Oberlin Bike Path Trailhead ODÖT PID 103853

ADDITIONAL INFORMATION (Optional)

Describe any other actions taken which show that all employees are recruited, hired, trained, and promoted without regard to their race, religion, color, sex, ancestry, national origin, military status, familial status, disability, sexual orientation, or gender identity or expression. Use separate sheet if additional space is needed.

The undersigned certifies that he/she is legally authorized be the bidder to make the statements and representations contained in this report; that he/she has read all of the foregoing statements and representations and that they are true and correct to the best of his/her knowledge and belief. The undersigned understands that if any of the statements and representations are made knowing them to be false or there is a failure to implement any of the stated intentions or objectives, set forth herein, without prior notice to the Office of the City manager the bidder will be subject to the loss of all future awards.

or Corporation Co. Inc.

Date of Signing

V. P. Treesure

Title

DESCRIPTION OF OCCUPATIONAL CATEGORIES

Officials. Managers and Supervisors - Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for executing of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers, and superintendents, salaried foremen who are members of management, purchasing agents and buyers, and kindred workers.

Professionals - Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dieticians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, personnel and labor relations workers, physical scientists, physicians, social scientists, teachers and kindred workers.

Technicians - Occupations requiring a combination of basic scientific knowledge and manual skills which can be obtained through about two years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: draftsmen, engineering aides, junior engineers, mathematical aides, nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Sales workers - Occupations engaging wholly or primarily in direct selling. Includes: advertising agents and salesmen, insurance agents and brokers, real estate agents and brokers, stock and bond salesmen, demonstrators, salesmen and sales clerks and kindred workers.

Office and Clerical - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly non-manual though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers cashiers, collectors (bills and accounts), messengers and office boys, office machine operators, shipping and receiving clerks, stenographers, typists, secretaries, telegraph and telephone operators and kindred workers.

Craftsmen (skilled) - Manual works of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades hourly paid men and lead men who are not members of management, mechanics and repairmen, skilled machine occupations, compositors and typesetters electricians engravers job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and seamstresses, and kindred workers.

Operatives (semi-skilled) - Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Laborers (unskilled) - Workers in manual occupation which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers car washers and greasers gardeners (except farm) grounds keepers, longshoremen and stevedores lumbermen, craftsmen and wood choppers, laborers performing lifting, digging, mixing, loading and pulling operations and kindred workers.

Service Workers - Workers in both protective and nonprotective service occupations. Includes: attendants (hospital and other institutions, professional and personal service), barbers, charwomen and cleaners, cooks (except household), counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeepers, stewards janitors, police and detectives, porters, waiters, and waitresses and kindred workers.

Apprentices - Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship, regardless of whether the program is registered with a Federal or State agency.

| EQUAL OPPORTUNITY EMPLOYMENT ASSURANCE OF COMPLIANCE |
|--|
| Title IV of the Civil Rights Act of 1964 (P.S. 88-352) to the end that in accordance with Title VI of that Act and the regulations, no person in the United States shall, on the ground of race, color, creed or national origin be excluded from employment by the Bidder and hereby gives assurance that it will immediately take any measure to effectuate this agreement. |
| THIS ASSURANCE is given in consideration of and for the purpose of complying with the Equal Opportunity Employment section in the Instructions to Bidders and to generally qualify the bidder for award of the contract. The bidder recognizes and agrees that such contracts or purchase agreement will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the bidder its successors, transferees, and assignees. Furthermore, the person whose signature appears below is authorized to sign this assurance on behalf of the bidder. Date Signature Title Title Title Firm |

00023 NON-COLLUSION AFFIDAVIT

| STATE OF Ohio |
|--|
| COUNTY OF Lorain |
| Detsy Hopkins - Nestor , being first duly sworn, deposes and says that: |
| (name of person submitting bid proposal) 1. Use by the Construction, the |
| (company name) |
| Bidder that has submitted the attached Bld; |
| 2. He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid; |
| 3. Such Bid is genuine and is not a collusive or sham Bid; |
| 4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached Bid or of any other bidder, or to secure through any overhead, profit or cost element of the bid price or the bid price of any other bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Oberlin, Lorain County, Ohio or any person interested in the proposed contract; and |
| 5. The price or prices quoted in the attached Bid are fair and proper and are not tainted by a collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant. |
| (Signed) Big Holl hut |
| (Title) / V. 18. / I reasared |
| Notary Subscribed and sworn to before me |
| this 10th day of line, 2018 |
| Halle S. Ele |
| (signature) My commission expires My commission expires |

UTILITY NOTE

LOR - OBERLIN BIKEPATH TRAILHEAD

PID Number 103853

FAN E160 (854)

January 15th, 2018

Bidders are advised that the following utilities have facilities that will not be cleared from the construction area at the time of award of the contract. These utility facilities shall remain in place and be functional within the construction limits of the project. Please refer to the plan sheets for location.

Oberlin Utilities – Sanitary, Storm, Water, and Electric – facilities will remain in place and in service

The City has existing underground facilities as follows:

Sanitary on north side of proposed pavilion

Water service lines on south and west side of proposed pavilion

Water service line parallel to property line within electric work limits

Water main line running along Edison Street within electric work limits

Sanitary line running along Edison Street within electric work limits

The City has proposed facilities as follows:

Overhead electric line west of proposed pavilion parallel to property line

<u>COLUMBIA GAS OF OHIO – Gas Main – Facilities will remain in place and in</u> service

The Company has existing buried facilities as follows:

Gas line running along north side of Edison Street is within electric work limits

00026 FEDERAL WAGES

Davis-Bacon Act Wage Determination OH2 General Decision Number: OH180108 07/27/2018 OH108

Superseded General Decision Number: OH20170108

State: Ohio

Construction Type: Building

County: Lorain County in Ohio.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

| Modification | Number | Publication | Date |
|--------------|--------|-------------|------|
| 0 | | 01/05/2018 | |
| 1 | | 01/12/2018 | |
| 2 | | 01/26/2018 | |
| 3 | | 05/04/2018 | |
| 4 | | 05/18/2018 | |
| 5 | | 05/25/2018 | |
| 6 | | 06/01/2018 | |
| 7 | | 06/15/2018 | |
| 8 | | 07/27/2018 | |
| | | | |

ASBE0003-002 08/01/2017

| | Rates | Fringes |
|--|-----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR | .\$ 37.58 | 21.58 |
| BROH0005-006 05/01/2017 | | |
| | Rates | Fringes |
| BRICKLAYER | .\$ 34.54 | 15.55 |
| BROH0005-007 05/01/2017 | | |

Rates

Fringes

| BRICK POINTER/CAULKER/CLEANER | \$ 34.54 | 15.55 |
|--|----------------------|-----------|
| BROH0005-009 05/01/2017 | | |
| | Rates | Fringes |
| TILE FINISHER | \$ 26.80 | 12.51 |
| BROH0036-001 05/01/2017 | | |
| | Rates | Fringes |
| TILE SETTER | \$ 31.06 | 15.40 |
| CARP0373-001 05/01/2017 | | |
| | Rates | Fringes |
| SOFT FLOOR LAYER | \$ 26.58 | 17.73 |
| CARP0435-002 05/01/2017 | | |
| | Rates | Fringes |
| CARPENTER (Excluding Drywall Hanging, Metal Stud Installation, Soft Floor Laying, and Form Work) | \$ 32.40 | 16.97 |
| CARP0735-003 05/01/2017 | | |
| | Rates | Fringes |
| CARPENTER (Drywall Hanging and Metal Stud Installation Only) | \$ 25.27 | 15.53 |
| CARP1090-001 05/01/2017 | | |
| | Rates | Fringes |
| PILEDRIVERMAN | \$ 30.53 | 18.84 |
| ELEC0038-004 04/30/2018 | | |
| | Rates | Fringes |
| ELECTRICIAN (HVAC/Temperature Controls Installation Only) | \$ 38.13 | 20.66+a+b |
| FOOTNOTES; a. 6 Paid Holidays: New Year's Labor Day; Thanksgiving Day; 8 b. 1 week's paid vacation for vacation for 2 or more years' ELEC0038-005 04/24/2017 | Christma 1 year's | s Day |

| | Rates | Fringes | |
|--|---|-------------------------|--|
| ELECTRICIAN (Low Voltage Wiring Only) | .\$ 25.30 | 10.88+a+b | |
| FOOTNOTES; a. 6 Paid Holidays: New Year's Labor Day; Thanksgiving Day; & b. 1 week's paid vacation for vacation for 2 or more years' | Day; Memorial Christmas Day 1 year's servi service | / Lce; 2 weeks' paid | |
| ELEC0038-007 04/30/2018 | | | |
| | Rates | Fringes | |
| ELECTRICIAN (Alarm Installation Only) | .\$ 38.13 | 20.66+a+b | |
| FOOTNOTES; a. 6 Paid Holidays: New Year's Labor Day; Thanksgiving Day; & b. 1 week's paid vacation for vacation for 2 or more years' | Christmas Day 1 year's serv | A . | |
| * ELEC0129-005 02/26/2018 | | | |
| | Rates | Fringes | |
| ELECTRICIAN (Excludes Low Voltage Wiring and Installation of Alarms/HVAC Temperature Controls) | .\$ 33.35 | 17.27 | |
| ELEV0017-002 01/01/2018 | | | |
| | Rates | Fringes | |
| ELEVATOR MECHANIC | .\$ 49.38 | 32.645+a+b | |
| PAID HOLIDAYS: | | | |
| a. New Year's Day, Memorial Day, Independence Day, Labor Day, Vetern's Day, Thanksgiving Day, the Friday after Thanksgiving, and Christmas Day. | | | |
| b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for less than 5 years' service. | | | |
| ENGI0018-042 05/01/2017 | | | |
| | Rates | Fringes | |
| POWER EQUIPMENT OPERATOR Crane Oiler | | 14.76 14.76 | |

ENGI0066-045 06/01/2017

| | Rates | Fringes |
|--|---------------------------------------|-------------------------|
| POWER EQUIPMENT OPERATOR Forklift | \$ 32.42 | 19.66 19.66 19.66 |
| IRON0017-011 05/01/2017 | | |
| | Rates | Fringes |
| IRONWORKER Ornamental, Reinforcing, & Structural | .\$ 33.33 | 21.50 |
| LABO0758-002 05/01/2018 | · · · · · · · · · · · · · · · · · · · | |
| | Rates | Fringes |
| LABORER Common or General Mason Tender - Brick & Cement/Concrete | | 10.90 |
| LABO0894-003 06/01/2017 | | |
| | Rates | Fringes |
| LABORER Pipelayer | .\$ 30.42 | 10.70 |
| PAIN0181-001 05/01/2018 | | |
| | Rates | Fringes |
| GLAZIER | .\$ 32.07 | 16.65 |
| PAIN0707-002 05/01/2014 | | |
| | Rates | Fringes |
| PAINTER (Brush and Roller) | .\$ 27.57 | 12.69 |
| PAIN0707-003 05/01/2018 | | |
| | Rates | Fringes |
| PAINTER (Drywall Finishing/Taping Only) | | 16.07 |
| PLAS0031-018 05/01/2014 | | |
| | Rates | Fringes |
| PLASTERER (Including FLOOR LAYER: Floor Coating/Epoxy) | .\$ 29.51 | 15.67 |
| PLAS0404-001 05/01/2018 | | |

| | Rates | Fringes |
|--|----------|---------|
| CEMENT MASON/CONCRETE FINISHER | | 19.32 |
| * PLUM0042-004 07/01/2018 | | |
| | Rates | Fringes |
| PLUMBER (Excludes HVAC Pipe Installation) | | 22.07 |
| PLUM0120-009 05/01/2017 | | |
| | Rates | Fringes |
| PIPEFITTER (Includes HVAC Pipe Installation) | \$ 37.27 | 23.80 |
| Sprinklers) | | 23.80 |
| ROOF0044-003 04/29/2018 | | |
| | Rates | Fringes |
| ROOFER | \$ 32.80 | 18.73 |
| SHEE0033-043 05/01/2018 | | |
| | Rates | Fringes |
| SHEET METAL WORKER (HVAC Duct and Unit Installation Only) | \$ 37.53 | 24.89 |
| SHEE0033-045 07/01/2017 | | |
| | Rates | Fringes |
| SHEET METAL WORKER (Excluding HVAC Duct and Unit Installation) | | 23.19 |
| * UAVG-OH-0026 01/01/2018 | | |
| | Rates | Fringes |
| CARPENTER (Form Work Only) | \$ 31.43 | 12.63 |
| SUOH2012-089 08/29/2014 | | |
| | Rates | Fringes |
| LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor | \$ 24.53 | 14.55 |
| OPERATOR: Backhoe/Excavator/Trackhoe | \$ 30.95 | 10.20 |
| OPERATOR: Bobcat/Skid | | |

| Steer/Skid | Loader\$ 32.88 | 12.26 |
|-------------|---------------------------------------|-------|
| OPERATOR: | Bulldozer\$ 21.15 | 8.72 |
| OPERATOR: | Loader\$ 29.66 | 12.61 |
| | Paver (Asphalt, and Concrete)\$ 31.48 | 12.80 |
| OPERATOR: | Roller\$ 31.48 | 12.80 |
| PAINTER: S | Spray\$ 22.78 | 12.40 |
| TRUCK DRIVE | CR: Dump (All Types)\$ 24.32 | 11.73 |

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses $(29CFR\ 5.5\ (a)\ (1)\ (ii))$.

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed

in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

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

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

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

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

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

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

END OF GENERAL DECISION

00015 BID GUARANTY AND CONTRACT BOND

(Section 153.571 Ohio Revised Code)

| KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned |
|---|
| N & N CONSTRUCTION CO., INC., 14510 Denman Road, Wakeman, Ohio 44889 |
| (Here insert full name or legal title of Contractor and Address) |
| as Principal and OHTO FARMERS INSURANCE COMPANY (Here insert full name or legal title of Surety) |
| as Surety, are hereby held and firmly bound unto The Clty of Oberlin and the Ohio Department of Transportation hereinafter called the Obligee, in the penal sum of the dollar emount of the bid submitted by the Principal to the |
| Obligee on June 19,2018Bid Date) to undertake the project known as |
| LOR-OBERLIN BIKE PATH TRAILHEAD |
| |
| The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Obligee, incorporating any additive or deductive alternate proposals 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 above line is left blank, the penal sum will be the full amount of the Principal's bid, including alternates.) Alternatively, if completed, the amount stated must not be less than the full amount of the bld, including alternates, in dollars and cents. (A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally blind ourselves, our heirs, executors, administrators, successors, and assigns. |
| THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above named Principal has submitted a bid on the above referenced project; |
| 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 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 project for bidding, the Principal will pay the Obligee the difference not to exceed ten percent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and vold, otherwise to remain in full force and effect. If the Obligee accepts the bid of the Principal and the Principal within ten days after the awarding of the contract, enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein; and |
| IF THE SAID Principal shall well and faithfully perform each and every condition of such contract; and indemnify the Obligee against all damage suffered by failure to perform such contract according to the provisions thereof and in accordance with the plans, details, specifications, and bills of material therefor; and shall pay all lawful claims of subcontractors, materialmen, and laborers; for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated. |
| THE SAID Surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of said contract or in or to the plans and specifications therefor shall in any wise affect the obligations of said Surety on this bond, and it 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 <u>8TH</u> day of <u>June</u> , 20 18 |
|--|
| PRINÇIPAL: |
| N & N CONSTRUCTION CO. INC. |
| BY: Bly John Ruter |
| TITLE: V.P. / Ireasure |
| SURETY AGENT: |
| STEINEMANN-HAFNER INSURANCE SERVICES |
| BY: Carola K, Midkiff Attorney-in-Fact Carole K. Midkiff |
| Address: |
| 165 E Water Street |
| Sandusky, Ohio 44870 |

POWER NO. 3407771 01

General Power of Attorney

Westfield Insurance Co. Westfield National Insurance Co. Ohio Farmers Insurance Co.

CERTIFIED COPY

Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint

CABLE A. STEINEMANN, KAREN J. BACNI, CAROLE K. MIDKIFF, JOINTLY OR SEVERALLY

of SANDUSKY and State of OH its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, undertakings, and recognizances; provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS

THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY.

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more sultable persons as Attorney(s)-in-Fact to represent and act for

and on behalf of the Company subject to the following provisions:

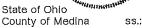
The Attorney-in-Fact. may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary.

"Be it Further Resolved; that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting

held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 18th day of SEPTEMBER A.D., 2013.

Corporate Seals Affixed







WESTFIELD INSURANCE COMPANY WESTFIELD NATIONAL INSURANCE COMPANY OHIO FARMERS INSURANCE COMPANY

Dennis P. Baus, National Surety Leader and

On this 18th day of SEPTEMBER A.D., 2013, before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial Seal Affixed

State of Ohlo County of Medina

SS.I



William J. Kahelin, Attorney at Law, Notary Public My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by sald Companies, which is still in full force and effect; and furthermore; the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have no A.D., 2018. have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 8th day of June







Frank A. Carrino, Secretary

Financial Statement

Ohio Farmers Insurance Co.

December 31, 2017

Westfield Center, Ohio 44251-5001

| OHIO FARMERS INSURANCE COMPANY 12/31/17 | The state of the s |
|--|--|
| (in thousands) | |
| (iii tioudatiud) | |
| Assets | |
| Cash, cash equivalents, and short term investments | 35,162 |
| Bonds | 465,546 |
| Stocks | 165,581 |
| Subsidiaries | 2,093,058 |
| Real estate | 66,639 |
| Premiums receivable | 122,793 |
| Other assets | 159,116 |
| ти и дарушин и ин принцип и у учену, и и и и уда неу и принс ученицизардарный институтывающения интрива преднага и и и и дален у ученицизардарный и и и и дален ученицизардарный и и и и и дален ученицизардарный и и и и и дален ученицизардарный и и и и и и и и и и и и и и и и и и и | |
| Total assets | 3,107,895 |
| Liabilities | |
| Reserve for unearned premiums | |
| Reserve for unpaid losses and loss expenses | 172,782 |
| Reserve for taxes and other liabilities | 334,323 |
| 1. 1000110 101 Lance and the management and accommendation of the second | 266,276 |
| Total liabilities | 770.004 |
| The state of the s | 773,381 |
| Surplus | |
| Surplus to policyholders | 2,334,514 |
| The control of the co | 2,334,314 |
| Total surplus | 2,334,514 |
| The second of th | |
| Total liabilities and surplus | 3,107,895 |
| and the second s | |

State of Ohio

ss:

County of Medina

Attest:

Frank A. Carrino

Group Legal Leader, Secretary

Sworn to before me this 14th day of February A.D. 2018.

My Commission Does Not Expire Sec. 147.03 Ohio Revised Code

Dennis P. Baus National Surety Leader Senior Executive

David A. Kotnik

Attorney at Law Notary Public – State of Ohio

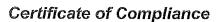




Office of Risk Assessment 50 West Town Street Third Floor - Suite 300 Columbus, Ohio 43215 (614)644-2658 Fax(614)644-3256 w.insurance.ohio.gov

Ohio Department of Insurance

John R. Kasich - Governor Jillian Froment - Director





Issued 06/19/2017 Effective 07/01/2017 Expires 06/30/2018

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

OHIO FARMERS INSURANCE COMPANY

of Ohio 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)

Accident & Health

Aircraft

Allied Lines

Boiler & Machinery

Burglary & Theft

Collectively Renewable A & H

Commercial Auto - Liability

Commercial Auto - No Fault

Commercial Auto - Physical Damage

edit Accident & Health

Earthquake

Fidelity

Financial Guaranty

Fire

Glass

Group Accident & Health

Guaranteed Renewable A & H

Inland Marine

Medical Malpractice

Multiple Peril - Commercial

Multiple Peril - Farmowners

Multiple Peril - Homeowners

Noncancellable A & H

Nonrenew-Stated Reasons (A&H)

Ocean Marine

Other Accident only

Other Liability

Private Passenger Auto - Liability

Private Passenger Auto - No Fault

Private Passenger Auto - Physical Damage

Surety

Workers Compensation

OHIO FARMERS INSURANCE COMPANY certified in its annual statement to this Department as of December 31,2016 that it has admitted assets in the amount of \$2,964,703,740, liabilities in the amount of \$752,835,972, and surplus of at least \$2,211,867,768.

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

Jillian Froment, Director





CERTIFICATE.OF LIABILITY INSURANCE

N&NCO-1

OP ID: CN

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate descent desce

| t | he terms and conditions of the policy certificate holder in lieu of such endorse | , cer emen | tain ¡ t(s). | policies may require an e | ndorsement. A sta | e endorsed. etement on ti | nis certificate does not | WAIVE confer | nights to the |
|---------------------------------------|--|--|-----------------|---|---|--|--|-----------------|---------------------------------------|
| | DDUCER | | | Phone: 419-626-6432 | CONTACT Carole | K. Midkiff | | | |
| Cable A. Steinemann Fax: 419-625-0400 | | | | | PHONE (A/C No EV), 419-6; | | FAX | 110_ | 625-0400 |
| 165 | East Water Street ndusky, OH 44870 | | | | D PHONE (A/C, No, Ext): 419-626-6432 FAX (A/C, No): 419-625-0400 E-MAIL ADDRESS: carole@stein-haf.com | | | | |
| Ste | inemann-Hafner Ins. Svs. | | | | | | RDING COVERAGE | | NAIC # |
| | | | | | INSURER A : Westfie | | | | 24112 |
| INS | N & N Construction Co, I | nc. | | | INSURER B: | | | | 27112 |
| | 14510 Denman Road Wakeman, OH 44889 | | | | INSURER C: | | | | |
| | Wakeman, On 44005 | | | | INSURER D: | | | | |
| | | | | | INSURER E : | | | | |
| | | | | | INSURER F: | | | | |
| | OVERAGES CER | RTIFI | CAT | E NUMBER: | | | REVISION NUMBER: | | |
| C | HIS IS TO CERTIFY THAT THE POLICIES NDICATED. NOTWITHSTANDING ANY RETRIFICATE MAY BE ISSUED OR MAY EXCLUSIONS AND CONDITIONS OF SUCH | PER POLI | TAIN, CIES. | THE INSURANCE AFFORD LIMITS SHOWN MAY HAVE | ED BY THE POLICIE BEEN REDUCED BY | OR OTHER S DESCRIBE PAID CLAIMS. | ED NAMED ABOVE FOR DOCUMENT WITH RESPECT TO HEREIN IS SUBJECT TO | | |
| INSF LTR | | INSR | SUBF | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIM | TS | |
| | GENERAL LIABILITY | | | | 1 | | EACH OCCURRENCE | s | 2,000,00 |
| Α | X COMMERCIAL GENERAL LIABILITY | | | CWP1816524 | 09/30/2017 | 09/30/2018 | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$ | 500,00 |
| | CLAIMS-MADE X OCCUR | | | | | | MED EXP (Any one person) | \$ | 5,00 |
| | | | | | | | PERSONAL & ADV INJURY | \$ | 2,000,00 |
| | | | | | | | GENERAL AGGREGATE | \$ | 4,000,00 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | PRODUCTS - COMP/OP AGG | \$ | 4,000,00 |
| | X POLICY PRO- JECT LOC | ļ | | | | | Emp Ben. | \$ | 1,000,00 |
| | <u></u> | X ANY AUTO ALL OWNED CONTRAINED CWP1816524 | | | | | COMBINED SINGLE LIMIT (Ea accident) | \$ | 1,00 |
| Α | X ANY AUTO ALL OWNED SCHEDULED | | | CWP1816524 | 09/30/2017 | 09/30/2018 | BODILY INJURY (Per person) | \$ | |
| | AUTOS AUTOS | | | | | | BODILY INJURY (Per accident) | \$ | |
| | X HIRED AUTOS X NON-OWNED AUTOS | | | | | PROPERTY DAMAGE (Per accident) | \$ | | |
| | | ļ | ļ | | | | | \$ | |
| | X UMBRELLA LIAB X OCCUR | | | | | | EACH OCCURRENCE | \$ | 1,000,00 |
| A | EXCESS LIAB CLAIMS-MADE DED X RETENTION \$ 0 | 1 1 | | CWP1816524 | 09/30/2017 | 09/30/2018 | AGGREGATE | \$ | 1,000,00 |
| | | | | | | | | \$ | · · · · · · · · · · · · · · · · · · · |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N | | | | | | WC STATU- TORY LIMITS X OTH- | | |
| | OFFICER/MEMBER EXCLUDED? | N/A | | | | 09/30/2018 | E.L. EACH ACCIDENT | \$ | 1,000,00 |
| A | (Mandatory in NH) | | | CWP1816524 | | | E.L. DISEASE - EA EMPLOYEE | \$ | 1,000,00 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - POLICY LIMIT | | 1,000,00 |
| A | Equipt Leased/Rent | | | CWP1816524 | 09/30/2017 | 09/30/2018 | EquiptRen | | 250,00 |
| Α | Installation Float | | | CWP1816524 | 09/30/2017 | 09/30/2018 | EndIM7105 | | 683,00 |
| oro, | CRIPTION OF OPERATIONS / LOCATIONS / VEHIC lect:: Lor-Oberlin Bike Path Trailhe RTIFICATE HOLDER | cles ad | (Attach | | CANCELLATION SHOULD ANY OF T | THE ABOVE DI | ESCRIBED POLICIES BE C | ANCEL | LED BEFORE |
| | CITY OF OBERLIN 85 South Main St. Oberlin, OH 44074 | | | | AUTHORIZED REPRESE Steinemann-Hafr | N DATE THE TH THE POLIC NTATIVE | REOF, NOTICE WILL Y PROVISIONS. | BE DE | LIVERED IN |

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Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we (Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and (Here insert full name and address or legal title of Surety)

This document has important legal consequences.
Consultation with an attorney is encouraged with respect to its completion or modification.

a corporation duly organized under the laws of the State of as Surety, hereinafter called the Surety, are held and firmly bound unto (Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called the Obligee, in the sum of (\$), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for (Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this day of ,

| | (Principal) | (Seal) |
|-----------|-------------|---------|
| (Witness) | (Title) | <u></u> |
| (Witness) | (Surety) | |
| | (Title) | (Seal) |

Performance Bond

| CONTRACTOR (Name, Legal Status and Address): | SURETY (Name, Legal Status and Principal Place of Business): | | | | |
|--|--|--|--|--|--|
| OWNER (Name, Legal Status and Address): | | | | | |
| CONSTRUCTION CONTRACT Date: Amount: \$ Description (Name and Location): | | | | | |
| BOND Date (Not earlier than Construction Contract Date): Amount: \$ Modifications to this Bond: None See Section 13 | | | | | |
| CONTRACTOR AS PRINCIPAL Company: (Corporate Seal) | SURETY Company: (Corporate Seal) | | | | |
| Signature: Name and Title: (Any additional signatures appear on the | Signature: Name and Title: e last page) | | | | |
| (FOR INFORMATIO於O於LŶ - Name, A AGENT or BROKER: | ddress and Telephone) OWNER'S REPRESENTATIVE (Architect, Engineer or other party): | | | | |

This document has important legal consequences.
Consultation with an attorney is encouraged with respect to its completion or modification.

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

- § 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- § 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Section 3.1.
- § 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
- § 3.1 The Owner has notified the Contractor and the Surety at its address described in Section 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
- § 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Section 3.1; and
- § 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
- § 4 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take-one of the following actions:
- § 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or
- § 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
- § 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
- § 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
 - .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.
- § 5 If the Surety does not proceed as provided in Section 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
- § 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Section 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

- § 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- § 5.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 4; and
- § 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- § 7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.
- § 8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- § 9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- § 10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
- § 11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 12 DEFINITIONS

- § 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- § 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- § 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.
- § 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 13 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

| (Space is provided beloe CONTRACTOR AS PRIN | | s of added parties, other that SURETY | led parties, other than those appearing on the cover page.) SURETY | | |
|---|------------------|---|---|--|--|
| Company: | (Corporate Seal) | Company: | (Corporate Seal) | | |
| | | | | | |
| Signature: Name and Title: Address: | | Signature: Name and Title: Address: | | | |



Payment Bond

| CONTRACTOR (Name, Legal Status and Address): | SURETY (Name, Legal Status and Principal Place of Business): | |
|---|--|---|
| OWNER (Name; Legal Status and Address): CONSTRUCTION CONTRACT | | This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. |
| Date: | | Any singular reference to |
| Amount: \$ Description (Name and Location): | | Contract, Surety, Owner or other party shall be considered plural where applicable. |
| BOND Date (Not earlier than Construction Construction: \$ Modifications to this Bond: | tract Date): None See Section 16 | |
| CONTRACTOR AS PRINCIPAL Company: (Corporate Seal) | SURETY Company: (Corporate Seal) | • |
| Signature: Name and Title: (Any additional signatures appear on the | Signature: Name and Title: e last page) | |
| (FOR INFORMATION ONLY - Name, A AGENT or BROKER; | ddress and Telephone) OWNER'S REPRESENTATIVE (Architect, Engineer or other party): | |

- § 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
- § 2 With respect to the Owner, this obligation shall be null and void if the Contractor:
- § 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- § 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- § 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
- § 4 The Surety shall have no obligation to Claimants under this Bond until:
- § 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
- § 4.2 Claimants who do not have a direct contract with the Contractor:
 - Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 - .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- § 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
- § 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:
- § 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- § 6.2 Pay or arrange for payment of any undisputed amounts.
- § 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- § 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- § 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

- § 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- § 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- § 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- § 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- § 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 15 DEFINITIONS

- § 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- § 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- § 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.
- § 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

| (Space is provided CONTRACTOR AS | below for additional signature: PRINCIPAL | s of added parties, other that SURETY | in those appearing on the cover page. |
|---|--|--|---------------------------------------|
| Company: | (Corporate Seal) | Company: | (Corporate Seal) |
| Signature: Name and Title: Address: | | Signature: Name and Title: Address: | |



General Conditions of the Contract for Construction These General Conditions are intended to

for the following PROJECT:

LOR-OBERLIN BIKE PATH TRAILHEAD **ODOT PID 103853**

THE OWNER:

(Name; legal status and address)

City of Oberlin 85 South Main Oberlin, OH 44074

THE ARCHITECT:

(Name, legal status and address)

Moody Nolan Architects 1621 Euclid Ave., Suite 1150 Cleveland, OH 44115

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

augment ODOT Requirements. In the event of

prevail. Bidders/Contractors shall notify the City

a conflict, the ODOT Requirements shall

immediately if a conflict is discovered.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams,

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

- § 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- § 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- § 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.
- § 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

- § 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.
- § 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

- § 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.
- § 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
- § 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.
- § 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

- § 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- § 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.
- § 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- § 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.
- § 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

- § 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- § 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.
- § 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.
- § 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.
- § 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

- § 3.8.2 Unless otherwise provided in the Contract Documents,
 - Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
 - 3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.
- § 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- § 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- § 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- § 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- § 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.
- § 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect. Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.
- § 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- § 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.
- § 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.
- § 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.
- § 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withheld from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

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§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

- § 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- § 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.
- § 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

- § 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
- § 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.
- § 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

- § 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- § 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- § 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- § 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.
- § 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section
- § 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
- § 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- § 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.
- § 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Subsubcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

- § 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.
- § 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- § 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.
- § 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.
- § 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.
- § 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

- § 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- § 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

- § 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.
- § 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.
- § 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.4 GENERAL Company of the control of the control

- § 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.
- § 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.
- § 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work,

§ 7.2 CHANGE ORDERS

- § 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:
 - .1 The change in the Work;
 - .2 The amount of the adjustment, if any, in the Contract Sum; and
 - .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

- § 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.
- § 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- § 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
 - .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
 - .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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- .4 As provided in Section 7.3.7.
- § 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- § 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- § 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.
- § 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:
 - .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
 - .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others:
 - .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
 - .5 Additional costs of supervision and field office personnel directly attributable to the change.
- § 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- § 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.
- § 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

- § 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.
- § 8.1.2 The date of commencement of the Work is the date established in the Agreement.
- § 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.
- § 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

- § 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- § 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.
- § 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

- § 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.
- § 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.
- § 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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- § 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.
- § 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
- § 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.
- § 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

- § 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.
- § 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous onsite inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

- failure of the Contractor to make payments properly to Subcontractors or for labor, materials or .3 equipment:
- reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; .4
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- ,7 repeated failure to carry out the Work in accordance with the Contract Documents.
- § 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.
- § 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

- § 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.
- § 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- § 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
- § 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.
- § 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.
- § 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.
- § 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

- § 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
- § 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- § 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.
- § 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- § 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

- § 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.
- § 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- § 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Subsubcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- § 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- § 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- § 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- § 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.
- § 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.
- § 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

- § 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.
- § 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.4.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage:
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom:
- Claims for damages because of bodily injury, death of a person or property damage arising out of 6, ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- Claims involving contractual liability insurance applicable to the Contractor's obligations under 8. Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment. and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless ofherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Subsubcontractors in the Project.

- § 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
- § 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.
- § 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.
- § 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- § 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 14.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, subsubcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, subsubcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

- § 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- § 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.
- § 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- § 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- § 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

- § 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
- § 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

- § 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- § 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

- § 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.
- § 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.
- § 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.
- § 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.
- § 13.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

- § 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:
 - Issuance of an order of a court or other public authority having jurisdiction that requires all Work to .1
 - .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- 3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.
- § 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
- § 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.
- § 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3,

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- § 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
 - Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
 - .2 Accept assignment of subcontracts pursuant to Section 5.4; and
 - Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- § 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.
- § 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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User Notes:

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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- § 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
 - .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

- § 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
- § 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
 - .1 cease operations as directed by the Owner in the notice;
 - .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
 - .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
- § 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

- § 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.
- § 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

- § 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.
- § 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
- § 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

- § 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.
- § 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
- § 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- § 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

- § 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- § 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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SUPPLEMENTARY CONDITIONS

A. GENERAL CONDITIONS

The General Conditions of the Contract for Construction, Standard Form of the American Institute of Architects, A201, 2007 edition, a copy of which is enclosed, is hereby incorporated as part of these Contract Documents.

B. SUPPLEMENTAL GENERAL CONDITIONS

The following supplements modify, change, delete from or add to the General Conditions of the Contract for Construction, AIA Document A201, 2007 edition. Where any article of the General Conditions is modified or any paragraph, subparagraph, or clause thereof is modified or deleted by these Supplementary General Conditions, all the remaining divisions of the article, paragraph, subparagraph, or clause not so specifically modified or deleted shall remain in effect.

These Supplementary Conditions are intended to augment ODOT Requirements. In the event of a conflict, the ODOT Requirements shall prevail. Bidders/Contractors shall notify the City immediately if a conflict is discovered.

ARTICLE 1

GENERAL PROVISIONS

1.1 Basic Definitions

Add the following new paragraphs:

- 1.1.9 Furnish: The term "furnish" as used in the Contract Documents shall mean to purchase and deliver products to the site ready for installation.
- 1.1.10 Install: The term "install" as used in the Contract Documents shall mean to take furnished products and assemble, erect, secure in place, connect and place in operation as applicable.
- 1.1.11 Provide: The term "provide" as used in the Contract Documents shall mean to furnish, install and pay all costs in connection therewith.

1.2 Correlation and Intent of the Contract Documents

1.2.1 Add the following at the end of this subparagraph:

Should the Drawings and Specifications appear to be in disagreement with each other relative to the quality or quantity of work required, the better quality and/or greater quantity shall govern, and shall be provided, unless instructions are otherwise furnished to the Contractor by the Architect in writing.

Add the following Subparagraphs:

- 1.2.4 Execute Work as per Contract Documents. Make no changes therefrom without having first received written permission from the Architect. Where detailed information is lacking, before proceeding with Work, refer matter to Architect for clarification.
- 1.2.5 If the Contractor observes any errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the Architect, requesting clarification. If the Contractor proceeds with Work affected by such errors, discrepancies or omissions without receiving such clarification, he does so at his own risk. Any adjustments involving such circumstances made by the Contractor, prior to approval by the Architect, shall be at the Contractor's risk and the settlement of any complications or disputes arising therefrom shall be at the Contractor's sole expense.

1.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

Add the following:

1.5.2.1 CADD Drawings: The Architect will make available to the successful Bidder electronic CADD Documents for use in preparation of Shop Drawings. These documents will be available without dimensions and without notes. The cost of these documents is \$100.00 for the first sheet and \$50.00 for each additional sheet. Bidder will be required to sign an Agreement and Waiver prior to obtaining the CADD files from the Architect.

ARTICLE 2

OWNER

2.2 Information and Services Required of the Owner

2.2.3 This subparagraph is modified to read as follows:

The Owner shall <u>not</u> be responsible for furnishing surveys or other information as to the physical characteristics of, legal limitations of or utility locations for the Project site, except as included in these Contract Documents. The Contractor shall confirm the location of each utility, shall excavate and relocate or dispose of each on-site utility and shall cap each utility as required by the Work or as may be included in the Specifications.

2.2.4 Add at the beginning of this subparagraph, "Upon receipt of a written request from the Contractor, the Owner shall..."

Delete Subparagraph 2.2.5 in its entirety and substitute the following:

2.2.5 The Contractor will be furnished, free of charge, 5 copies of the Drawings and Project Manuals. Additional sets will be furnished, by the Owner, at the cost of reproduction, postage and handling.

2.3 Owner's Right to Stop the Work

2.3.1 Delete the word "repeatedly" in the first sentence of this subparagraph.

ARTICLE 3

CONTRACTOR

3.2 Review of Contract Documents and Field Conditions by Contractor

Add to 3.2 the following:

- 3.2.5 Mechanical and Electrical Drawings are diagrammatic only. Actual work involved shall be installed from approved shop drawings with all measurements obtained at the work site.
- 3.2.6 Dimensions that are lacking shall be obtained from the Architect. In no case shall drawings be scaled.
- 3.2.7 Where there is a conflict in or between the Drawings and Specifications, the Contractor shall be deemed to have estimated on the more expensive way of doing the work and/or the greater quantity required. Only changes or interpretations covered by Addenda or written from the Architect will be permitted during construction of the work.

3.4 Labor and Materials

3.4.2 Add the following at the end of this subparagraph:

See Substitution requirements specified in Article of the Instructions to Bidders.

3.4.3 Add the following at the end of this subparagraph:

The Owner reserves the right to reject any Subcontractor or Material Supplier.

- 3.4.4 Add the following new subparagraphs:
- 3.4.4 The Contractor shall place orders for materials and equipment to be incorporated into the Work as soon as possible after the award of the Contract and receipt of approvals where applicable. The Contractor shall keep the Architect informed as to the availability of all specified materials and equipment. Nothing herein shall relieve the Contractor from its obligation to complete its Work as required by the Contract Documents on a timely basis.
- 3.4.5 See Section 01 60 00, Product Requirements and Section 01 73 00 Execution Requirements, for additional procedures and requirements.

3.5 Warranty

Add the following to subparagraph 3.5:

3.5.1 The Contractor shall guarantee his workmanship and materials for a period of one year from the date of acceptance by the Architect. Should defects develop within the guarantee period, the Contractor shall, upon written notice of same, remedy the defects and reimburse the Owner for all damage to the other work, whether caused by the defects or the work of correcting same.

The Performance Bond furnished by the Contractor as a part of this contract shall remain in effect until the expiration of the guarantee period as assurance of the Contractor's

obligation to meet the guarantee herein stipulated. Guarantees, if any, extending beyond said one year period shall be specifically provided for in the Contract and may be fulfilled by assignment of the bond or written warranty of the manufacturer.

The standard one-year warranty period shall start on the date that a Certificate of Substantial Completion is issued for the portion of the project in question.

In the case of replacement or repair due to failure within the guarantee period, the guarantee on that portion of the work shall be extended for a period of one (1) year from the date of such replacement or repair.

3.6 Taxes

3.6.1 This subparagraph is modified to read as follows:

The Owner claims exemption from Ohio Sales Tax under the Ohio Revised Code for the purchase of all building and construction materials for incorporation into the work, exclusive of improvements to the site, and agrees to furnish the Contractor with a completed and signed exemption certificate which, when signed by the Contractor and surrendered at the time of purchase, will exempt the purchase of such items from the Ohio Sales Tax. The Contractor shall secure certificates from the Owner.

- 3.6.2 Add the following new subparagraph:
- 3.6.2 Purchases by the Contractor of expendable items such as form lumber, tools, oils, greases, fuel, or equipment rentals are subject to the applicable Ohio Sales Tax.

3.7 Permits, Fees, Notices and Compliance with Laws

- 3.7.1 Add the following:
- 3.7.1.1 The Owner will obtain and pay for the Building Permit. All other permits, inspections, licenses, taps and fees shall be obtained and paid for by the Contractor.

3.9 **Superintendent**

- 3.9.3 Add the following:
- 3.9.3.1 Superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove any Superintendent from the Project whose performance is not satisfactory to the Owner, and to replace such Superintendent with a Superintendent who is satisfactory to the Owner. Contractor shall not replace the Superintendent without the consent of the Owner, except with another Superintendent who is satisfactory to the Owner.

Add to 3.9 the following Subparagraph:

3.9.4 Contractor shall have direct control and management of all construction operations and be responsible for the satisfactory overall performance of his suppliers and subcontractors in order that the entire Work be coordinated and supervised.

3.10 Contractor's Construction Schedules

Add the following:

3.10.4 Refer to Section 01 32 16, Construction Schedule for procedures and requirements of Construction Schedule.

3.11 Documents and Samples on Site

Add to 3.11 the following Subparagraph:

3.11.1 Refer to Specification Section 01 78 39, Project Record Documents, for requirements of record documents.

3.12 Shop Drawings, Product Data and Samples

Add to 3.12 the following Subparagraph:

3.12.11 Refer to Specification Section 01 33 23, Shop Drawings, Product Data and Samples, for additional procedures and requirements.

3.14 Cutting and Patching of Work

Add to 3.14 the following Subparagraph:

3.14.3 Refer to Specification Section 01 73 29, Cutting and Patching, for additional procedures and requirements.

3.15 Cleaning-Up

Add to 3.15 the following Subparagraph:

3.15.3 Refer to Specification Section 01 70 00, Cleaning, for additional procedures and requirements.

3.19 Add the following new paragraph:

3.19 LIEN WAIVERS AND NOTICES OF COMMENCEMENT

3.19.1 The Contractor will obtain from all its Subcontractors and Suppliers, regardless of tier, a lien waiver, at the time they enter into an agreement to provide labor, materials, equipment and/or supplies for the Project, of all lien rights they have with respect to the Project or the balance of the Contract Sum in the form of the Lien Waiver included in the Contract Documents or in such other form requested by the Owner and immediately deliver a copy of the executed lien waivers to the Owner. By entering into an agreement to provide labor, materials, equipment and/or supplies for the Project, such Subcontractors and Suppliers agree to provide such lien waivers to the Contractor.

Upon receipt of Notices of Furnishing, the Contractor will deliver copies of the Notices of Furnishing to the Owner. The Contractor will provide such Subcontractors and Suppliers a copy of its Performance Bond and Payment Bond.

ARTICLE 7

CHANGES IN THE WORK

Comply with ODOT requirements contained in Article 17 herein.

ARTICLE 8

TIME

8.2 **Progress and Completion**

Add the following:

8.2.4 Project completion to be as indicated on the Form of Proposal.

ARTICLE 9

PAYMENTS AND COMPLETION

9.2 Schedule of Values

Add the following subparagraph:

9.2.1 Schedule of Values shall be closely coordinated with the Construction Schedule such that the percentages of Work completed closely related to the values for the Work shown on the request for payments.

9.3 Applications for Payment

Add the following Clauses to Subparagraph 9.3.1:

- 9.3.1.3 The Form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment supported by AIA Document G703. Continuation Sheet.
- 9.3.1.4 The Contractor shall submit his Application for Payment on or before the twenty-fifth (25th) day of each month for work completed to that date.
- 9.3.1.5 The Application for Payment shall be accompanied by Affidavits in full compliance with all requirements of the Ohio Mechanics Lien Law, when requested by the Owner.
- 9.3.1.6 The Owner will make monthly payments to Contractor upon request thereof. Until the Work is 50 percent complete, the Owner will retain 8 percent of the amount due the Contractor as retainage.

At the time the Work is 50 percent complete, and thereafter, if the manner of completion of

the Work and its progress are and remain satisfactory to the Architect, and in the absence of other good and sufficient reasons, he shall authorize any remaining partial payments to be paid in full.

- 9.3.1.7 The full Contract Retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Architect, or for other good and sufficient reasons.
- 9.3.1.8 Funds retained will be paid to the Contractor within 30 days after the Contractor has completed his obligations under this Contract.

Add the following Clause to Subparagraph 9.3.3:

9.3.3.1 Upon each application for payment, the Contractor shall submit to the Owner for review and use, a signed affidavit from each subcontractor, material or equipment supplier, laborer, or other parties which have provided goods, services, or equipment for the work covered under this contract, which states that they have received payment, less any retainage percentage, for all materials, supplies, labor, equipment, etc., which cost was included in all previous applications for payment. Such affidavit shall further release and waive all liens, claims, security interests, encumberances, etc., for which an amount has been indicated and paid on a prior application for payment, except that the contractor, subcontractor, or material or equipment supplier may retain a security interest, lien claim, or encumberance in the items supplied only to the extent of the retained percentage. Failure to provide the affidavit will result in a reduction of the application for payment equal to the amounts of all prior amounts paid which remain unaccounted for as a result of the payment affidavit.

9.6 **Progress Payments**

Add the following to Subparagraph 9.6.6:

"...nor shall any such Certificate of Payment, Payment, use or occupancy be construed as constituting the completion of work by the Contractor."

9.10 Final Completion and Final Payment

Add to 9.10 the following Subparagraph:

9.10.6 Notwithstanding anything to the contrary contained in this Article 9, the Owner shall not be obligated to make final payment until after a Final Certificate for Payment has been issued by the Architect and the Project has been finally inspected and approved by the appropriate building inspectors, and, where required by law, a Certificate of Occupancy relative to the Project has been issued by an appropriate governmental authority.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.2 Safety of Persons and Property

10.2.2 Add the following at the end of this subparagraph:

Contractor shall provide and maintain first aid and fire protection as required by national, state, and local authorities.

10.2.4 Add the following at the end of this subparagraph:

When the use or storage of these types of materials or equipment is anticipated or scheduled, the Contractor shall give the Owner a minimum of 72 hours advance notice.

Add the following:

10.2.9 The Contractor acknowledges that the safety of the Owner's employees and guests and the safety of the general public is of the utmost importance. The Contractor will take no action which would jeopardize the safety of the Owner's employees or guests, or of the general public, and, without the Owner's written approval, shall take no action which would interfere with any of the Owner's activities.

10.4 Emergencies

10.6.1 Add the following at the end of this subparagraph:

The Contractor shall provide the Owner a list of names and telephone numbers of the designated employees for each Subcontractor to be contacted in case of emergency during non-working hours. A copy of the list will also be displayed on the job site.

ARTICLE 11

INSURANCE AND BONDS

11.1 Contractor's Liability Insurance

See "107.12 Responsibility for Damage Claims and Liability Insurance" in **Article 17 - OHIO DEPARTMENT OF TRANSPORTATION (ODOT) REQUIREMENTS** contained herein

11.4 Performance Bond and Payment Bond

Delete Subparagraph 11.4.1 and substitute the following:

- 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100% of the Contract Sum. In addition to the project Owner, ODOT shall be named as an obligee.
- 11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
- 11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds

on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.3 Acceptance of Nonconforming Work

Add the following at the end of this subparagraph:

The acceptance of nonconforming Work by the Owner shall be by written Change Order signed by the Owner's authorized representative. No person has authority to accept nonconforming Work except pursuant to such written Change Order.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.3 Written Notice

Add the following clause at the end of this subparagraph:

"or by facsimile transmission to the last known facsimile number of the party receiving the notice provided a copy is also sent to the last known business address by first class mail."

Add the following new article:

ARTICLE 16

EQUAL OPPORTUNITY

16.1 See requirements in the "Instructions to Bidders".

END OF SUPPLEMENTARY CONDITIONS

ODOT'S LPA Template (ODOT Spec Book and LPA Spec Book) Required Contract Provisions.

1. ODOT'S 2016 CONSTRUCTION AND MATERIAL SPECIFICATIONS (CM&S) AND ITS SUPPLEMENTS

With the exception of Section 100 "General Provisions" included in the matrix below, ODOT's Construction and Material Specifications (CM&S) and its supplements are hereby incorporated by reference, in their entirety, as if rewritten herein. The incorporation of this document by reference is not intended to interfere with the order of precedence set forth in Section 105.04 of the CMS Manual.

In accordance with the Locally Administrated Transportation Projects Manual of Procedures (LATPM), when bidding this project, the Contractor should replace the terms "the Department", "the Engineer" and "the DCA" with the term "the Local Public Agency (LPA)." Furthermore, nothing in this document is intended to alter the LPA's adherence to Ohio Revised Code, local ordinance or other applicable requirements which are properly established.

| Excluded 2016 Specifications | | | |
|------------------------------|-------------------|-------------------|-------------------|
| Section102.01 | Section 103.01 | Section 105.19 | Section 108.09 |
| Section 102.03 | Section 103.02 | Section 107.04 | Section 109.06 |
| Section 102.06 | Section 103.04 | Section 107.13 | Section 109.09 |
| Section 102.09 | Section 103.05 | Section 108.01 | Section 109.12(A) |
| Section 102.10 | Section 103.06 | Section 108.02(B) | Section 109.12(B) |
| Section 102.11 | Section 103.07 | Section 108.02(E) | Section 109.12(E) |
| Section 102.13 | Section 104.02(A) | Section 108.02(G) | |
| Section 102.14 | Section 105.05 | Section 108.08 | |
| Section 102.17 | Section 105.13 | | |

2. STEEL AND IRON PRODUCTS MADE IN THE UNITED STATES

Furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC 153.011 and 5525.21. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States. Both the State and Federal requirements contained in (A.) and (B.) of this section apply to this contract.

- A. Federal Requirements. All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing, and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.
- B. State Requirements. All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.
- C. Exceptions. ODOT may grant specific written permission to use foreign steel or iron products in bridge construction and foreign iron products in any type of construction. ODOT may grant such exceptions under either of the following conditions:
 - 1. The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.

- 2. The specified products are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet the requirements of the Contract Documents. ODOT may require the Contractor to obtain letters from three different suppliers documenting the unavailability of a product from a domestic source, if the shortage is not previously established.
- D. Proof of Domestic Origin. Furnish documentation to the Engineer showing the domestic origin of all steel and iron products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

3. CERTIFICATION AGAINST DEBARMENT AND SUSPENSION

The bidder hereby certifies by signing this proposal that, except as noted below, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the company or any person associated there with in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds is **not** currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; that the company or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds has **not** been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; that the company or any person associated therewith in the capacity of owner, partner, director, manager, auditor, or any position involving the administration of federal funds does **not** have a proposed debarment pending; that the company or any person associated there with in the capacity of owner, partner, director, officer, principal investigator has **not** been indicted, convicted, or had a civil judgment rendered against the company, or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

If there are exceptions to any of the above clauses please include a statement with the bid package detailing these exceptions.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate below to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. Execution of this proposal on the signature portion thereof shall constitute also signature of this certification as permitted by Title 28 United States Code, Section 1746.

4. PREQUALIFICATION

governing plan notes.

Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force at the time of bid, at the time of award, and through the life of the construction contract. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. The "prime" contractor must perform no less than 30 percent of the total original contract price.

5. PN033 - 4/18/2008- AS PER PLAN DESIGNATION

(Not required by FHWA, but strongly suggested if As Per Plan is used by the LPA)

For the last several years the "As Per Plan" designation has been added to some item descriptions in the proposal to assist the Contractors to easily identify standard items that have been altered by plan notes.

The "As Per Plan" designation has proven to be a very useful tool for the Contractors. However, its use was <u>never</u> intended to relieve the Contractors of their responsibility to read, bid and construct all items in accordance with all governing plan notes. Therefore, the absence of an "As Per Plan" designation on some item descriptions in the proposal for which there are clear and controlling plan notes does not relieve the Contractors of the responsibility to read, bid and construct those particular items in accordance with the

Be advised that the item descriptions in the bidding proposal must be read or interpreted with the governing plan notes and the Construction and Material Specification Manual. A claim based upon an "order of precedence" basis will be denied. In the event that a conflict, either real or perceived, exists between the item description and the governing plan note, the Contractors are to request clarification through the prebid process.

6. FEDERALLY REQUIRED EEO CERTIFICATION FORM

The bidder hereby certifies that he has, has not, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that he has, has not, filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements. The Bidder must circle the appropriate "has or has not" above.

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

The Federally Required EEO Certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontractors which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

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

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

8. PN 026 - 10/15/2004 - CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (for a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).
- (b) Bidders are cautioned as follows: By signing this bid, the bidder has agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- (c) Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

"Notice to Prospective Subcontractors and Material Suppliers of Requirement for Certification of Nonsegregated Facilities" -

- (a) A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.
- (b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- (c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

9. PN 035 - 10/15/2004 - SPECIAL PROVISIONS OF FEDERAL-AID HIGHWAY PROGRAM OF MANUAL 6-4-1-2 SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

GENERAL

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR- 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.
- b. The contractor will work with the LPA, ODOT and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal Employment Opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection I of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. EQUAL EMPLOYMENT OPPORTUNITY POLICY

The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race,

color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

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

3. EQUAL EMPLOYMENT OPPORTUNITY OFFICE

The contractor will designate and make known to the LPA contracting officer(s) an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable to effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. DISSEMINATION OF POLICY

- a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
 - (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
 - (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official covering all major aspects of the contractor's equal employment opportunity
 obligations within thirty days following their reporting for duty with the contractor.
 - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.
- b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will the following actions:
 - (1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - (2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

RECRUITMENT

- a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Employment Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women or obligates the contractor to do the same, such implementation violates Executive Order 1 1246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. PERSONNEL ACTIONS

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. TRAINING AND PROMOTION

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the "Training Special Provisions" are included in this bid proposal, this subparagraph will be superseded as indicated in said provisions.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. UNIONS

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to ODOT and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex or national origin, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify ODOT.

9. SUBCONTRACTING

- a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from the LPA's personnel.
- b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

RECORDS AND REPORTS

- The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:
 - (1) The number of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force);
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and;
 - (4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the LPA, ODOT and the Federal Highway Administration.
- c. The contractors will submit to the LPA and ODOT a monthly report for the first three months after construction begins and every month of July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 139 1. If on-the-job training is being required by "Training Special Provisions," the contractor will be required to furnish Form FHWA 1409.

10. PN 003 - 10/15/2004 - TITLE VI RELATED STATUTES NON-DISCRIMINATION STATEMENT

The LPA, under Title VI of the Civil Rights Act and related statutes, ensures that no person in the LPA, shall on the grounds of race, color, national origin, sex, disability or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

11. CERTIFICATION OF COMPLIANCE WITH AFFIRMATIVE ACTION PROGRAMS
In accordance with Ohio Administrative Code §9.47, before any Contract is awarded, the LPA will require the Bidder to furnish a valid Certificate of Compliance with Affirmative Action Programs, issued by the State EEO Coordinator dated prior to the date fixed for the opening of bids.

12. PN 020 – 11/21/2011 - NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

The Bidder's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found on ODOT's website at http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Pages/default.aspx. These goals are based on 2000 census data and represent the area, per craft, minority and female availability pool.

Minority and female utilization obligations by craft per county (applicable to project):

http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CountyAvailability-ByTrade,pdf

Statewide utilization obligations by craft (applicable to the Contractor's statewide workforce):

 $\frac{http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/StatewideAverages-ByTrade.pdf}{}$

Effective 11/21/2011 the New Hire Definition will be as follows:

An individual who has a break in service (not on an employer's payroll) for a period of 12 months or longer and the person affected is not a salaried employee, but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is 12 months or longer.

The time frame for a new hire shall be associated with the first project worked for that contractor regardless of whether it is public or private. When reporting new hires the contractor shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would not qualify the employee as a new hire for that contractor.

The Contractor's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and females on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the contractor will be measured against the total work hours performed. Under FHWA, ODOT is the authority tasked with ensuring that the contractor adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions as outlined in the attached subcontract agreement the Contractor shall provide immediate written notification to the ODOT and the Prime Contractor when referral practices of the union or unions with which the Contractor has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The Office of Federal Contract Compliance Programs (OFCCP) administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order

11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

https://www.dol.gov/ofccp/TAguides/new_contractors_guide.htm page E-32

The Department of Administrative Services (DAS), Equal Opportunity Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to Ohio Administrative Code (OAC) 123:2-3-02. Specifically, this unit's responsibilities includes the issuance of certificates of compliance under ORC 9.47 and 153.08, conducting project site visits and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, as well as maintaining a working environment free of discrimination, harassment and intimidation. The DAS may perform contract compliance reviews on contractors involved with state funded ODOT projects. Requirements for affirmative action obligations governing DAS contract compliance reviews are those listed in the O.A.C. for the Metropolitan Statistical Area in which a project is located. http://das.ohio.gov/Divisions/EqualOpportunity/ConstructionCompliance.aspx

All prime and subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to Ohio Department of Administrative Services covering the contractor's total workforce within the state of Ohio. The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the contractor or subcontractor completes performance of the state contract. http://das.ohio.gov/Divisions/EqualOpportunity/InputForm29.aspx

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs, 200 N. High Street, Room 409, Columbus, Ohio 43215, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the subcontract is to be performed.

13. PN 029 - 10/15/2004 - ON-THE JOB TRAINING (OJT) PILOT PROGRAM

The requirements of this Training Special Provision supersede subparagraph 7b of the Special Provision entitled Special Employment Opportunity Responsibilities, and implements 23 U.S.C. 140(a).

The following must be included as part of the Contractor's equal employment opportunity affirmative action training program:

The Contractor must provide on-the-job training aimed at developing full journey persons in the type or job classification in which they work.

The contractor is not required to have a specific number of trainees assigned to this project. The number of trainees will be distributed among the work classifications on the basis of the Contractor's needs and the availability of the journey persons in the various classifications. The Contractor will be credited for each trainee employed by him or her who is currently enrolled or becomes enrolled in an approved program.

Training and upgrading of minorities and women toward journey person status is a primary objective of this Training Special Provision. Accordingly, the Contractor must make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used, to

discriminate against any applicant for training, regardless of whether the applicant is a member of a minority group or not.

No employee will be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey person status or in which he or she has been employed as a journey person. The Contractor must satisfy this requirement by including appropriate questions in the employee's application or by other suitable means. Regardless of the method used, the Contractor's records must document the findings in each case.

The minimum length and type of training for each classification will be established in the training program selected by the Contractor.

No payment by the LPA will be made to the Contractor for providing this training. However, if the Contractor fails to provide adequate training and cannot show good faith efforts on its part to provide adequate training, it will be subject to a formal compliance review to determine the Contractor's efforts in meeting the EEO laws and regulations.

The Contractor must provide the following reports:

- 1. CR1 Report
 - A. To be completed on each trainee
 - B. To be filled out at the start of training and finish of training or at the end of the year, whichever comes first
 - C. To be submitted to the ODOT District in which the Contractor's home office is located.
- 2. Tracking will be on an annual basis. The Contractor must submit the subsequent CR1 to the ODOT District in which the Contractors home office is located.

The prime or subcontractor conducting the training must be involved in at least one Federal project per calendar year in order to get FHWA training credit. Participation in the OJT Program is not project or contract specific.

All Contractors are encouraged to participate in the OJT program. Such a program will be considered when examining the contractor's Good Faith Efforts toward meeting its contractual affirmative action obligations.

All Contractors shall submit their own Training Program or Apprenticeship Certificate, for approval, to the ODOT District in which the company's home office is located.

All OJT Trainees must have the appropriate certification. Apprenticeship Certificates can be obtained from the State of Ohio, Bureau of Apprenticeship and Training. The union apprenticeship agreement is not acceptable verification of an apprentice's enrollment in a union sponsored training program. A copy of the Apprenticeship Certificate along with a statement indicating the number of months/years the employee has been in the apprenticeship program must be submitted to the ODOT EEO Coordinator in the company's home district and to the prevailing wage coordinator in the district responsible for the project within 90 days of the apprentice beginning work on the project.

14. PN 059 - 10/15/2004 - WAGE DETERMINATION APPEALS PROCESS

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

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

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

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

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

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

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

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

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

15. PN 061 -10/22/2012- WAGE SCALE ON ALL FEDERAL-AID PROJECTS

The wage rates for this project were determined by the Secretary of Labor in accordance with Federal-Aid requirements. LPA must formally incorporate into contract documents.

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

This USDOL wage decision may be viewed, by accessing the United States Department of Labor (USDOL) website at:

http://www.wdol.gov/

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

- 1) The U.S. Department of Labor Regulations, Title 29, Subtitle A, Part 5, Sections 5.5, 5.31, and 5.32, most recent revision at contract execution.
- 2) Form FHWA-1273 (most recent revision at contract execution) Part IV. Payment of Predetermined Minimum Wage and Part V. Statements and Payrolls.

The failure to pay prevailing wages to all laborers and mechanics employed on this project, shall be considered a breach of contract. Such a failure may result in the termination of the contract and debarment.

The Contractor and all subcontractors shall pay all wages and fringe benefits by company check. All payroll records and canceled pay checks shall be maintained for at least three years after final acceptance as defined in section 109.12 of the Ohio Department of Transportation Construction and Materials Specifications. The Contractor's and all subcontractors payroll records and canceled pay checks shall be made available for inspection by the Department and the U.S. Department of Labor, upon request, anytime during the life of the contract, and for three years thereafter by the U.S. Department of Labor. Additionally, the Contractor and all subcontractors shall permit such representatives to interview any employees during working hours while the employee is on the job.

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

The Contractor and all subcontractors shall submit to the District Construction Office, certified payrolls each week beginning three weeks after the start of work. These payrolls shall be on a Form WH-347 or equivalent and shall show the following:

- 1) Employee name, address, classification, and hours worked.
- 2) The basic hourly and overtime rate paid, total pay, and the manner in which fringe benefit payments have been irrevocably made.
- 3) The project number and pay week dates.
- 4) Original signature of a company officer on the certification statement.

Additionally, a copy of the "Apprentice Certification" obtained from the Ohio State Apprenticeship Council, must accompany all certified payrolls submitted for all apprentices working on this project.

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

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

The applicable wage and fringe rates for this project are to be incorporated in their entirety as an attachment to the executed contract.

16. LIMITATION ON USE OF CONTRACT FUNDS FOR LOBBYING

- The prospective bidder certifies, by signing and submitting this bid proposal, to the best of his or her knowledge and belief, that:
 - (a.) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3. The prospective bidder also agrees by submitting his or her bid proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

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

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

REPORTING BID RIGGING

To report bid rigging activities call:

1-800-424-9071

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

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

18. PN 014 - 10/15/2004 - DRUG-FREE WORKPLACE

The prime contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. The prime contractor shall make a good faith effort to ensure that all its employees, while working on this project, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

The prime contractor shall also require that this contractual obligation be placed in all subcontractor and materialman contracts that it enters into and further requires that all subcontractors and materialmen place the same contractual obligations in each of their lower tier contracts.

19. PN 034 - 05/25/2011 - DRUG FREE SAFETY PROGRAM

During the life of this project, the Contractor and all its Subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker's Compensation ("OBWC") Drug-Free Safety Program ("DFSP") or a comparable program approved by the OBWC.

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

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

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

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

20. OHIO WORKERS'COMPENSATION COVERAGE

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

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

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

21. PN 038 - 10/15/2004 - UNRESOLVED FINDING FOR RECOVERY

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

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

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

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

23. PN 024 - 04/21/2006 - US ARMY CORPS OF ENGINEERS AND OHIO ENVIRONMENTAL PROTECTION AGENCY PERMITS

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

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

24. PN 007 - 10/15/2004 - TRUCK LEASING (Required if DBE goal on the project)

The Code of Federal Regulations Title 49, Section 26.55(d) (4) (5) (6) governs trucking operations. This section states that the Disadvantaged Business Enterprise (DBE) may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE will receive credit for only the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. The law requires that a lease must indicate that the DBE has exclusive use of and control over the truck for credit to be accorded to the DBE. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

In lieu of a truck owner displaying the name and identification number of the DBE, the truck owner shall be required to furnish a photocopy of the lease agreement, thereby fulfilling the rule without causing undue hardship on any entity.

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. When the materials or supplies are obtained from a DBE manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or

establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. When the materials or supplies are purchased from a DBE regular dealer or supplier the prime contractor may receive credit for 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

For subcontract agreement (C-92) purposes the following definitions will be used:

Install - DBE contractor who obtains goods, materials and supplies and fixes in place, for use, the same goods, materials and supplies. (e.g., DBE contractor obtains and fixes in place re-bar on project site). Must spend 20% or more time on project per day. 100% credit toward prime's DBE goal.

Stockpiling - DBE Contractor/Trucker who delivers materials, goods, or supplies to project site. 60% credit toward prime's DBE goal.

Tailgating - DBE Contractor/Trucker who delivers and installs materials, goods, or supplies to project site. Must spend 20% or more time on project per day. 100% credit toward prime's DBE goal.

25. PN 013 - 07/21/2017 - DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION PLAN AND GOOD FAITH EFFORTS For LPA PROJECTS- Effective 09/25/2017

DBE UTILIZATION PLAN

All Bidders shall submit a DBE Utilization Plan at the time of bid setting forth specific information demonstrating how the Bidder will achieve the DBE goal. By submitting a DBE Utilization Plan, the Bidder is affirming that they will be using the DBE firms identified in the Utilization Plan to meet the DBE contract goal. The DBE Utilization Plan shall be submitted with Formstack at time of bid submission. Any bids received without electronic submission of the DBE Utilization Plan at or before bid time, will be deemed unresponsive. Bidders shall submit their DBE Utilization Plans via: https://odot.formstack.com/forms/dbe_copy. This file contains the current list of certified DBEs and is updated regularly. The DBE Utilization Plan must be filled out completely and submitted prior to bid opening.

The DBE Utilization Plan shall include the following information:

- 1) The names and addresses of the certified DBE firm(s) that will be used to meet the DBE goal;
- 2) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- 3) Whether the DBE firm(s) being used to meet the goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity; and
- 4) The dollar amount of the participation of each DBE firm used to meet the DBE goal.

PROJECTS AWARDED ON ALTERNATES

In the event the project is awarded on alternates which increases or decreases the total dollar amount of the bid, a revision to the DBE Utilization Plan and DBE Affirmation Form(s) shall be submitted and approved by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days after the notification of the alternates.

DBE AFFIRMATION

The Apparent Low Bidder shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the bid within five (5) calendar days after the bid opening to ODOT. The contract dollar amount(s) and/or DBE firm(s) included in the Apparent Low Bidder's DBE Utilization Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the Apparent Low Bidder shall utilize the Request to Terminate/Substitute DBE Form located at http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall utilize the DBE Affirmation Form located at http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the type and amount of work provided in the Bidder's DBE Utilization Plan. The Apparent Low Bidder shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

All other Bidders shall submit a DBE Affirmation Form(s) if notified that the information is required in order for ODOT to complete its assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required DBE Affirmation Forms to ODOT. Notification will be by email.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five (5) calendar days of bid opening, the Apparent Low Bidder shall submit a Request to Terminate/Substitute DBE Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after bid opening in order for the Apparent Low Bidder to still be considered for contract award. The Apparent Low Bidder shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the Apparent Low Bidder made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the Apparent Low Bidder intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the Apparent Low Bidder is unable to affirm a DBE firm included in its original DBE Utilization Plan at bid submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth calendar day after bid opening. All GFE documentation submitted for consideration should demonstrate the efforts the Bidder made prior to the time of bid submission to secure sufficient DBE participation on the project to meet the DBE goal although the Bidder was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the Apparent Low Bidder's Good Faith Efforts in meeting the goal.

DBE BIDDERS

In the event that the Bidder is also a certified DBE firm, the Bidder is required to complete a DBE Utilization Plan as set forth above. In this instance, however, the certified DBE Bidder would not need to submit a DBE Affirmation Form for the work it is planning to self-perform in order to meet the goal. ODOT will consider the submission of the bid as the certified DBE Bidder's written confirmation that it is participating in the contract. However, a DBE Affirmation Form must be submitted for all other DBE firms that are being utilized toward the DBE goal.

JOINT VENTURES

In the event that the Bidder is a Joint Venture, the Joint Venture will only be considered a Certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a Certified DBE firm that is also a partner in the Joint Venture as part of its DBE Utilization Plan. The Certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work that the Certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. ODOT will consider submission of the Joint Venture's bid as the Certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

GOOD FAITH EFFORTS (GFE's)

In the event that the DBE contract goal established by ODOT is not met, the Apparent Low Bidder shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the Apparent Low Bidder does not meet the goal at bid time, the Apparent Low Bidder shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of the bid opening. Submission of DBE affirmation(s) with additional participation sufficient to the meet the DBE contract goal does not cure the Apparent Low Bidder's failure to meet the goal at bid time or eliminate the Apparent Low Bidder's responsibility of submitting GFE's within five (5) calendar days of the bid opening.

The Apparent Low Bidder shall demonstrate its GFE's by submitting the following information within five (5) calendar days after the bid opening:

- (1) All written quotes received from certified DBE firms;
- (2) All written (including email) communications between the Apparent Low Bidder and DBE firms;
- (3) All written solicitations to DBE firms, even if unsuccessful;
- (4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
- (5) Phone logs of communications with DBE firms.

The Apparent Low Bidder shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) calendar days of bid opening. ODOT has provided Good Faith Efforts Guidance located at

http://www.dot.state.oh.us/Divisions/ODI/SDBE/DBE%20Goal%20Forms/Contractors%20Good%20Faith%20Efforts%20Guidelines.pdf

All other Bidders shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Bidders shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Bidder has made adequate good faith efforts to meet the goal.

ADMINISTRATIVE RECONSIDERATION

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. In the event that ODOT determines that the Apparent Low Bidder has failed to demonstrate adequate GFE's to meet the goal, the Apparent Low Bidder will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the Apparent Low Bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Deputy Director of the Division of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223, within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The Apparent Low Bidder may also include in their written documentation a request for an in person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

ODOT will send the Apparent Low Bidder a written decision on reconsideration explaining the basis for finding that the Apparent Low Bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

TERMINATION OR REPLACEMENT OF A DBE

By submitting a DBE Utilization Plan, the Bidder is committing to use the DBE firms identified in the plan. The Apparent Low Bidder/Awarded Contractor shall utilize the specific DBEs listed in the DBE Utilization Plan to

perform the work and supply the materials for which each is listed unless the Apparent Low Bidder/Awarded Contractor obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the Apparent Low Bidder/Awarded Contractor shall utilize the Request to Terminate/Substitute DBE Form located at http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx.

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Awarded Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

GOOD CAUSE

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, that the Apparent Low Bidder/Awarded Contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause to terminate a DBE includes the following circumstances:

- 1) The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract;
- 2) The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor;
- 3) The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements.
- 4) The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- 5) The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
- 6) ODOT has determined that the listed DBE firm is not a responsible contractor;
- 7) The listed DBE firm voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- 10) Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided, that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason the Awarded Contractor must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the Awarded Contractor. If ODOT requests documentation under this provision, the Awarded Contractor shall submit the documentation within seven (7) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether or not GFEs have been demonstrated.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions and substitutions of DBE firms put forward by Bidders in the DBE Utilization Plan.

ADDITION

In the event additional DBE participation is required for the project, the Awarded Contractor shall utilize the DBE Affirmation Form located at http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx. The DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project.

WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the Apparent Low Bidder/Awarded Contractor must give notice in writing to the DBE firm, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The Apparent Low Bidder/Awarded Contractor must give the DBE five (5) calendar days to respond to the notice, advising ODOT and the Apparent Low Bidder/Awarded Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the Apparent Low Bidder/Awarded Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five (5) days.

GOAL ATTAINMENT POST AWARD

The Awarded Contractor shall make available upon request a copy of all DBE subcontracts. The Awarded Contractor shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Proposal Note.

Approval of a DBE Utilization Plan does not ensure approval of C-92 Requests to Sublet nor does approval of a DBE Utilization Plan indicate that the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the Awarded Contractor to advise ODOT of any changes to the DBE Utilization plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

SANCTIONS AND ADMINISTRATIVE REMEDIES

PRE-BID

Failure by the Apparent Low Bidder to do any of the following shall result in the bid being rejected in accordance with ORC §5525.08:

- 1) Failure to submit a complete DBE Utilization Plan at the time of bid;
- 2) Failure to submit DBE Affirmation Form(s) and/or failure to submit Request to Terminate/Substitute DBE Form(s) as required by this Proposal Note; and Failure to meet the goal and/or failure to demonstrate GFEs to meet the goal as required by this Proposal Note.

POST-BID

Failure by the Awarded Contractor to carry out the requirements of this Proposal Note, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

1st Tier:

Letter of Reprimand

2nd Tier:

Damages equivalent to the DBE shortfall

3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

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

- the magnitude and the type of offense
- the degree of the Contractor's culpability
- any steps taken to rectify
- the Contractor's record of performance on other projects including, but not limited to:
 - o annual DBE participation
 - o annual DBE participation on projects without goals
 - o the number of complaints ODOT has received regarding the Contractor
 - o the number of times the Contractor has been previously sanctioned by ODOT

26. PN - 031 - 10/15/2004 - AFFIDAVIT OF SUBCONTRACTOR PAYMENT (Required if DBE goal on the project)

The Code of Federal Regulations 49, 26.37(b), requires the LPA to monitor and verify that work committed to Disadvantaged Business Enterprise (DBE) firms at contract award is actually performed by the DBE's. Additionally, the LPA is required to report the DBE participation on each project, including all work, materials or service sublets. Therefore, it is the LPA's responsibility to discern whether payments are made to DBE firms. An affidavit is to be completed and signed by the contractor within 15 days of the completion of the project. The affidavit seeks to verify actual payments made to DBE firms on the project. Each DBE firm must verify the actual payment amount.

The blank spaces in the affidavit must be filled in correctly, where indicated. The affidavit must be signed by the prime contractor and subcontractor, or by the subcontractor and DBE sub-contractor, if applicable. By signing the affidavit, the noted firm agrees that the payment amount recorded is true and accurate as of the payment time period.

Completed and signed affidavit shall be mailed to the Ohio Department of Transportation, Office of Contracts, DBE Services section, 1980 West Broad Street, Columbus, Ohio 43223. A color scan of the affidavit may be sent in advance to Central Office, to keep project moving forward. However, the originals will still need to be mailed to Central Office.

27. WAIVER OF CM&S 614.03

ODOT's 2016 Construction and Material Specifications section 614.03, third paragraph, does not apply to any project which is not physically located on the National Highway System (NHS), and/or does not impact NHS traffic in any way.

28. ODOT AS OBLIGEE ON BOND

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

29. NON-DISCRIMINATION PROVISIONS

1) Compliance with Regulations: The CONTRACTOR will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation

(hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the CONTRACTOR will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

- (2) Nondiscrimination: The CONTRACTOR, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (3) Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential subcontractor, or supplier will be notified by the CONTRACTOR of the CONTRACTOR's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (4) Information and Reports: The CONTRACTOR will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this contract, the LPA will impose such contract sanctions as it or STATE / FHWA may determine to be appropriate, including, but not limited to:
 - (a) Withholding of payments to the CONTRACTOR under the contract until the CONTRACTOR complies, and/or
 - (b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The CONTRACTOR will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR will take such action with respect to any subcontractor procurement as the LPA or STATE / FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor, or supplier as a result of such direction, the CONTRACTOR may request the LPA / STATE to enter into such litigation to protect the interests of the LPA and the STATE, and, in addition, the LPA / STATE may request the United States to enter into such litigation to protect the interests of the United States.

30. REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONSTRUCTION CONTRACTS (Electronic Form FHWA 1273 - May 1, 2012)

- General
- Nondiscrimination
- Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act **Provisions**
- VI. Subletting or Assigning the Contract VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway
- Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work

performed on the contract by piecework, station work, or by subcontract.

- 3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
- 4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific

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affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.
- b. The contractor will accept as its operating policy the following statement:

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

- 2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.
- 3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of

employees by means of meetings, employee handbooks, or other appropriate means.

- 4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.
- 5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the

contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.
- 7. Unlons: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below;
- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even

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

- 8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
- 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.
- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

- The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference,
- b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.
- 11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.
- a. The records kept by the contractor shall document the following:
- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

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

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

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are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or

disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolis and basic records

- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired.

 Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency...
- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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- (i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.
- (4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer

and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage

determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
 - d. Apprentices and Trainees (programs of the U.S. DOT).

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

- **5. Compilance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- 6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- 8. Compilance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract.

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Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

- 1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
- 3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon

its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

- 1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
- a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
- (1) The prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) The prime contractor remains responsible for the quality of the work of the leased employees;
- (3) The prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) The prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on

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the contract as a whole and in general are to be limited to minor components of the overall contract.

- 2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
- 3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
- 4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
- 5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own selfperformance requirements.

VII. SAFETY: ACCIDENT PREVENTION

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

- In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
- 2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
- 3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under

Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

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- That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
- 2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification - First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred,"
 "suspended," "ineligible," "participant," "person," "principal,"
 and "voluntarily excluded," as used in this clause, are
 defined in 2 CFR Parts 180 and 1200. "First Tier Covered
 Transactions" refers to any covered transaction between a
 grantee or subgrantee of Federal funds and a participant
 (such as the prime or general contract). "Lower Tier
 Covered Transactions" refers to any covered transaction
 under a First Tier Covered Transaction (such as
 subcontracts). "First Tier Participant" refers to the participant
 who has entered into a covered transaction with a grantee or
 subgrantee of Federal funds (such as the prime or general

contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
- Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

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- (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
- (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant leams that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction." "debarred." "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epis.gov/), which is compiled by the General Services Administration.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, ineligibility and Voluntary Exclusion—Lower Tier Participants:

* * * * *

- The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

9/25/2017 Revision XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

- 1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
- a. To the extent that qualified persons regularly residing in the area are not available.

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

City of Oberlin – Public Works Standards Construction and Materials Specifications

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Attachment 2

LOR-GASHOLDER HOUSE PHASE 2B COUNTY-ROUTE-SECTION 103853 PID NUMBER

> 30264 AGREEMENT NUMBER

07-455-0401 DUNS NUMBER

DIRECT PAYMENT OF CONTRACTOR

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

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

| | request that all payments for the Federal/State shars of this agreement performed by N&N Construction Co., Inc. | e of the |
|--|---|----------|
| Contractor Name Oaks Vendor ID: Mailing Address: | | |
| ٠ | | |
| LPA signature | My 1 Barn | |
| LPA Name: Oaks Vendor ID: | Jeffrey J. Baumann, Public Works Director 0000102469 | |

Mailing Address: 85 S. Main St.

Oberlin, OH 44074