

**EXTENSION OF INDUSTRIAL DRIVE
PROPOSAL
NAPOLEON, OHIO**

HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

LETTING - TUESDAY, JULY 29, 2014 AT 10:00 A.M.

Submitted By: _____

Address: _____

City: _____ **State:** _____ **Zip Code:** _____

Telephone: _____

Fax: _____

Email: _____

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT (HCTID)
INDUSTRIAL DRIVE EXPANSION PROPOSAL
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HENRY COUNTY TID

DEFINITIONS

1. **Addenda or Addendum** - A written or graphic instruction issued prior to the opening of bids which clarifies, amends or interprets the Contract Documents.
2. **Alternate** - A proposed change in the Work described in the Contract Documents providing the Transportation Improvement District with an option to select between alternative materials, products or systems, or to add or delete portions of the Work.
3. **Alternative Dispute Resolution** - A method of resolving disputes other than arbitration or litigation.
4. **Approved Equal** - Article, device, material, equipment, form of construction or other item proposed by the Bidder and approved by the Architect/Engineer for incorporation or use in the Work as being equivalent to essential attributes of a Standard specified in the Contract Documents.
5. **Architect/Engineer** – The City Engineer or a contracted designee.
6. **As-Built Drawings** - Drawings or computer files revised by the Contractor to show changes made during the construction process.
7. **Authorized Representative** - The Executive Director of the Transportation Improvement District (TID) or in the absence or unavailability of such Executive Director, the designee of such Executive Director, if any.
8. **Base Bid** - The amount of money stated in a bid as the sum for which the Bidder offers to perform the Work described in the Contract Documents, exclusive of adjustments for Alternates.
9. **Bidder** - A Person who submits a bid for a Contract with the TID.
10. **Bid Form** - The form furnished by the TID that is to be completed, signed and submitted containing the Bidder's bid.
11. **Bid Guaranty** - Bid bond or other instrument of security furnished by the Bidder to provide assurance that the Bidder will execute the Contract Form.
12. **Board of Trustees** – The Henry County Transportation Improvement District Board of Trustees.
13. **Building Department** - The Building and Zoning Department of the City of Napoleon or as contracted by the City of Napoleon.
14. **Bulletin** - A document issued by the Architect/Engineer after the execution of the Contract Form requesting a Proposal from the Contractor which, if approved as provided in the Contract Documents, will cause the execution of a Change Order to modify, amend or alter the Contract Documents and which becomes a part of the Contract Documents when a Change Order related to the Bulletin is executed by all applicable Persons.
15. **Change Order** - A document recommended by the Architect/Engineer and authorized by the Authorized Representative, subject to approval of Henry County Transportation Improvement District Board of Trustees when required by the Board of Trustees, issued after execution of the Contract Form, which authorizes a change in the Work or the

- Contract Documents or an adjustment in the Contract Price or the time for Contract Completion.
16. **City** - The City of Napoleon, an Ohio municipal corporation.
 17. **City Council** - The legislative authority for the City.
 18. **City Manager** - The Person having administrative or executive authority for the City.
 19. **Claim Affidavit** - A sworn document containing a claim on funds that are due to a Contractor created by statute in favor of a Person supplying labor, materials or services for the value of labor, materials or services supplied.
 20. **Construction Schedule** - The schedule for the construction of the Work showing the time for completing the Work, the planned sequence for performing the Work, the Contractor's resource loading curve and the interrelationship between Contractor's activities and the activities of the other Contractors, the Engineer and the TID.
 21. **Contract** - The agreement between the TID and the Contractor as set forth in the Contract Documents.
 22. **Contract Bond** - Performance and payment bond or other instrument of security, furnished by the Contractor and the Contractor's Surety to provide assurance that the Contractor will perform the Contract and make required payments.
 23. **Contract Completion** - The date upon which all deficiencies noted in the Punch List have been corrected, the Contractor's Work is 100% complete, and the Contractor has complied with all conditions precedent to final payment and release of retainage.
 24. **Contract Cost Breakdown** - A statement furnished by the Contractor to the TID reflecting the portions of the Contract Price allocated to the various portions of the Work and used as the basis for reviewing the Contractor's Contractor Payment Request.
 25. **Contract Documents** - Collectively, the Drawings, Specifications, Addenda, Definitions, Notice to Bidders, Instructions to Bidders, Bid Form, Non-Collusion Affidavit, List of Subcontractors, Bid Guaranty, Substitution Sheet, Contract Form, Contract Bond, General Conditions, Wage Rates and Special Conditions, Change Orders and approved Shop Drawings, if any.
 26. **Contract Form** - The form furnished by the TID that when completed and signed by the Contractor and the TID evidences the entry into the Contract.
 27. **Contractor** - A Person with whom the TID has entered into a Contract for the performance of Work on the Project in cooperation with other Contractors and Persons and in accordance with the Contract Documents.
 28. **Contractor Payment Request** - The form furnished by the TID that is to be used by the Contractor in requesting progress payments and which when signed by the Contractor shall serve as an affidavit that payments requested are in proportion to the Work completed as shown by the Contract Cost Breakdown and that payments previously paid by the TID have been applied by the Contractor to discharge in full all of Contractor's obligations incurred in connection with the Work covered by all prior Contract Payment Requests.

29. **Day** - Unless otherwise expressly specified to mean a business day, means a calendar day. A business day is any day other than a Saturday, Sunday or legal holiday.
30. **Defective** - When modifying the word Work, refers to Work that does not conform to the Contract Documents, or does not meet the requirements of any applicable statute, rule or regulation, policy, inspection, reference standard, test or approval, or has been damaged prior to Final Acceptance unless responsibility for the protection thereof has been expressly assumed by the City, or that is not free from defects in workmanship, material or equipment during the period of the Guarantee.
31. **Drawings** - The graphic and pictorial portions of the Contract Documents, showing the design, type of construction, location, dimension and character of the Work to be provided by the Contractor, generally including Plans, elevations, sections, details, schedules, diagrams, notes and Specifications, in whole or in part.
32. **Executive Director** - The Person having administrative or executive authority for the TID.
33. **Final Acceptance** - The TID's acceptance of the Work from the Contractor upon execution of the certificate of Contract Completion by the Authorized Representative.
34. **Final Inspection** - Final review of the Work of the Contractor by the Architect/Engineer to determine whether certification of Contract Completion is appropriate.
35. **Guarantee** - Legally enforceable assurance, for a period after Contract Completion, of quality or performance of the Contractor's workmanship, material and equipment.
36. **Liquidated Damages** - The sum established in the Contract Documents as the predetermined measure of damages to be paid to the TID due to the Contractor's failure to complete the Work, or portions thereof, within a stipulated time.
37. **Maintenance Bond** - Bond furnished by the Contractor's Surety to provide assurance that the Contractor will perform the Guarantee as provided in Paragraph GC 11.3.
38. **Material Supplier** - A Person who furnishes materials, equipment and supplies for Work on the Project, in any tier.
39. **Notice of Commencement** - The notice prepared by the TID or the Authorized Representative identifying the Project, the Contractors, the Surety for each Contractor and the name of the Authorized Representative upon whom a Claim Affidavit may be served.
40. **Notice of Intent to Award** - The notice provided to the apparently successful Bidder stating that upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified, the TID intends to execute a Contract Form with the Bidder.
41. **Notice to Proceed** - A notice provided by the Authorized Representative to the Contractor authorizing the Contractor to proceed with the Work and establishing the date for commencement of the Work.
42. **Or Equal** - See Approved Equal.
43. **OAC** - The Ohio Administrative Code.

44. **ORC** - The Ohio Revised Code.
45. **Partial Use** - The stage in the progress of the Work when the Project, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Project, or designated portion thereof, for its intended use.
46. **Person** - An individual, corporation, business trust, estate, limited liability company, partnership, association or other entity, private or public.
47. **Plans** - See Drawings.
48. **Project** - The public improvement to be constructed of which the Work performed under the Contract Documents may be the whole or a part.
49. **Project Schedule** - The schedule for the construction of the Project showing the time for completing the Project, the planned sequence for performing all Work at the Project, each Contractor's resource loading curve and the interrelationship between the activities of the Contractors, the Architect/Engineer and the City.
50. **Proposal** - The offer of a Contractor to complete the Work set forth in a Bulletin.
51. **Proposed Equal** - Article, device, material, equipment, form of construction or other item proposed by the Bidder for incorporation or use in the Work as being equivalent to essential attributes of a Standard specified in the Contract Documents.
52. **Punch List** - A list of items of Work to be completed or corrected by the Contractor as a condition precedent to Contract Completion.
53. **Record Drawings** - Drawings or computer files revised by the Architect/Engineer to show the changes made during the construction process, based on the As-Built Drawings furnished by the Contractor to the Architect/Engineer.
54. **Request for Information** - Written request from the Contractor to the Architect/Engineer seeking an interpretation or clarification of the Contract Documents.
55. **Right-of-Way** - Land, property, or interest therein, usually in a strip, acquired for or devoted to a road and includes the roadway, shoulder or berm, ditch and slope extending to the limits under the control of the City.
56. **Samples** - Physical examples furnished by the Contractor to illustrate materials, equipment or workmanship and to establish standards by which the Work will be judged.
57. **Schedule of Values** - See Contract Cost Breakdown.
58. **Shop Drawings** - Drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data and other data specially prepared or provided by the Contractor, a Subcontractor or Material Supplier to illustrate some portion of the Work.
59. **Special Conditions** - Amendments to the Standard Conditions, which describe conditions unique to a particular Project, including without limitation, provisions regarding the assignment of responsibility for refuse removal and for safety and security precautions and programs, regarding traffic, maintenance, landscaping, temporary Project facilities and utilities, weather and fire protection, scaffolding, commissioning, and equipment, materials and services to be used commonly by Contractors and requiring

Contractors to provide assistance in the utilization of any applicable equipment system, preparation of operation and maintenance manuals, and training of City or other personnel for operation and maintenance of the Project.

60. **Specifications** - Those portions of the Contract Documents consisting of the detailed written requirements and standards for materials, equipment, construction systems and workmanship as applied to the Work and certain administrative details applicable thereto.
61. **Standard** - The items named in the Specifications to denote kind, quality or performance for the Work. All bids and Proposals shall be based on the Standards as set forth in the Specifications or Addenda.
62. **Standard Conditions** - The TID's Standard Conditions for the Project consisting of Definitions, Notice to Bidders, Instructions to Bidders, Bid Form, Non-Collusion Affidavit, List of Subcontractors, Bid Guaranty, Substitution Sheet, Contract Form, Contract Bond, General Conditions and Wage Rates.
63. **State** - The State of Ohio.
64. **Subcontractor** - A Person who undertakes to perform any part of the Work on the Project under a contract with any Person other than the City, in any tier.
65. **Substitution** - An item proposed by the Bidder to be used instead of a Standard, but not considered in determining the lowest and best Bidder.
66. **Surety** - A Person providing a Bid Guaranty, Contract Bond or Maintenance Bond to a Bidder or Contractor, as applicable, to indemnify the TID against all direct and consequential damages suffered by failure of the Bidder to execute the Contract Form or by the failure of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, Material Suppliers and laborers, as applicable.
67. **TID** – The Henry County Transportation Improvement District, organized under Ohio Revised Code Section 5540.
68. **Unit Price** - An amount stated in the bid as the price per unit of measurement for materials or services described in the Contract Documents, which amount shall include overhead, profit and any other expense for the applicable Work.
69. **Warranty** - Legally enforceable assurance, for the specified duration from Final Acceptance, of quality or performance of Work, or any portion thereof.
70. **Work** - The construction services required by the Contract Documents, to include all labor, materials, equipment, insurance and services performed or provided by the Contractor for the Project.

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
NOTICE TO BIDDERS**

SEALED BIDS WILL BE RECEIVED BY THE HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT (THE "TID") AT THE OFFICE OF THE HENRY COUNTY COMMISSIONERS, 1853 OAKWOOD AVENUE, NAPOLEON, OHIO 43545 UNTIL TUESDAY, JULY 29, 2014 AT **10:00 A.M.** AND WILL BE OPENED AND READ PUBLICLY IMMEDIATELY THEREAFTER, FOR FURNISHING THE MATERIAL AND PERFORMING THE LABOR FOR THE EXECUTION OF:

Project Name: **INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION**

IN ACCORDANCE WITH THE DRAWINGS AND SPECIFICATIONS FURNISHED BY THE ARCHITECT/ENGINEER.

BIDS WILL BE RECEIVED FOR:

Contract – **INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION**

ESTIMATE OF COST - **\$290,000.00**

COPIES OF THE CONTRACT DOCUMENTS, TOGETHER WITH ANY FURTHER INFORMATION DESIRED, MAY BE OBTAINED AT THE OFFICE OF THE HENRY COUNTY ENGINEER, TELEPHONE NUMBER (419) 592-2976 DURING REGULAR BUSINESS HOURS. ALL CONTRACT DOCUMENTS WILL BE FORWARDED UPON RECEIPT OF A NON-REFUNDABLE DEPOSIT IN THE AMOUNT OF FIFTY DOLLARS (\$50.00) PER SET IN FAVOR OF THE HENRY COUNTY TID. BIDDING DOCUMENTS AND PLANS MAY ALSO BE OBTAINED ONLINE UNDER THE "BID REQUEST LISTING" TAB AT WWW.HENRYCOUNTYENGINEER.COM.

A PORTION OF THE PROJECT WILL BE FUNDED BY THE LOCAL TRANSPORTATION IMPROVEMENTS PROGRAM AS ADMINISTERED BY THE OHIO PUBLIC WORKS COMMISSION.

[ALL QUESTIONS SHOULD BE DIRECTED TO CITY ENGINEER CHAD E. LULFS, P.E., P.S. (419)592-4010]

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. ADDITIONALLY, CONTRACTOR COMPLIANCE WITH THE EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS OF THE OHIO ADMINISTRATIVE CODE CHAPTER 123, THE GOVERNOR'S EXECUTIVE ORDER OF 1972 AND THE GOVERNOR'S EXECUTIVE ORDER 84-9 SHALL BE REQUIRED.

DOMESTIC STEEL USE REQUIREMENTS AS SPECIFIED IN SECTION 153.011 OF THE REVISED CODE APPLY TO THIS PROJECT. COPIES OF SECTION 153.011 OF THE REVISED CODE CAN BE OBTAINED FROM ANY OF THE OFFICES OF THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

EACH BIDDER IS REQUIRED TO FILE WITH THIS BID A BID GUARANTEE IN THE FORM OF EITHER:

1. A BOND, EXECUTED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE OF OHIO, FOR THE FULL AMOUNT BID; OR
2. A CERTIFIED CHECK, CASHIER'S CHECK OR LETTER OF CREDIT PURSUANT TO CHAPTER 1305 OF THE OHIO REVISED CODE, IN THE AMOUNT OF TEN (10%) PERCENT OF THE BID.

BID GUARANTEE MUST BE PROVIDED THAT IF THE CONTRACT BE AWARDED ON SUCH BID, THE BIDDER WILL ENTER INTO A CONTRACT AND THE PERFORMANCE OF IT WILL BE PROPERLY SECURED. THE SUCCESSFUL BIDDER, IF USING A 10% BID GUARANTEE, SHALL BE REQUIRED TO PROVIDE A CONTRACT PERFORMANCE AND PAYMENT BOND, EXECUTED BY A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE OF OHIO, FOR THE FULL AMOUNT OF THE BID.

DAVIS-BACON WAGE RATES SHALL PREVAIL ON SAID PROJECT. ANY PROPOSED EQUAL FOR A STANDARD SHALL BE SUBMITTED TO THE ENGINEER NOT LATER THAN TEN (10) DAYS PRIOR TO THE BID OPENING. IF NO ADDENDUM IS ISSUED ACCEPTING THE PROPOSED EQUAL AS AN APPROVED EQUAL, THE PROPOSED EQUAL SHALL BE CONSIDERED REJECTED.

THE BOARD RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS

BY ORDER OF
THE BOARD OF TRUSTEES
HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
HENRY COUNTY, OHIO
BY: LISA D. SUGG, CLERK

Please publish the above legal notice once:
July 8, 2014

ARTICLE 1 - CONTRACT INFORMATION

1.1 PROJECT SCHEDULING AND COORDINATION

- 1.1.1 Unless otherwise provided in the Contract Documents, the time for completion of the Project indicated on the Bid Form shall be the time for Contract Completion applicable to the Bidders.
- 1.1.2 The Architect/Engineer shall be responsible for scheduling the Project, coordinating the Contractors, and providing other services identified in the Contract Documents. Critical path scheduling methods shall be utilized.
- 1.1.3 No Routine Work shall be allowed between 9:00 pm and 6:30 am. These restrictions apply to work performed with powered or noisy equipment. Special requests to perform work during the Restricted Hours will be evaluated on a case-by-case basis by the City Engineer.**
- 1.1.4 The award of separate Contracts for the Project requires sequential, coordinated and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance, delay or impact in the progress of any individual Contractor's Work and any such interference, disruption, hindrance, delay or import is within the contemplation of the Bidder and the TID. Each Contractor shall cooperate with the Architect/Engineer and any other Contractors to minimize interference, disruption, hindrance, delay or impact of any Work on the Project. Each Contractor shall be an intended third-party beneficiary of the Contract of each other Contractor performing Work on the Project.
- 1.1.5 Except when the cause of a delay is the proximate result of the TID's or City's act or failure to act as required by Section 4113.62, ORC, the Bidder agrees that the Contract Price, as amended from time to time in accordance with the Contract Documents, shall cover all amounts due from the TID or City resulting from interference, disruption, hindrance, delay or impact caused by or between Contractors or their agents and employees. The Bidder agrees that the Bidder will make no claim against the TID or City for additional compensation or mitigation of Liquidated Damages for any such interference, disruption, hindrance, delay or impact, and will accept as full satisfaction an extension of time which may be provided by the TID or City in accordance with the Contract Documents. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

1.2 GIVING NOTICE

- 1.2.1 Whenever any provision of the Contract Documents requires the giving of notice prior to the execution of the Contract Form, such notice shall be deemed

to have been validly given if delivered personally to the Person for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such Person known to the giver of the notice, or if given by facsimile transmission or electronic mail to the last known facsimile transmission number or electronic mail address of such Person, as applicable, known to the giver of the notice.

1.2.1.1 All notices provided to the Bidder by the Architect/Engineer shall be copied to the Authorized Representative.

1.2.1.2 All notices provided to the Architect/Engineer by the Bidder shall be copied to the Authorized Representative.

1.2.1.3 All notices provided to the Authorized Representative by the Bidder shall be copied to the Architect/Engineer.

1.2.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first, and include the last, day of such period. If the last day of any such period falls on a Saturday, Sunday or a legal holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

1.2.3 Any notice required to be given under the Contract Documents may be given by facsimile transmission or electronic mail.

ARTICLE 2 - BIDDING PROCEDURES

2.1 EXAMINATION OF CONTRACT DOCUMENTS AND PROJECT SITE

2.1.1 The Bidder shall examine all Contract Documents, including without limitation the Drawings and Specifications for all divisions of Work for the Project, noting particularly all requirements which will affect the Bidder's Work in any way, prior to submitting the Bidder's bid.

2.1.2 Failure of a Bidder to be acquainted with the amount and nature of Work required to complete any of the Work, in conformity with all requirements of the Project as a whole wherever set forth in the Contract Documents, or reasonably inferred therefrom, will not be considered as a basis for additional compensation.

2.1.3 The Bidder shall evaluate when the Work may be performed and examine and evaluate the Project site and related Project conditions where the Work will be performed, including without limitation the following:

2.1.3.1 The condition, layout and nature of the Project site and surrounding

area;

2.1.3.2 The availability and cost of labor;

2.1.3.3 The availability and cost of materials, supplies and equipment;

2.1.3.4 The cost of temporary utilities required;

2.1.3.5 The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;

2.1.3.6 The usual weather conditions;

2.1.3.7 Conditions bearing upon transportation, disposal, handling, and storage of materials and waste.

2.1.4 Unless otherwise specified in the Contract Documents, borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions, if any, are provided solely to share information available to the TID and/or City and any use of, or reliance upon, such items by the Bidder is at the risk of the Bidder. The Bidder shall be afforded access to examine the Project site and to obtain the Bidder's own borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions upon request made to the Architect/Engineer not less than ten (10) days prior to opening of the bids. No part of the Contract Documents shall be deemed to show actual or anticipated subsurface or concealed physical conditions or are to be relied upon by the Bidder as permitting any particular means, method or manner of construction with respect to such conditions.

2.1.5 The Bidder shall correlate the Bidder's examination of the Contract Documents with the Bidder's examination and evaluation of the Project site and related Project conditions.

2.2 PRE-BID MEETING

2.2.1 The Bidder is strongly encouraged to attend the pre-bid meeting, where the Architect/Engineer will answer questions regarding the Contract Documents. If not given in the Notice to Bidders, notice of the time and place of any pre-bid meeting to be held will be given by the Architect/Engineer to each Person of record holding Contract Documents.

2.2.2 The Architect/Engineer shall prepare minutes of the pre-bid meeting, which will be provided to a Bidder upon request.

2.2.3 Failure of the Bidder to attend the pre-bid meeting, which results in the Bidder not being fully acquainted with the requirements of the Project, will not be

considered as a basis for additional compensation.

2.3 INTERPRETATION

2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including without limitation the Drawings and Specifications, or between any of the Contract Documents and any applicable provision of law, including without limitation the Ohio Building Code, the Bidder shall submit a written request to the Architect/Engineer for an interpretation or clarification.

2.3.1.1 The Bidder shall be responsible for prompt delivery of such request.

2.3.1.2 In order to prevent an extension of the bid opening, the Bidder is encouraged to make all requests for interpretation or clarification a minimum of seven (7) days before the bid opening.

2.3.2 If the Architect/Engineer determines that an interpretation or clarification is warranted, the Architect/Engineer shall issue an Addendum and provide a copy to each Person of record holding Contract Documents. Any Addendum issued within ninety-six (96) hours before a bid opening, excluding Saturdays, Sundays and legal holidays, shall include a new date for the opening of bids.

2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect/Engineer, or in any manner other than a written Addendum, shall not be binding and the Bidder shall not rely upon any such interpretation or clarification.

2.3.4 The Bidder shall not, at any time before or after the execution of the Contract Form, be compensated for a claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, any discrepancy on or between Contract Documents, or incorrectly assumed conditions regarding the nature, extent or character of the Work, if no request for interpretation or clarification regarding such matter was made by the Bidder prior to the bid opening.

2.4 STANDARDS

2.4.1 The articles, devices, materials, equipment, forms of construction, fixtures and other items named in the Specifications to denote kind, quality or performance requirement for the Work shall be known as Standards and all bids shall be based upon those Standards.

2.4.2 Where two (2) or more Standards are named, the Bidder may furnish any one of those Standards.

2.4.3 Items which are not Standards may be used only if accepted pursuant to the requirements of paragraph 2.5.

2.5 PROPOSED EQUALS AND SUBSTITUTIONS

- 2.5.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture or item other than those Standards named in the Drawings or Specifications, the Bidder shall certify that the item is equal in quality, and in all aspects of performance and appearance, to the Standards specified.
- 2.5.2 In addition, the Bidder shall submit information to the Architect/Engineer not later than ten (10) days prior to the bid opening, which information shall include:
- 2.5.2.1 The name and a complete description of the Proposed Equal, including Drawings, performance and test data, and other information necessary for a complete evaluation of the Proposed Equal;
 - 2.5.2.2 A statement setting forth any changes which the Proposed Equal will require in the Contract Documents or the Project.
- 2.5.3 If the Architect/Engineer approves the Proposed Equal as a Standard, the Architect/Engineer shall issue an Addendum to that effect to each Person of record holding Contract Documents.
- 2.5.4 If the Architect/Engineer does not approve the Proposed Equal as a Standard, the Architect/Engineer shall inform the Bidder of the disapproval in writing, no later than ninety-six (96) hours prior to the bid opening, excluding Saturdays, Sundays and legal holidays, stating the reason for the disapproval, which decision shall be final. The Architect/Engineer shall have the discretion to reject a Proposed Equal for the reason that the Bidder failed to provide sufficient information to enable the Architect/Engineer to completely evaluate the Proposed Equal without delaying the scheduled bid opening.
- 2.5.5 If no Addendum is issued approving the Proposed Equal as a Standard, the Bidder may list the item on the Substitution Sheet in accordance with the subparagraph 2.5.6.
- 2.5.6 A Bidder desiring consideration for the use of an article, device, material, equipment, form of construction, fixture or item other than those Standards named in the Specifications shall submit a proposal for the substitution of same for the applicable Standard, using the Substitution Sheet attached to the Bid Form and listing, for each proposed substitution: the Standard specified, the substitution, and the change in bid amount, (or indicate no change, if applicable). The name and a complete description including Drawings, performance and test data, and other information necessary for a complete evaluation of each substitution shall be furnished to the Architect/Engineer by the Bidder promptly upon request.

- 2.5.7 Any substitution accepted by the TID must be incorporated in the Contract in writing.
- 2.5.8 Substitutions shall not be considered in determining of the lowest and best Bidder but may be considered in rejecting all bids.

2.6 BID FORM

- 2.6.1 Each bid shall contain the name of every Person interested therein, be submitted on the Bid Form and be sealed in an envelope clearly marked as containing a bid, indicating the Project name, the date of the bid opening and the Contract or scope of Work, if applicable, on the envelope.
 - 2.6.1.1 Any change, alteration or addition in the wording of the Bid Form may cause a bid to be rejected as nonresponsive.
 - 2.6.1.2 Unless the Bidder withdraws the bid as provided in Article 4, the Bidder will be required to comply with all requirements of the Contract Documents, regardless of whether the Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
- 2.6.2 The Bidder shall fill in all relevant blank spaces in the Bid Form in ink or by typewriting or printing and not in pencil. Most of the form can be filled out electronically.
 - 2.6.2.1 The Bidder shall show the amount for labor, the amount for materials and the final total amount of the Base Bid and the amounts of any Alternates in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where such words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions or misspellings of words will not render the words ambiguous. Where there is a conflict between the separate amounts for Labor and Materials and the total thereof, the separate amounts shall govern and a corrected total shall be used for the comparison of the bids.
 - 2.6.2.2 Any alteration or erasure of items filled in on the Bid Form shall be initialed by the Bidder in ink or other permanent means and not in pencil.
- 2.6.3 When an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an amount that will increase or decrease the Base Bid. The TID reserves the right to accept or reject any or all bids on Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected

in any order.

- 2.6.3.1 If no change in the bid amount is required, indicate "No Change" or \$0 dollars.
- 2.6.3.2 Failure to make an entry or an entry of "No Bid," "N/A," or similar entry for any Alternate may cause the bid to be rejected as nonresponsive only if that Alternate is selected.
- 2.6.3.3 If an Alternate is not selected, an entry as listed in subparagraph 2.6.3.2 on that Alternate will not, by itself, render a bid nonresponsive.

2.6.4 If the Bidder is a corporation, limited liability company partnership or sole proprietorship, an officer, member, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and **sign the Bid Form**. If the Bidder is a joint venture, an officer, member, partner or principal, as applicable, of each participant in the joint venture shall print or type the legal name of the applicable participant on the line provided and sign the Bid Form on behalf of that participant. All signatures must be original.

2.6.5 Subject to the provisions of this paragraph 2.6, the completed Bid Form of the Bidder with whom the TID executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.

2.7 REQUIRED SUBMITTALS WITH BID FORM

2.7.1 A bid shall be rejected as nonresponsive if the Bidder fails to submit the following submittals with the Bid Form in a sealed envelope:

- 2.7.1.1 A Bid Guaranty as provided in Article 6 meeting the requirements of Sections 153.54 to 153.571, ORC.
- 2.7.1.2 Power of Attorney of the agent signing for the Surety.
- 2.7.1.3 An executed Bidder Qualification Statement
- 2.7.1.4 An executed Non-Collusion Affidavit

2.8 UNIT PRICES

2.8.1 When Unit Prices are requested on the Bid Form, any scheduled quantities listed by the TID are to be considered as approximate and are to be used only for the comparison of bids for purposes of determining the lowest and best Bidder and to determine the maximum quantity to be provided without a Change Order. If Unit Prices are stated to be sought only for informational purposes, they shall not be used for comparison of bids.

2.8.2 Unless otherwise specified in the Contract Documents, the Unit Prices and the

totals and extensions thereof set forth shall include all materials, equipment, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of that portion of the Work to which the Unit Prices apply. The Bidder shall submit Unit Prices for all items listed unless other instructions are stated on the Bid Form.

- 2.8.3 Where there is a conflict between a Unit Price and any total or extension thereof made by the Bidder, the Unit Price shall govern and a corrected total or extension of such Unit Price shall be made and such corrected total or extension shall be used for the comparison of the bids and to determine the maximum quantity to be provided without a Change Order.
- 2.8.4 The Bidder agrees that the TID may increase, decrease or delete entirely the scheduled quantities of Work to be done and materials to be furnished after execution of the Contract Form, without invalidating the Contract.
- 2.8.5 Payments, except for lump sum items in Unit Price Contracts, will be made to the Contractor only for the actual quantities of Work performed or materials furnished in accordance with the Contract Documents, but not in excess of the maximum set by the scheduled quantities. The Contractor must obtain a Change Order prior to performing Work or furnishing materials in excess of the scheduled quantities in order to be compensated for the excess.
- 2.8.6 If the cost of an item for which a Unit Price is stated in the Contract changes substantially so that application of the Unit Price to the quantities of Work proposed will create an undue hardship on the TID or the Contractor, the applicable Unit Price may be equitably adjusted by Change Order. Notwithstanding any other provision found in the General Conditions, Special Conditions, Supplemental Conditions or Specifications, and regardless of any mention of an asphalt binder adjustment as found in ODOT Item 401.20, an Asphalt Binder Price Adjustment, expressly **does not** apply to this contract.

2.9 CHANGE IN THE BID AMOUNT

- 2.9.1 Any change to a previously submitted bid shall be made in writing and must be received by the TID before the time scheduled for the bid opening, as determined by the employee or representative of the TID designated to open the bids.
- 2.9.2 Changes shall provide an amount to be added to or subtracted from the bid amount, so that the final bid amount can be determined only after the sealed envelope is opened.
- 2.9.3 If the Bidder's written instruction reveals the bid amount in any way prior to the bid opening, the bid may be rejected as nonresponsive.

2.10 RETURN OF BIDDING DOCUMENTS

- 2.10.1 Bidders shall not return any Contract Documents.
- 2.10.2 Any deposit received by the TID upon a Bidder's request for copies of the Contract Documents is non-refundable.

ARTICLE 3 - BID OPENING AND CONSIDERATION OF BIDS

3.1 DELIVERY OF BIDS

- 3.1.1 It is the responsibility of the Bidder to submit the bid at to the office of the Henry County Commissioners, 1853 Oakwood Avenue, Napoleon, Ohio 43545 prior to the time scheduled for bid opening.
- 3.1.2 If the bid envelope is enclosed in another envelope for the purpose of delivery, the exterior envelope shall be clearly marked as containing a bid with the Project name and the date of the bid opening shown on the outer envelope.
- 3.1.3 No bid shall be considered if it arrives after the time set for the bid opening, as determined by the employee or representative of the TID designated to open the bids.

3.2 BID OPENING

- 3.2.1 Sealed bids will be received at the office of the Henry County Commissioners until the time stated when all bids will be opened, read aloud and the tabulation made public.
- 3.2.2 The public opening and reading of bids is for informational purposes only and is not to be construed as an acceptance or rejection of any bid submitted.

3.3 BID OPENING EXTENSION

- 3.3.1 If any Addendum is issued within ninety-six (96) hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall automatically be extended one (1) week, with no further advertising required.
- 3.3.2 If any Addendum is issued more than ninety-six (96) hours prior to the published time for the bid opening, excluding Saturdays, Sundays, and legal holidays, the bid opening may be revised by the Addendum.

3.4 BID EVALUATION CRITERIA

- 3.4.1 The TID reserves the right to accept or reject any or all bids, in whole or in part, and reserves the right to reject any bid or bids and to award the Contract to any remaining Bidder the TID determines to be the lowest and best Bidder. The TID reserves the right to accept or reject any or all Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any

remaining Alternate or Alternates. Alternates may be accept or rejected in any order.

3.4.2 The TID may reject the bid of any Bidder who has engaged in collusive bidding, violated applicable ethics laws or who has an unresolved finding against it by the Auditor of State as provided in Section 9.24, ORC, as not the lowest and best bid.

3.4.3 The TID reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a bid, provided the irregularity or deficiency does not affect the bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any requirements of the Contract Documents may cause a bid to be rejected.

3.5 BID EVALUATION PROCEDURE

3.5.1 The Contract will be awarded to the lowest and best Bidder as determined in the discretion of the TID or all bids will be rejected in accordance with the following procedures:

3.5.1.1 In determining which Bidder is the lowest, the TID shall consider the Base Bid and any Alternate or Alternates which the TID determines to accept. Substitutions shall not be considered.

3.5.1.2 The total of the bids for the accepted Alternate(s) shall be added to the Base Bid for the purpose of determining the lowest Bidder.

3.5.1.3 If a Bidder submits a combined bid for two (2) or more kinds of Work, the TID may determine that such Bidder is lowest if the combined bid is lower than the lowest separate bids for such Work in the aggregate or if the separate bids do not cover all of the applicable Work.

3.5.2 A Bidder for a Contract shall be considered responsive if the Bidder's bid responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents which would affect the amount of the bid or otherwise give the Bidder a competitive advantage.

3.5.2.1 A Bidder shall be rejected as nonresponsive if the Bidder's bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the TID.

3.5.2.2 A Bidder may be rejected as nonresponsive if the Bidder's bid does not contain an executed Non-Collusion Affidavit.

3.5.2.3 If the lowest Bidder is not responsive, such Bidder shall be notified according to paragraph 3.6.

- 3.5.3 In determining whether a Bidder is best, factors to be considered include, without limitation:
 - 3.5.3.1 Preferences required by law, where applicable;
 - 3.5.3.2 The experience of the Bidder;
 - 3.5.3.3 The financial condition of the Bidder;
 - 3.5.3.4 The conduct and performance of the Bidder on previous contracts, which shall include, without limitation, compliance with Davis-Bacon wage laws and equal opportunity requirements;
 - 3.5.3.5 The facilities of the Bidder;
 - 3.5.3.6 The management skills of the Bidder;
 - 3.5.3.7 The ability of the Bidder to execute the Contract properly;
 - 3.5.3.8 The evaluation of a bid below the median of other bids pursuant to paragraph 5.2;
 - 3.5.3.9 Compliance by the Bidder and related Person with ethics laws.
- 3.5.4 The Architect/Engineer shall obtain from the lowest responsive Bidder any information the Authorized Representative deems appropriate to the consideration of factors showing that such Bidder's bid is best, including without limitation the following:
 - 3.5.4.1 Overall experience of the Bidder, including number of years in business under present and former business names;
 - 3.5.4.2 Complete listing of all ongoing and completed public and private construction contracts of the Bidder in the last three (3) years, including the nature, status and value of each contract and a name, address, and phone number for a representative of the owner of each related project;
 - 3.5.4.3 Complete listing of any Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA) or other regulatory entity issues or citations in the last ten (10) years;
 - 3.5.4.4 Certified financial statement with trade and bank references;
 - 3.5.4.5 Description of relevant facilities of the Bidder;

- 3.5.4.6 Description of the management experience of the Bidder's project manager(s) and superintendent(s);
- 3.5.4.7 Complete list of major Subcontractors with an estimated aggregate subcontract value of \$250,000 or more and Material Suppliers with an estimated aggregate purchase order value of \$250,000 or more, which the Bidder proposes to employ on the Project;
- 3.5.4.8 To support a Contract Bond, a current and signed Certificate of Compliance required under Section 9.311, ORC, issued by the Department of Insurance, showing the Surety is licensed to do business in Ohio;
- 3.5.4.9 Current Ohio Workers' Compensation Certificate;
- 3.5.4.10 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.95, inclusive, ORC.

If the lowest responsive Bidder is best, the Contract shall be awarded to such Bidder unless all bids are rejected.

- 3.5.5 If the lowest responsive Bidder is not best, and all bids are not rejected, the TID shall follow the procedure set forth in subparagraphs 3.5.3 and 3.5.4 with each next lowest responsive Bidder until the Contract is awarded, all bids are rejected or all responsive Bidders are determined to be not best.
- 3.5.6 The Architect/Engineer may obtain the information described in subparagraph 3.5.4 from several Bidders simultaneously, but shall review each Bidder's information separately and not comparatively.
- 3.5.7 Each Bidder shall provide requested information within such time limits as the Architect/Engineer shall establish.

3.6 REJECTION OF BID

- 3.6.1 If the lowest Bidder is not responsive or best, the TID shall reject such bid and the Authorized Representative shall notify the Bidder of the finding and the reasons for finding.

3.7 NOTICE OF INTENT TO AWARD AND BID CONTESTS

- 3.7.1 The TID shall notify the apparent successful Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified, the TID intends to award the Contract to the Bidder.
- 3.7.2 Upon authorization for award of contract, the Director who is responsible for the contract, shall furnish notice to any unsuccessful Bidder of the TID's intent to award to another. Such notice may be made by regular U.S. mail to the business address contained in the bid, personal service, or by electronic mail or facsimile transmission at the address or number contained in the bid. The unsuccessful Bidder shall have ten (10) business days after notice is received as provided herein to file a written protest with the TID's Executive Director clearly stating the grounds for the protest. Such protest shall be deemed received when time stamped by the Clerk of the TID Board of Trustees. The failure to timely file a protest constitutes a complete waiver thereof. Upon the proper filing of a protest, a meeting, informal in nature, shall be held within thirty (30) days. The disposition order of the board of trustees shall be deemed a final order.

ARTICLE 4 - WITHDRAWAL OF BID

4.1 WITHDRAWAL PRIOR TO BID OPENING

- 4.1.1 A Bidder may withdraw a bid after the bid has been received by the TID, provided the Bidder makes a request in writing and the request is received by the TID prior to the time of the bid opening, as determined by the employee or representative of the TID designated to open the bids.

4.2 WITHDRAWAL AFTER BID OPENING

- 4.2.1 All bids shall remain valid and open for acceptance for a period of at least sixty (60) days after the bid opening; provided, however that during that period a Bidder may withdraw a bid from consideration if the bid amount was substantially lower than the amounts of other bids, providing the bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor or material made directly in the compilation of the bid amount.

4.2.1.1 Notice of a request to withdraw a bid must be made in writing filed with the Authorized Representative within two (2) business days after the bid opening. The Authorized Representative reserves the right to request that the Bidder submit evidence substantiating the Bidder's request to withdraw the bid.

4.2.1.2 No bid may be withdrawn under subparagraph 4.2.1 when the result would be the awarding of the Contract on another bid to the same Bidder.

- 4.2.2 If a bid is withdrawn under subparagraph 4.2.1, the TID may award the Contract to another Bidder the TID determines to be the lowest and best Bidder or reject all bids and advertise for other bids. In the event the TID advertises for other bids, the withdrawing Bidder shall pay the costs, in connection with the rebidding, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, if the TID finds that such costs would not have been incurred but for such withdrawal.
- 4.2.3 A Bidder may withdraw the Bidder's bid at any time after the sixty (60)-day period described in subparagraph 4.2.1 by written notice to the Authorized Representative.

4.3 REFUSAL BY TID TO ACCEPT WITHDRAWAL

- 4.3.1 The Board of Trustees shall be deemed the hearing body for the purposes of Section 9.31 ORC. Any order by the Board resulting from such a hearing shall be deemed a final order, subject to litigation in a court of competent jurisdiction. If the TID intends to contest the right of the Bidder to withdraw a bid pursuant to subparagraph 4.2.1, a hearing shall be held by the TID within ten (10) days after the bid opening and an order shall be issued by the TID allowing or denying the claim of such right within five (5) days after such hearing is concluded. The TID shall give the withdrawing Bidder timely notice of the time and place of any such hearing.

4.4 REFUSAL BY BIDDER TO PERFORM

- 4.4.1 In the event the TID denies the claim for withdrawal and the Bidder elects to litigate or otherwise refuses to perform the Contract, the TID may reject all bids or award the Contract to the next lowest and best Bidder, as determined by the TID, without waiving any claims against the non-performing Bidder.

4.5 EFFECT OF WITHDRAWAL

- 4.5.1 No Bidder who is permitted, pursuant to subparagraph 4.2.1, to withdraw a bid, shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the Person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn bid was submitted, without the written approval of the TID.
- 4.5.2 The Person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the TID in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval.

ARTICLE 5 - BID ESTIMATE

5.1 LIMIT ON AWARD

- 5.1.1 If the project is not financed with assessments, no Contract shall be entered into

if the price of the Contract, or if the Project involves multiple Contracts where the total price of all Contracts for the Project, is in excess of ten percent (10%) above the estimate.

5.2 REVIEW OF LOW BID

5.2.1 No Bidder shall be best if the Bidder's bid is more than twenty percent (20%) below the median of all higher bids received for a Contract where the estimate is \$100,000 or more, and no Bidder shall be best if the Bidder's bid is more than twenty-five percent (25%) below the median of all higher bids received for a Contract where the estimate is less than \$100,000, unless the following procedures are followed.

5.2.1.1 The Architect/Engineer conduct an interview with the Bidder to determine what, if anything, has been overlooked in the bid, and to analyze the process planned by the Bidder to complete the Work. The Architect/Engineer shall submit a written summary of the interview to the Authorized Representative.

5.2.1.2 The Bidder submits to the TID a certified financial statement and a list of recent public contracts which the Bidder has performed.

5.2.1.3 The TID reviews and approves the Bidder as the best pursuant to subparagraph 3.5.

5.2.1.4 The TID notifies the Bidder's Surety in writing that the Bidder with whom the TID intends to enter a Contract submitted a bid determined to be substantially lower than the median of all higher bids.

ARTICLE 6 - BID GUARANTY AND CONTRACT BOND

6.1 BID GUARANTY

6.1.1 The Bidder must file with the bid a Bid Guaranty, payable to the Henry County Transportation Improvement District, in the form of either:

6.1.1.1 A bond, executed by a surety company authorized to do business in the State of Ohio, for the full amount of the bid; or

6.1.1.2 A certified check, cashier's check or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code, in the amount of ten (10%) percent of the bid, payable to the Board of Trustees of Marion Township.

6.1.2 The Bid Guaranty shall be in form and substance satisfactory to the TID and shall serve as an assurance that the Bidder will, upon acceptance of the Bidder's bid, comply with all conditions precedent for the execution of the Contract Form and execute the Contract Form, within the time specified by the TID.

6.1.3 Bid guarantee must be provided as guarantee that if the contract be awarded on such bid, the bidder will enter a contract and the performance of it will be properly secured. The successful bidder if using a 10% bid guarantee, shall be required to provide a contract performance and payment bond, executed by a surety company authorized to do business in the State of Ohio, for the full amount of the bid.

6.2 FORFEITURE

6.2.1 If for any reason, other than as authorized by subparagraph 4.2.1 or paragraph 6.3, the Bidder fails to execute the Contract Form, and the TID awards the Contract to another Bidder which the TID determines is the lowest and best Bidder, the Bidder who failed to execute the Contract Form shall be liable to the TID for the difference between such Bidder's bid and the bid of the lowest and best Bidder, or for a penal sum not to exceed ten percent (10%) of the bid amount, whichever is less.

6.2.2 If the TID then awards a Contract to another Bidder which the TID determines is the lowest and best Bidder and such Bidder also fails or refuses to execute the Contract Form, the liability of such lowest and best Bidder shall, except as provided in paragraph 6.3, be the amount of the difference between the bid amounts of such lowest and best Bidder and another Bidder which the TID determines is the lowest and best Bidder, but not in excess of the liability specified in subparagraph 4.2.2. Liability on account of an award to each succeeding lowest and best Bidder shall be determined in like manner.

6.2.3 If the TID does not award the Contract to the another Bidder which the TID determines is the lowest and best Bidder but resubmits the Contract for bidding, the Bidder failing to execute the Contract Form shall, except as provided in paragraph 6.3, be liable to the TID for a penal sum not to exceed ten percent (10%) of such Bidder's bid amount 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.

6.3 EXCEPTION TO FORFEITURE

6.3.1 A Bidder for a Contract with the TID costing less than \$500,000 may withdraw a bid from consideration if the Bidder's bid for some other contract with the State or any political subdivision, district, institution or agency thereof, excluding the Ohio Department of Transportation, costing less than \$500,000 has already been accepted, if the Bidder certifies in good faith that the total price of all such Bidder's current contracts is less than \$500,000, and if the Bidder's Surety certifies in good faith that the Bidder is unable to perform the subsequent Contract because to perform such Contract would exceed the Bidder's bonding capacity.

6.3.2 If a bid is withdrawn pursuant to subparagraph 6.3.1, the TID may award the

Contract to another Bidder which the TID determines is the lowest and best Bidder or reject all bids and resubmit the Contract for bidding, and neither the withdrawing Bidder nor such Bidder's Surety shall be liable for the difference between the Bidder's bid and that of another Bidder which the TID determines is the lowest and best Bidder, for a penal sum, or for the costs of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders.

6.4 CONTRACT BOND

- 6.4.1 If the Bidder executes the Contract Form, the Bidder shall, at the time of signing the Contract Form, provide the Contract Bond required by law in form and substance, and from a Surety, satisfactory to the TID.
- 6.4.2 The Contract Bond shall be in the full amount of the Contract to indemnify the TID against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract Documents and in accordance with the Plans, Specifications, details and bills of material therefor and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in carrying forward, performing or completing the Contract.

6.5 PERSONAL PROPERTY TAX STATEMENT

- 6.5.1 The successful Bidder shall provide a properly completed and executed statement in the form attached hereto in order to fulfill the requirements of Section 5719.042 of the Ohio Revised Code.

A copy of the statement shall also be incorporated into the contract, and no payment shall be made with respect to any contract to which this section applies unless such statement has been so incorporated as a part thereof. The completed and executed statement should be enclosed with the Bid Form.

ARTICLE 7 - CONTRACT AWARD AND EXECUTION

7.1 NONCOMPLIANCE WITH CONDITIONS PRECEDENT

- 7.1.1 The award of the Contract and the execution of the Contract Form are based upon the expectation that the lowest and best Bidder will execute the Contract Form and comply with all conditions precedent for execution of the Contract Form listed in Paragraph 7.3 within ten (10) days of the date of the Notice of Intent to Award.
 - 7.1.1.1 Failure to execute the Contract Form or noncompliance with the conditions precedent for execution of the Contract Form within ten (10) days of the date of the Notice of Intent to Award shall be cause permitting the TID to cancel the Notice of Intent to Award and award

the Contract to another Bidder which the TID determines is the lowest and best Bidder or to resubmit the Contract for bidding, at the discretion of the TID.

- 7.1.1.2 The TID may extend the time for submitting the conditions precedent for execution of the Contract Form for good cause shown. No extension shall operate as a waiver of the conditions precedent for execution of the Contract Form.

7.2 TIME LIMITS

- 7.2.1 The failure to award the Contract and to execute the Contract Form within sixty (60) days of the bid opening invalidates the entire bid process and all bids submitted, unless the time is extended by written consent of the apparent lowest and best Bidder within the sixty (60) day period.

- 7.2.1.1 If the Contract is awarded and the Contract Form is executed within sixty (60) days of the bid opening, any increases in material, labor and subcontract costs shall be borne by the Bidder without alteration of the amount of the bid.

- 7.2.1.2 If the cause of the failure to execute the Contract Form within sixty (60) days of the bid opening is due to matters for which the TID is solely responsible, the Contractor shall be entitled to a Change Order authorizing payment of verifiable increased costs in materials, labor or subcontracts.

- 7.2.1.3 If the cause of the failure to execute the Contract Form within sixty (60) days of the bid opening is due to matters for which the Contractor is responsible, no request for increased costs will be granted.

7.3 CONDITIONS PRECEDENT FOR EXECUTION OF THE CONTRACT FORM

- 7.3.1 Contract Bond. To support the Contract Bond, a Certificate of Compliance issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio.

- 7.3.2 Ohio Workers' Compensation Certificate.

- 7.3.3 Certificate of Insurance (ACORD form is acceptable) and copy of additional insured or loss payee endorsement. The TID reserves the right to request a certified copy of the Contractor's insurance policies.

- 7.3.4 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the

right of the Bidder to do business in the State; or, if the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.94, inclusive, ORC.

7.3.5 Contract Form executed by the Contractor.

7.3.6 Personal Property Tax Statement in accordance with paragraph 6.5.

7.3.7 Certification of Political Contribution Disclosure.

7.4 NOTICE TO PROCEED AND SUBMITTALS

7.4.1 The Authorized Representative shall issue the Contractor a Notice to Proceed which shall establish the date for commencement of the time for Contract Completion. The Contractor shall, within ten (10) days of the date of the Notice to Proceed, furnish the Architect/Engineer the following submittals:

7.4.1.1 Contract Cost Breakdown;

7.4.1.2 Preliminary schedule including Shop Drawings and submittals;

7.4.1.3 List of Subcontractors;

7.4.1.4 List of Material Suppliers;

7.4.1.5 Outline of Qualifications of proposed Superintendent.

7.5 WAGE PAYMENT DATES

7.5.1 The Bidder shall base its bid upon the federal Davis-Bacon rates of wages as ascertained by the United States Department of Labor. Further information can be found in Appendix C.

7.5.2 The Contractor shall, within ten (10) days of the date of the Notice to Proceed, provide to the Architect/Engineer for the Wage Coordinator a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

7.6 DAVIS BACON WAGE RATES

7.6.1 DAVIS BACON WAGE RATES SHALL PREVAIL ON THE PROJECT IN ACCORDANCE WITH HUD-4010

7.6.2 A COPY OF THE APPLICABLE WAGE RATES MAY BE OBTAINED

ONLINE VIA THE INTERNET AT THE FOLLOWING WEB SITE:
<http://www.wdol.gov>

- 7.6.3 SHOULD THE BIDDER NOT HAVE ACCESS TO THE INTERNET, A COMPLETE SET OF THE APPLICABLE WAGE RATES ARE AVAILABLE AT THE OFFICE OF THE HENRY COUNTY ENGINEER. A COPY WILL BE PROVIDED IF REQUESTED.
- 7.6.4 THE SUCCESSFUL BIDDER WILL BE PROVIDED A HARD COPY OF THE WAGE RATES AS A PART OF THE CONTRACT DOCUMENTS.
- 7.6.5 Further information can be found in the Appendices of this proposal.

ARTICLE 8 - APPLICABLE LAW AND FORUM

8.1 STATE COURTS AND LAW

- 8.1.1 The Henry County Court of Common Pleas, or if permitted by law the United States District Court for the Northern District of Ohio, shall be the exclusive jurisdiction in which any action or proceeding concerning any Contract, agreement or performance under the Contract Documents or in connection with the Project shall be filed. In any such action or proceeding, the Contract Documents shall be construed in accordance with the laws of the State of Ohio which shall govern to the exclusion of the law of any other forum.

HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

BID FORM

Project Name: **INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION**

THE TIME FOR COMPLETION OF THE PROJECT IS ON OR BEFORE OCTOBER 31, 2014.

HAVING READ AND EXAMINED THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE DRAWINGS AND SPECIFICATIONS PREPARED BY THE ENGINEER FOR THE ABOVE-REFERENCED PROJECT, AND THE FOLLOWING ADDENDA:

ADDENDUM NO.

DATE OF RECEIPT

THE UNDERSIGNED BIDDER PROPOSES TO PERFORM ALL WORK FOR THE APPLICABLE CONTRACT, IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, PROPOSAL, AND APPENDICES, FOR THE FOLLOWING SUM(S):

CONTRACT

TOTAL ("BASE BID") \$ _____

Amount of BASE BID written in Words: _____

BID SCHEDULE

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE (\$)	TOTAL COST (\$)
<i>Base Bid</i>					
ROADWAY					
1	Clearing & Grubbing (including Stripping/Stockpiling Topsoil)	1.00	LS		
2	Concrete Curb Removal	2.00	LF		
3	Roadway Excavation	450.00	CY		
4	Roadway Excavation (Undercuts)	460.00	CY		
5	Roadway Embankment	350.00	CY		
6	Subgrade Compaction	975.00	SY		
7	Structural Geograd (Tensar BX-1200 or Equal)	975.00	SY		
8	12" #1's & #2's Aggregate	325.00	CY		
9	10" Crushed Aggregate Base (ODOT 304)	275.00	CY		
10	6" Asphalt Base Course (ODOT 302, PG64-22)	130.00	CY		
11	2.5" Asphalt Concrete Intermediate Course (ODOT 448 Type 2 Medium, PG64-22 M)	35.00	CY		
12	2.5" Asphalt Concrete Surface Course (ODOT 448 Type 1 Medium, PG64-22)	55.00	CY		
13	8" Plain Portland Cement Concrete Pavement with 6" Crushed Aggregate Base (ODOT 304)	175.00	SY		
14	Type 2 Concrete Curb (Modified)	500.00	LF		
15	Type 2A Concrete Curb	50.00	LF		
16	6" Perforated Corrugated HDPE Pipe (Storm) with Filter Sock, including No. 8 Stone & End Caps	500.00	LF		
17	4" Centerline, Double Yellow, Type 1 (ODOT 642)	0.05	MI		
18	Mobilization	1.00	LS		
19	Maintaining Traffic	1.00	LS		
20	Construction Layout Stakes	1.00	LS		
21	Topsoil (3")	275.00	CY		
22	Seeding, Mulching & Fertilizer	2,400.00	SY		
23	Stormwater Pollution Prevention Plan	1.00	LS		
SANITARY SEWER					
24	12" PVC ASTM D3034 SDR 35 (Sanitary) Type B	285.00	LF		
25	12" PVC Plug (Sanitary)	1.00	EA		
26	48" Manhole with Standard Cone (Sanitary)	1.00	EA		
27	Manhole Casting & Gasketed Lid Marked ("Sanitary Sewer")	1.00	EA		

ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE (\$)	TOTAL COST(\$)
STORM SEWER					
28	12" Concrete Pipe ASTM C76 Class (IV Storm), Type B	35.00	LF		
29	12" PVC ASTM D3034 SDR 35 (Storm), Type B	10.00	LF		
30	18" PVC F679 (Storm), Type C	800.00	LF		
31	Storm Manhole Removal	1.00	EA		
32	2-2B Catch Basin with Bike Safe Grate	3.00	EA		
33	2' x 3' Curb Inlet with Casting & Bike Safe Grate	2.00	EA		
WATERLINE					
34	Fire Hydrant Assembly with Storz Connection, Complete	1.00	EA		
35	12" M.J. Gate Valve & Box Assembly, Complete	1.00	EA		
36	12" – 22½ Degree MJ Bend	2.00	EA		
37	12" Solid Sleeve	1.00	EA		
38	12" M.J. Plug Sleeve	1.00	EA		
39	12" AWWA C900 (Class 150 & DR18) Type B	140.00	LF		
40	12" AWWA C900 (Class 150 & DR18) Type C	130.00	LF		
TOTAL BID:				\$	

BIDDER'S CERTIFICATION

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

1. The Bidder has read and understands the Contract Documents, which includes this proposal and the proposal's appendices, and agrees to comply with the contract documents regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
2. The Bidder represents that the bid contains the name of every Person interested therein and is based upon the Standards specified by the Contract Documents.
3. The Bidder has evaluated when the Work may be performed and visited the Project site, become familiar with local conditions and has correlated its evaluations and observations with the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the Contract Documents.
4. The Bidder understands that the award of separate Contracts for the Project requires sequential, coordinated and interrelated operations which may involve interference, disruption, hindrance, delay or impact in the progress of any individual Contractor's Work and that any such interference, disruption, hindrance, delay or impact is within the contemplation of the Bidder and the TID. Except when the cause of a delay is the proximate result of the TID's or City's act or failure to act as required by Section 4113.62, ORC, the Bidder agrees that the Contract Price, as amended from time to time in accordance with the Contract Documents, shall include all amounts due from the TID or City resulting from interference, disruption, hindrance, delay or impact caused by or between Contractors or their agents and employees. The Bidder agrees that the Bidder will make no claims against the TID and/or City for additional compensation or mitigation of Liquidated Damages for any interference, disruption, hindrance, delay or impact, and will accept as full satisfaction any extension of time which may be provided by the TID in accordance with the Contract Documents. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.
5. The Bidder and each Person signing on behalf of the Bidder certifies, and in the case of a bid by a joint venture, each participant thereof certifies as to such participant, under penalty of perjury, that to the best of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Prices and any Alternate bid in the bid have been arrived at independently without collusion, consultation, communication or agreement, or for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Prices or Alternate bid with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Prices and any Alternate bid in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Prices or Alternate bid; (c) no attempt has been made or will be made by the Bidder to induce any other Person to submit or not to submit a bid for the purpose of restricting competition; (d) the statements made in the Bidder's Qualification Statement and Non-Collusion Affidavit are true and correct, and (e) no unresolved finding for recovery has

been issued against the Bidder by the Auditor of State in accordance with Section 9.24, ORC.

6. The Bidder understands that the Contract is subject to all the provisions, duties, obligations, remedies and penalties of Chapter 4115, ORC, "Wages and Hours on Public Works" or the Davis Bacon Act, as applicable, and that the Bidder shall pay any wage increase in the locality during the term of the Contract.
7. The Bidder will execute the Contract Form with the TID, if a Contract is awarded on the basis of this bid, and if the Bidder does not execute the Contract Form for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the TID as provided in Article 6.
8. The Bidder certifies that the upon the execution of the Contract Form, the Contractor will make a good faith effort to ensure that all of the Contractor's employees, while working on the Project site, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
9. The Bidder agrees to furnish any information requested by the Architect/Engineer or the Authorized Representative to evaluate whether the Bidder is best.
10. The Bidder agrees to execute the Contract Form and furnish the submittals required by paragraph 7.3 for execution of the Contract Form, within ten (10) days of the date of the Notice of Intent to Award.

If the Bidder is a corporation, limited liability company, partnership or sole proprietorship, an officer, member, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and sign the Bid Form. If the Bidder is a joint venture, an officer, member, partner or principal, as applicable, of each participant of the joint venture shall print or type the legal name of the applicable participant on the line provided and sign the Bid Form on behalf of such participant. All signatures must be original.

BIDDER'S NAME: _____

Authorized Signature: *By:* _____

Print Name of Authorized Signature: _____

Title: _____

Date: _____

Participant Name (if different from Bidder): _____

Company Name: _____

Mailing Address: _____

Telephone Number: _____
Facsimile Number: _____
E-Mail Address: _____
Where Incorporated: _____
Federal Identification Number: _____
Contact Person for Contract processing: _____

ADDITIONAL SIGNATURE FOR JOINT VENTURE

Authorized Signature: _____
Print Name of Authorized Signature: _____
Title: _____
Participant Name: _____
Mailing Address: _____
Telephone Number: _____
Facsimile Number: _____
E-Mail Address: _____
Where Incorporated: _____
Federal Identification Number: _____
Contact Person for Contract processing: _____

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
BIDDER QUALIFICATION STATEMENT**

**(MUST BE SUBMITTED WITH BID. FAILURE TO COMPLY CAN RESULT IN
REJECTION OF BID.)**

ALL QUESTIONS MUST BE ANSWERED AND THE DATA GIVEN MUST BE CLEAR AND COMPREHENSIVE. THIS STATEMENT MUST BE NOTARIZED. IF NECESSARY, QUESTIONS MAY BE ANSWERED ON SEPARATE ATTACHED SHEETS. THE BIDDER MAY SUBMIT ANY ADDITIONAL INFORMATION HE DESIRES.

1. BIDDER'S NAME

NAME OF COMPANY

BUSINESS ADDRESS (PERMANENT MAIN OFFICE)

CITY, STATE, ZIP CODE

2. DATE BUSINESS WAS ORGANIZED ____/____/____

3. IF BIDDER IS A CORPORATION, INDICATES WHERE BUSINESS IS INCORPORATED. _____

4. INDICATE YEARS ENGAGED IN CONTRACTING BUSINESS.

5. GENERAL CHARACTER OF WORK PERFORMED BY YOUR COMPANY.

6. HAVE YOU EVER FAILED TO COMPLETE ANY WORK AWARDED TO YOU?
YES NO

IF YES, INDICATE WHERE AND WHY:

7. HAVE YOU EVER DEFAULTED ON A CONTRACT? YES NO

8. HAVE YOU, OR ANY OF THE PRINCIPAL MEMBERS OF YOUR ORGANIZATION EVER RECEIVED OR BEEN THE SUBJECT OF ANY OF THE FOLLOWING?
- A. OHIO ENVIRONMENTAL PROTECTION AGENCY NOTICE OF VIOLATION;
 - B. OHIO DEPARTMENT OF HEALTH NOTICE OF VIOLATION;
 - C. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SERIOUS OR WILLFUL CITATION;
 - D. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 114A LETTER OR FINDING OF VIOLATION;
 - E. CONSENT ORDER OR COURT ORDER RELATED TO ANY OF THE ABOVE; OR
 - F. FELONY CONVICTION.
- YES NO
9. IF THE ANSWER TO QUESTION 8 IS "YES," PROVIDE COPIES OF ALL RELEVANT DOCUMENTS AND A SHORT WRITTEN DESCRIPTION OF THE CIRCUMSTANCES INVOLVED.
10. BACKGROUND AND EXPERIENCE OF THE PRINCIPAL MEMBERS OF YOUR ORGANIZATION, INCLUDING OFFICERS:
11. CREDIT AVAILABLE: \$

12. BANK REFERENCES:

_____	_____
NAME	NAME
_____	_____
ADDRESS	ADDRESS
_____	_____
CITY	CITY
_____	_____
STATE	STATE
_____	_____
ZIP	ZIP

13. UPON REQUEST OF THE TID, WILL YOU PROVIDE A DETAILED FINANCIAL STATEMENT AND FURNISH ANY OTHER INFORMATION THAT MAY BE REQUIRED?

YES NO

14. LIST EXPERIENCES IN CONSTRUCTION WORK SIMILAR IN TYPE AND IMPORTANCE TO THIS PROJECT WITHIN THE PAST THREE (3) YEARS:

15. CONTRACTS ON HAND:

CONTRACT NAME	\$ VALUE OF CONTRACT	COMPLETION DATE
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16. LIST YOUR MAJOR EQUIPMENT AVAILABLE FOR THIS CONTRACT:

17. LIST THE MOST IMPORTANT PROJECTS RECENTLY COMPLETED BY YOUR ORGANIZATION, STATING THE APPROXIMATE COST FOR EACH, AND THE MONTH AND YEAR COMPLETED.

18. THE UNDERSIGNED HEREBY AUTHORIZES AND REQUESTS ANY PERSON, FIRM OR CORPORATION TO FURNISH ANY INFORMATION REQUESTED BY THE TID IN VERIFICATION OF THE MATTERS CONTAINED IN THIS BIDDER QUALIFICATION STATEMENT.

DATED AT _____ THIS _____ DAY OF _____, _____.

NAME OF BIDDER

BY: _____
(SIGNATURE)

TITLE: _____

STATE OF _____

COUNTY OF _____, SS:

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____, 20____.

(SEAL)

NOTARY PUBLIC

MY COMMISSION EXPIRES:

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
BID GUARANTY AND CONTRACT BOND**

(SECTION 153.571, OHIO REVISED CODE)

KNOW ALL PERSONS BY THESE PRESENTS, THAT WE, THE UNDERSIGNED

(NAME AND ADDRESS)

AS PRINCIPAL, AND

(NAME OF SURETY)

AS SURETY, ARE HEREBY HELD AND FIRMLY BOUND UNTO THE HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, AS OBLIGEE, IN THE PENAL SUM OF THE DOLLAR AMOUNT OF THE BID SUBMITTED BY THE PRINCIPAL TO THE OBLIGEE ON _____, 201__, TO UNDERTAKE THE PROJECT KNOWN AS:

INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION

(PROJECT NAME)

CONTRACT:

THE PENAL SUM REFERRED TO HEREIN SHALL BE THE DOLLAR AMOUNT OF THE PRINCIPAL'S BID TO THE OBLIGEE, INCORPORATING ANY ADDITIVE 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 LINES IN THE IMMEDIATELY PREVIOUS SENTENCE ARE LEFT BLANK, THE PENAL SUM WILL BE THE FULL AMOUNT OF THE PRINCIPAL'S BID, INCLUDING ADDITIVE ALTERNATES. ALTERNATIVELY, IF COMPLETED, THE AMOUNT STATED MUST NOT BE LESS THAN THE FULL AMOUNT OF THE BID, INCLUDING ADDITIVE ALTERNATES, IN DOLLARS AND CENTS. A PERCENTAGE IS NOT ACCEPTABLE.) FOR THE PAYMENT OF THE PENAL SUM WELL AND TRULY TO BE MADE, WE HEREBY JOINTLY AND SEVERALLY BIND OURSELVES, OUR HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS, AND ASSIGNS.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT WHEREAS THE ABOVE-NAMED PRINCIPAL HAS SUBMITTED A BID FOR THE 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 CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE BID, PLANS, SPECIFICATIONS, DETAILS AND BILLS OF MATERIAL; AND IN THE EVENT THE PRINCIPAL PAYS TO THE OBLIGEE THE DIFFERENCE, NOT TO EXCEED 10% OF THE PENAL SUM HEREOF, BETWEEN THE AMOUNT SPECIFIED IN THE BID AND SUCH LARGER AMOUNT FOR WHICH THE OBLIGEE MAY IN GOOD FAITH CONTRACT WITH THE BIDDER DETERMINED BY THE OBLIGEE TO BE THE NEXT LOWEST AND BEST BIDDER TO PERFORM THE WORK COVERED BY THE BID; OR IN THE EVENT THE OBLIGEE DOES NOT AWARD THE CONTRACT TO SUCH NEXT LOWEST AND BEST BIDDER AND RESUBMITS THE PROJECT FOR BIDDING, THE PRINCIPAL PAYS TO THE OBLIGEE THE DIFFERENCE NOT TO EXCEED 10% OF THE PENAL SUM HEREOF, BETWEEN THE AMOUNT SPECIFIED IN THE BID, OR THE COSTS, IN CONNECTION WITH THE RESUBMISSION, OF PRINTING NEW CONTRACT DOCUMENTS, REQUIRED ADVERTISING, AND PRINTING AND MAILING NOTICES TO PROSPECTIVE BIDDERS, WHICHEVER IS LESS, THEN THIS OBLIGATION SHALL BE NULL AND VOID, OTHERWISE TO REMAIN IN FULL FORCE AND EFFECT. IF THE OBLIGEE ACCEPTS THE BID OF THE PRINCIPAL AND THE PRINCIPAL WITHIN 10 DAYS AFTER THE AWARDED OF THE CONTRACT ENTERS INTO A PROPER CONTRACT AND EXECUTES THE CONTRACT FORM IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE BID, PLANS, SPECIFICATIONS, DETAILS AND BILLS OF MATERIAL, WHICH SAID CONTRACT IS MADE A PART OF THIS BOND THE SAME AS THOUGH SET FORTH HEREIN;

NOW ALSO, IF THE SAID PRINCIPAL SHALL WELL AND FAITHFULLY 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 CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE PLANS, SPECIFICATIONS, DETAILS AND BILLS OF MATERIAL THEREFOR; AND SHALL PAY ALL LAWFUL CLAIMS OF SUBCONTRACTORS, MATERIAL SUPPLIERS, 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 SUBCONTRACTOR, MATERIAL SUPPLIER 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 SUM OF THIS OBLIGATION AS HEREIN STATED.

THE SAID SURETY HEREBY STIPULATES AND AGREES THAT NO MODIFICATIONS, OMISSIONS, OR ADDITIONS IN OR TO THE TERMS OF THE SAID CONTRACT, THE WORK THEREUNDER OR THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE PLANS AND SPECIFICATIONS THEREFOR, SHALL IN ANY WAY AFFECT THE OBLIGATIONS OF SAID SURETY ON THIS BOND, AND THE SURETY DOES HEREBY WAIVE NOTICE OF ANY SUCH MODIFICATIONS, OMISSIONS OR ADDITIONS IN OR TO THE TERMS OF THE CONTRACT, THE WORK OR THE CONTRACT DOCUMENTS, INCLUDING WITHOUT LIMITATION THE PLANS AND SPECIFICATIONS.

SIGNED THIS _____ DAY OF _____, 20__.

PRINCIPAL

BY _____
(SIGNATURE)

TITLE _____

SURETY _____

BY _____
ATTORNEY-IN-FACT

SURETY ADDRESS:

STREET

CITY STATE ZIP

(_____) _____
TELEPHONE NUMBER

SURETY AGENT'S ADDRESS:

AGENCY NAME

STREET

CITY STATE ZIP

(_____) _____
TELEPHONE NUMBER

CERTIFIED COPY OF CORPORATE RESOLUTION

(Name of Corporation)

I hereby certify that I am duly elected and acting Secretary of the above named corporation, a corporation duly organized and existing under the laws of the State of _____ and that on _____ day of _____, _____, the board of directors of said corporation authorized and approved submission of a certain bid to the Henry County Transportation Improvement District for the delivery of certain Work by said corporation and any Contract resulting therefrom and

empowered the _____ of said corporation to execute said bid and
(Title of Officer)

any contract resulting therefrom with the City of Napoleon, Ohio, and in behalf of said corporation; that said authority is not contrary to any provision in the governing instruments of said corporation; that said authority has not been rescinded or modified; and that _____ is duly elected and acting in the above official capacity of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name on _____, 20____.

(Name of Corporation)

By: _____

Name: _____
Secretary

**STATE OF OHIO
EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS AND BID CONDITIONS
FOR OPWC-ASSISTED CONSTRUCTION PROJECTS**

NOTICE TO CONTRACTORS:

The provisions of the Ohio Administrative Code 123:2-3-02 regarding Equal Employment Opportunity on State Construction Contracts and State-assisted Construction Contracts, and the Ohio Administrative Code 123:2-3-02 regarding Equal Employment Opportunity and Female Utilization Goals are applicable to this project, and each contractor will be required to comply in all aspects to the provisions of said executive orders.

CERTIFICATE OF COMPLIANCE FOR EEO PURPOSES:

All prime contract bidders on the project must submit prior to the execution of a contract a copy of a valid Certificate of Compliance for Equal Employment Opportunity purposes as issued by the State Equal Employment Opportunity Coordinator.

>>> Does this bidder have a valid Certificate of Compliance? Yes No

>>> If "No" to the above, will this bidder be able to obtain a valid Certificate of Compliance prior to the execution of a contract? Yes No

Bidder must provide a "Yes" answer to one or the other of the above questions.

BIDDER'S AFFIRMATIVE ACTION REQUIREMENTS:

Each prime contract bidder must submit an Affirmative Action Program regarding equal employment opportunity to and receive approval from the State Equal Employment Opportunity Coordinator prior to the bid opening, **OR** the prime contract bidder must evidence within its bid the adoption of the Minority Manpower Utilization Goals and Timetables set forth in "Appendix A" and the Specific Affirmative Action Steps set forth in "Appendix B" of the State Equal Employment Opportunity Bid Conditions.

>>> The prime contract bidder has prepared and submitted an Affirmative Action Program to the State Equal Employment Opportunity Coordinator and that program has been approved by the State Equal Employment Opportunity Coordinator prior to the bid opening? Yes No

O R

>>> With this bid response, the prime contract bidder hereby adopts the Minority Manpower Utilization Goals and Timetables set forth in Appendix "A" and the Specific Affirmative Action Steps set forth in Appendix "B" of the State Equal Employment Opportunity Bid Conditions? Yes No

Bidder must provide a “Yes” answer to one or the other of the above affirmative action alternatives.

BIDDER’S EEO COVENANTS:

Throughout its performance of any contract awarded to it on this State-assisted project, the prime contract bidder agrees to the following covenants:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry or sex. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry or sex. Such action shall include, but is not limited to, the following: 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.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will in all solicitations or advertisements for employees placed by or on behalf of the prime contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry or sex.

(3) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State Administering Agency advising the said labor union or workers’ representatives of the contractor’s commitments under this covenant and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of the Ohio Department of Administrative Services, Division of Public Works’ Regulations on Equal Employment Opportunity (hereinafter DPW Regulations) and with the implementing rules, regulations and applicable orders of the State Equal Employment Opportunity Coordinator.

(5) The contractor agrees to fully cooperate with the State Administering Agency, the State Equal Employment Opportunity Coordinator and with any other official or agency, or the State or Federal government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices under its contract and the contractor shall comply promptly with all requests and directions from the State Administering Agency, the State Equal Employment Opportunity Coordinator and any of the State of Ohio officials and agencies in this regard, both before and during construction.

(6) Full cooperation as expressed in clause (5), above, shall include, but not be limited to, being a witness and permitting employees to be witnesses and complainants in any proceeding involving questions of unlawful employment practices, furnishing all information and monthly utilization

work hour reports (OAC 123:2-9-01) required by the DPW Regulations and by the rules, regulations and orders of the State Equal Employment Opportunity Coordinator pursuant thereto, and permitting access to its books, records, and accounts by the State Administering Agency and the State Equal Employment Opportunity Coordinator for purposes of investigation to ascertain compliance with such rules, regulations and orders. Specifically, contractors will submit workforce utilization reports to the State Equal Opportunity Coordinator by the 10th of each month.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of its contract or with any of the said rules, regulations, or orders, its contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further State Contracts or State-assisted Construction Contracts in accordance with procedures authorized in the DPW Regulations and such other sanctions may be instituted and remedies invoked, as provided in said DPW Regulations or by rule, regulation, or order of the State Equal Employment Opportunity Coordinator, or as otherwise provided by law.

In the event that its contract is terminated for a material breach of DPW Regulations, the contractor shall become liable for any and all damages which shall accrue to the State Administering Agency and Applicant and the State of Ohio as a result of said breach.

(8) The contractor will require the inclusion of language reflecting these same eight covenants within every subcontract or purchase order it executes in the performance of its contract unless exempted by rules, regulations or orders of the State Equal Employment Opportunity Coordinator issued pursuant to O.A.C. 123:2-3-02 so that these provisions will be binding upon each subcontractor or vendor. The contractor will take such actions as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in any litigation with a subcontractor, vendor or other party as a result of such direction by the State Administering Agency, the contractor may be requested to protect the interests of the State.

>>> The prime contract bidder hereby adopts the foregoing covenants? ___Yes ___No

BIDDER'S CERTIFICATION:

The undersigned, being a duly authorized officer of the prime contract bidder, does hereby certify to and agree with the foregoing statements and covenants regarding its subscription to the State's Equal Employment Opportunity Requirements for State-assisted Construction Contracts.

_____/____/____
Signature of Authorized Officer Date

Title

>>> PLEASE NOTE: Only a bidder possessing a valid certificate will be awarded a contract pursuant to Chapter 153 of the Revised Code by an owner referred to in section 153.01 of the Revised Code. Application shall be made at least ten working days prior to the date that the bidder expects to receive the certificate. The bidder's failure to elect one of the two Bidder's Affirmative Action Requirements, adopt the Bidder's EEO Covenants, and complete the foregoing certification may cause the bidder's proposal to be rejected as being non-responsive to the State's Equal Employment Opportunity Requirements and in non-compliance with the State Equal Employment Opportunity Bid Conditions. In addition, the bidder must, prior to the execution of a contract, submit to the local subdivision a valid Certificate of Compliance for Equal Employment Opportunity Purposes.

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
NON-COLLUSION AFFIDAVIT**

State of _____

County of _____: ss.

I, _____,
(Name of Party Signing Affidavit) (Title)

being duly sworn, do depose and say:

That _____
(Insert name of individual, Co-partnership, or Corporation)

its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.

(Signature)

(Title)

Sworn to and subscribed before me this ____ day of _____, 2014.

Notary Public in and for
_____ County, Ohio

(Seal)

My commission expires:
_____, 20__

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
LIST OF SUB-CONTRACTORS**

Note: If the Bidder intends to sub-contract any of the Work included in the Contract, the Bidder must provide the information required below. All Work not listed below must be done by the Bidder with the Bidder's own forces unless written permission is granted by the TID to do otherwise.

<u>TYPE OF WORK</u>	<u>NAME</u>	<u>ADDRESS</u>

**CERTIFICATION OF COMPLIANCE WITH OHIO REVISED CODE SECTION
3517.13
FOR CONTRACTS IN EXCESS OF TEN THOUSAND DOLLARS (\$10,000.00)**

STATE OF _____

COUNTY OF _____

The undersigned personally appeared before me, as an individual or as a representative of

_____ for a contract for _____
(Name of Entity) (Type of Product or Service)

to be let by the Henry County Transportation Improvement District, who, being duly cautioned and sworn, makes the following statement with respect to prohibited activities constituting a conflict of interest or other violations under Ohio Revised Code Section 3517.13, and further states that the undersigned has the authority to make the following representation on behalf of himself or herself or of the business entity:

1. That none of *the* following has **individually** made since April 4, 2007 and that, if awarded a contract for the purchase of goods or services in excess of \$10,000, none of the following **individually** will make, beginning on the date the contract is awarded and extending until one year following the conclusion of the contract, as an individual, one or more campaign contributions totaling in excess of \$10,000, to any elected official of the County of Henry or their individual campaign committees:
 - a. Myself;
 - b. Any partner or owner or shareholder of the partnership (if applicable);
 - c. Any owner of more than 20% of the corporation or business trust (if applicable);
 - d. Each spouse of any person identified in (a) through (c) of this section;
 - e. Each child seven years of age to seventeen years of age of any person identified in divisions (a) through (c) of this section (only applicable to contributions made on or after April 4, 2007)

2. That none of the following have **collectively** made since April 4, 2007, and that, if awarded a contract for the purchase of goods or services in excess of \$10,000, none of the following **collectively** will make, beginning on the date the contract is awarded and extending until one year following the conclusion of the contract, one or more campaign contributions totaling in excess of \$10,000, to any elected official of the County of Henry or their individual campaign committees:
 - a. Myself;
 - b. Any partner or owner or shareholder of the partnership (if applicable);
 - c. Any owner of more than 20% of the corporation or business trust (if applicable);
 - d. Each spouse of any person identified in (a) through (c) of this section;
 - e. Each child seven years of age to seventeen years of age of any person identified in divisions (a) through (c) of this section (only applicable to contributions made on or after April 4, 2007)

Signature _____

Title _____

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

Notary Public _____

My Commission expires _____

APPENDIX A

General Conditions

**GENERAL CONDITIONS
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ARTICLE 1 - General Provisions

1.1 APPLICATION AND GOVERNING LAW

- 1.1.1 The Contractor, the Architect/Engineer and the Authorized Representative shall be familiar with all provisions of the Contract Documents.
- 1.1.2 No change shall be made to the Standard Conditions unless so provided in the Special Conditions prepared by the Authorized Representative or prepared by the Architect/Engineer and approved in writing by the Authorized Representative.
- 1.1.3 The Contractor shall comply with all applicable federal, State and local codes, statutes, ordinances, resolutions and regulations in the performance of the Work on the Project. References to ODOT matters, if any, shall be as set forth in the ODOT Construction and Material Specifications current as of the date of the opening of bids. Such Construction and Material Specifications are hereby incorporated by reference into the Contract Documents to the extent not inconsistent with the Standard Conditions; further, notwithstanding any other provision found in the General Conditions, Special Conditions, Supplemental Conditions or Specifications, and regardless of any mention of an asphalt binder adjustment as found in ODOT Item 401.20, an Asphalt Binder Price Adjustment, expressly **does not** apply to this contract.
- 1.1.4 The court of the State or, if permitted by law, the courts of the federal government in Ohio shall have exclusive jurisdiction over any action or proceeding concerning the Contract and performance thereunder and the Contractor irrevocably consents to such jurisdiction. Any such action or proceeding arising out of or related in any way to the Project, the Contract or performance thereunder shall be brought only in the Henry County, Ohio, Court of Common Pleas, or if permitted by law in the United States District Court for the Northern District of Ohio. The Contract shall be construed in accordance with the laws of the State.
- 1.1.5 Other rights and responsibilities of the Contractor, the Architect/Engineer and the TID are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience. Captions throughout the Contract Documents are for convenience and reference only and the words contained in a caption shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of the Contract Documents.
- 1.1.6 The TID may maintain an action in its own name for violations of any law relating to the Project or for any injury to Persons or property pertaining to the Work, or for any other cause which is necessary in the performance of the TID's

duties.

1.2 CONDITIONS OF CONTRACT

1.2.1 Nondiscrimination

- 1.2.1.1 During the performance of the Contract, the Contractor agrees that in the hiring of employees for the performance of Work, including without limitation Work to be performed by a Subcontractor, no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, religion, national origin, age, sex, disability or color, discriminate against any citizen in the employment of labor which the employment relates.
- 1.2.1.2 The Contractor further agrees that no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, national origin, age, sex, disability or color.
- 1.2.1.3 In the event of the Contractor's noncompliance with the nondiscrimination clauses, the Contract may be terminated or suspended in whole or in or workers who are qualified and available to perform the Work to part and the Contractor may be declared not responsive or responsible for further TID contracts or such other sanctions as provided by law.

1.2.2 Hiring Under Public Improvement Contracts

- 1.2.2.1 Any provision of a hiring hall contract or agreement which obligates a Contractor to hire, if available, only such employees as are referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless, at the date of execution of such hiring hall contract or agreement, or within thirty (30) days thereafter, such labor organization has in effect procedures for referring qualified employees for hire without regard to race, color, religion, national origin, or ancestry and unless such labor organization includes in its apprentice and journeymen membership, or otherwise has available for job referral without discrimination, qualified employees.

1.2.3 Wages and Hours

- 1.2.3.1 The Contractor shall pay the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce,

Division of Labor and Worker Safety, Wage and Hour Division or the U.S. Department of Labor, as applicable, to laborers and mechanics performing Work on the Project.

1.2.3.2 The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Sections 4115.03 to 4115.22 and 4115.99, ORC.

1.2.3.3 The Authorized Representative shall, within seven (7) working days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change, as required by applicable law. The Contractor shall make the necessary adjustment in the prevailing wage rate and pay any wage increase during the term of the Contract.

1.2.4 Notice of Commencement

1.2.4.1 The Authorized Representative shall prepare a Notice of Commencement as required by Section 1311.252, ORC.

1.2.4.2 The Notice of Commencement shall be made available upon request.

1.3 GIVING NOTICE

1.3.1 Whenever any provision of the Contract Documents requires the giving of any notice after execution of the Contract Form, such notice shall be deemed to have been validly given if delivered personally to the Person for whom the notice is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address of such Person known to the giver of the notice.

1.3.1.1 All notices provided to the Contractor by the Architect/Engineer shall be copied to the Authorized Representative.

1.3.1.2 All notices provided to the Architect/Engineer by the Contractor shall be copied to the Authorized Representative.

1.3.1.3 All notices provided to Authorized Representative by the Contractor shall be copied to the Architect/Engineer.

1.3.2 When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday or a legal holiday, such day will be omitted from the computation and such period shall be deemed to end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

1.4 USE OF FACSIMILE TRANSMISSION AND ELECTRONIC MAIL

1.4.1 Any notice required to be given by the Contract Documents may be given by facsimile transmission or electronic mail, provided the original document is delivered within two (2) days after the date of the facsimile transmission or electronic mailing.

1.4.2 Facsimile transmissions in excess of ten (10) pages are discouraged.

1.5 CONTRACT DOCUMENTS

1.5.1 Intent

1.5.1.1 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. The Contractor shall provide all labor and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferred therefrom to produce the intended results.

1.5.1.2 The General Conditions may not be superseded or amended by the Drawings or Specifications unless so provided in Special Conditions prepared or approved in writing by the Authorized Representative.

1.5.1.3 The Drawings shall generally govern dimensions, details and locations of the Work. The Specifications shall generally govern quality of materials and workmanship.

1.5.1.4 The organization of the Specifications in divisions, sections and articles, and the 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.

1.5.1.5 In the event of inconsistencies or ambiguities within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work, and shall comply with the stricter requirement.

1.5.1.6 Unless otherwise specified in the Contract Documents, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings.

1.5.2 Interpretation

1.5.2.1 If the Contractor finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including without limitation, the Drawings and Specifications, or between any of the Contract Documents and any applicable provision of law, the Contractor, before proceeding with

the Work, shall submit a with Request for Information to the Architect/Engineer seeking an interpretation or clarification. The Contractor shall be responsible for the prompt delivery of any such Request for Information to the Architect/Engineer.

- 1.5.2.2 The Architect/Engineer shall respond in writing to any and all Requests for Information within three (3) business days of receipt.
- 1.5.2.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect/Engineer, or in any manner other than in writing, shall not be binding and the Contractor shall not rely upon any such interpretation or clarification.
- 1.5.2.4 If any change to the Work is made to accommodate unforeseen circumstances, the Architect/Engineer shall initiate the appropriate action and notify the Authorized Representative.

1.6 DRAWINGS AND SPECIFICATIONS

1.6.1 Ownership

- 1.6.1.1 All Drawings and Specifications are the property of the TID.
- 1.6.1.2 In making copies of the Drawings and Specifications available, the TID and/or the City does not confer a license or grant permission for any use other than Work on the Project.
- 1.6.1.3 Unless otherwise specified in the Contract Documents, the Architect/Engineer shall furnish to the Contractor, free of charge, seven (7) sets of Drawings and Specifications if the Contract Price is \$500,000 or less, and ten (10) sets of Drawings and Specifications if the Contract Price is in excess of \$500,000.
- 1.6.1.4 The Contractor may obtain additional copies of the Contract Documents from the Architect/Engineer, upon request, at the cost of reproduction, if any.

1.6.2 Access

- 1.6.2.1 The Architect/Engineer shall maintain a set of Drawings and Specifications, approved by the Engineering Department, and the records required by subparagraph GC 3.2.14 at a secure location. The Architect/Engineer may delegate this responsibility to the Contractor upon written notice to the Authorized Representative.
- 1.6.2.2 The Contractor shall maintain in good order at the Project site one (1) copy of all Drawings, Specifications, Bulletins, Addenda, Requests for Information and responses thereto, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, Warranties, Change Orders, and other modifications,

including As-Built Drawings.

- 1.6.2.3 The Contractor shall at all times permit access to the documents described in subparagraphs GC 1.6.2.1 and GC 1.6.2.2 and any other Contract Documents by the Authorized Representative and the Architect/Engineer.

1.6.3 As-Built Drawings

- 1.6.3.1 The Contractor shall keep an accurate record of all approved changes made to the Drawings to show Work as actually performed where such Work varies from Work as originally shown, including the exact location and depth of underground utility lines.
- 1.6.3.2 During the performance of the Work, the Contractor shall record, prior to submission of such Contractor Payment Request, any approved changes on the Drawings, neatly in a contrasting color, noting new information not shown on the original Drawings. Failure to so record such changes may cause payment to be delayed or withheld.
- 1.6.3.3 Where Shop Drawings are used, the Contractor shall cross reference the corresponding sheet numbers on the Drawings and sections of the Specifications. The Contractor shall note related Change Order numbers where applicable.
- 1.6.3.4 The Contractor shall keep a record of any change made to the Specifications, noting particularly any variation from manufacturer's instructions and recommendations.

ARTICLE 2 - THE CONTRACTOR

2.1 CONSTRUCTION PROCEDURES

- 2.1.1 The Contractor shall be responsible for and have control over all construction means, methods, manners, techniques, sequences and procedures for all portions of the Contractor's Work and shall be responsible for any injury or damage which may result from the Contractor's Work or from improper construction, installation, maintenance or operation to the fullest extent permitted by law.
- 2.1.2 Unless otherwise specified in the Contract Documents, the Contractor shall be responsible for properly and accurately laying out all lines, levels, elevations, grades and measurements for all the Work as required by the Contract Documents.
- 2.1.3 The Contractor shall do all cutting, fitting or patching required for the Contractor's Work and shall not endanger the Project by cutting, excavating or

otherwise altering the Project, or any part of it.

- 2.1.3.1 The Contractor requiring sleeves shall furnish and coordinate the installation of those sleeves. The Contractor shall be responsible for the exact location and size of all holes and openings required to be formed or built for the Work to permit coordination with any Work performed by other Persons on the Project.
 - 2.1.3.2 The Contractor shall allow sufficient time for installation of any Work performed by other Persons before covering or closing the applicable portion of the Project.
 - 2.1.3.3 Patching shall match and blend with the existing or adjacent surface. Any patching required because of Defective or ill-timed Work shall be done by and at the expense of the Contractor.
- 2.1.4 The Contractor shall not cut away any structure or dig under any foundation or into any wall or other part of the Project, without the written approval of the Architect/Engineer.
- 2.1.4.1 Unless otherwise specified in the Contract Documents, the Contractor, prior to starting excavation or trenching, shall give notice at least two (2) business days in advance to the owners of any underground utilities, registered with the Ohio Underground Utility Protection Services (OUPS) at www.oups.org, or by phone at (800) 362-2764 and the owners of underground utilities shown on the Drawings and Specifications who are not registered members of OUPS. The owner of an underground utility is required within 48 hours of notice, excluding Saturdays, Sundays, and legal holidays, to stake, mark, or otherwise designate the location of its utilities in the construction area together with approximate depth. If any underground utility owner fails to timely perform, the Contractor shall immediately notify the Authorized Representative and the Architect/Engineer and contact the owner of the underground utility.
 - 2.1.4.2 In performing any excavation or trenching, the Contractor shall exercise caution and implement appropriate safety precautions to avoid property damage and personal injury.
 - 2.1.4.3 The Contractor shall backfill any excavation with the material specified and approved by the Architect/Engineer.
- 2.1.5 The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required heat and dryness for installation of the various materials.

2.2 CONSTRUCTION SUPERVISION

- 2.2.1 The Contractor shall provide continuous supervision at the Project by a competent superintendent (the “Superintendent”) when any Work is being performed, unless waived by the Authorized Representative.
- 2.2.2 The Superintendent shall have responsibility and authority to act on behalf of the Contractor. All communications to the Superintendent shall be deemed to have been given directly to the Contractor.
- 2.2.3 The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed Superintendent, including references, to the Architect/Engineer within ten (10) days of the Notice to Proceed.
 - 2.2.3.1 The TID reserves the right to reject the Contractor's proposed superintendent. Any such rejection shall be determined by the Authorized Representative. Failure of the Authorized Representative to notify the Contractor of such rejection within thirty (30) days of receipt of the required information shall constitute notice that the TID has no objection.
 - 2.2.3.2 If the TID rejects the Contractor's proposed Superintendent, the Contractor shall replace the Superintendent at no additional cost to the TID.
- 2.2.4 The Contractor shall not change or terminate the Superintendent without written approval of the Authorized Representative.
 - 2.2.4.1 If the Contractor proposes to change or terminate the Superintendent, the Contractor shall submit to the Architect/Engineer a written justification for the change or termination, along with the name and qualifications of the individual whom the Contractor proposes to be the new Superintendent not less than ten (10) days prior to any change or termination.
 - 2.2.4.2 The procedure provided in subparagraph GC 2.2.3 shall be conducted to evaluate the Contractor's proposed new Superintendent.

2.3 PROTECTION OF THE PROJECT

- 2.3.1 The Contractor shall protect the Contractor's Work from weather, and shall maintain the Work and all materials, equipment, apparatus, fixtures and other items on or adjacent to the Project site free from injury or damage until Final Acceptance.
 - 2.3.1.1 Work or items likely to be damaged shall be covered or protected at all times to prevent damage.
 - 2.3.1.2 Any Work or item damaged by failure of the Contractor to provide

coverage or protection shall be removed and replaced with new Work or a new item at the Contractor's expense.

- 2.3.1.3 Any adjacent property, including without limitation roads, walks, shrubbery, plants, trees or turf, damaged during the Contractor's Work shall be properly repaired or replaced at the Contractor's expense.
- 2.3.2 Unless otherwise specified in the Contract Documents, the Contractor shall protect the Project and existing or adjacent property and utilities from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take precautions to prevent injury or damage to individuals or property.
- 2.3.3 When mail boxes, road or street name signs and supports are within the Project site, the Contractor shall remove and erect them in a temporary location during construction in a manner satisfactory to and as directed by the Architect/Engineer. After completion of the Work, the Contractor shall erect the mail boxes, road or street name signs and supports in a permanent location in accordance with the Drawings unless otherwise directed by the Architect/Engineer. Removal, temporary erection and permanent erection shall be in accordance with U.S. postal regulations.
- 2.3.4 When cornerstones, monuments and land markers are encountered in the performance of the Work, and monument covers are not listed in the bid, the City will supply them and supervise their precise location and installation, and the Contractor will furnish all the labor, tools and other materials required for such installations. Any labor, tools and materials so furnished shall be paid by Change Order on a not-to-exceed price based on performing the Work on a time and materials basis.
- 2.3.5 Paragraph 5.2 may be invoked for the cost to the City for repair, reevaluation of location and replacement of any cornerstone, monument or landmarker within the Project, damaged, destroyed or made inaccessible during the progress of the Work by the Contractor in violation of subparagraph GC 2.3.4.
- 2.3.6 The Contractor shall not load, nor permit any part of the Project to be loaded, in any manner that will endanger the Project, or any portion thereof, nor shall the Contractor subject any part of the Project or existing or adjacent property to stress or pressure that will endanger the Project or property.
- 2.3.7 The Contractor shall provide all temporary bracing, shoring and other structural support required for safety of the Project and proper execution of the Work, including without limitation all necessary support and protection of the property of any utility.
- 2.3.8 Unless otherwise specified in the Contract Documents, the Contractor shall remove all snow and ice as may be required for access to and performance of the

Work.

2.4 MATERIAL AND EQUIPMENT

- 2.4.1 The Contractor shall provide only new material and equipment of the quality specified in the Contract Documents. Domestically produced steel products are required as provided in Paragraph GC 20.4
- 2.4.2 Only the material and equipment which are to be used directly in the Work shall be brought to or stored at the Project by the Contractor and the Contractor's Subcontractors and Material Suppliers.
 - 2.4.2.1 The Contractor shall be responsible for the proper storage of all material and equipment brought to the Project.
 - 2.4.2.2 After the material or equipment is no longer required for the Work, the Contractor shall promptly remove such material and equipment from the Project.
- 2.4.3 The Contractor's material and equipment shall not be stored in the Right-of-way unless the location of such storage is approved by the Authorized Representative.
- 2.4.4 The Contractor shall, before storing materials in gutters, lay suitable drains of sufficient size to carry all the storm water flowing in such gutters. Where the drainage from cross streets or alleys is interfered with or cut off by reason of the nature of the Work, the Contractor shall provide suitable crossings for pedestrians.
- 2.4.5 No material shall be stored within twenty (20) feet of any fire hydrant.
- 2.4.6 Private property shall not be used for storage of material and equipment without the prior written permission of the owner or lessee of the private property, and if requested by the Architect/Engineer, the Contractor shall provide copies of the written permission.
- 2.4.7 The Contractor shall restore all storage sites to their original conditions.
- 2.4.8 The Contractor's material and equipment shall not cause damage to the Project or adjacent property and shall not endanger any individual at, or in the vicinity of, the Project. Non-rubber tired vehicles or equipment shall not be moved on City streets.
- 2.4.9 Any injury to any individual or damage to property resulting from the Contractor's material or equipment shall be the responsibility of the Contractor. The provision is intended to be, and shall be construed as consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

2.5 LABOR

- 2.5.1 The Contractor shall maintain a sufficient workforce and enforce good discipline and order among the Contractor's employees and the employees of the Contractor's Subcontractors and Material Suppliers. The Contractor shall not permit employment of individuals not skilled in tasks assigned to them.
- 2.5.2 The Contractor shall dismiss from the Project any individual employed by the Contractor or the Contractor's Subcontractors and Material Suppliers who is found by the Authorized Representative, pursuant to a recommendation from the Architect/Engineer, to be incompetent, guilty of misconduct, or detrimental to the Project.
- 2.5.3 The Contractor shall employ all legal efforts to minimize the likelihood or effect of any strike, work stoppage or other labor disturbance. Informational pickets shall not justify any work stoppage.

2.6 TRAFFIC AND UTILITIES

2.6.1 Maintenance of Utilities.

- 2.6.1.1 The Contractor shall at all times provide and maintain access to fire hydrants, water valves, water service boxes, gas valves, gas service boxes, manholes and other similar appurtenances.

2.6.2 Cooperation with Utilities

- 2.6.2.1 The Contractor shall, in accordance with Section 153.64 ORC, notify all utility companies, all pipe line owners or other parties affected by the Work at least two (2) business days prior to commencement of Work. During the course of construction, the Contractor shall be solely responsible to notify any utility or other service when such utility or service is encountered.
- 2.6.2.2 The Contractor shall be solely and completely responsible for the protection and replacement of all above ground utilities, structures and appurtenances.
- 2.6.2.3 The Contractor shall be solely and completely responsible for the protection and replacement of all below ground utilities, structures and appurtenances that may be accurately located by removing manhole covers, valve box covers, and other access point coverings with reasonable effort using hand tools for such removal.

2.6.3 Maintenance of Traffic

- 2.6.3.1 When so stated on the Contract Documents, public traffic shall be

maintained during the Project whether it is traffic through the Project or only cross traffic at intersections. Maintenance of traffic shall be required unless otherwise provided in the Contract Documents.

2.6.3.2 At locations on the Project where sewer or water line construction only is called for and a part of the existing pavement will remain in place, traffic shall be maintained and ingress and egress to all public and private entrances shall be provided.

2.6.4 Notice of Closures

2.6.4.1 The Contractor shall notify the applicable fire and police department whenever a street or alley, or a portion of a street or alley is about to be closed to traffic and shall provide notice when such street or alley or portion thereof is to be opened.

2.6.4.2 In the event of the complete closure of any street, alley or private drive, the Contractor shall give written notification to the occupants of all premises affected by the closure. The notification shall include, without limitation, all construction activities that affect traffic at the time notice is required and during the following thirty (30) days.

2.6.4.3 When detours are planned the written notification required by subparagraph G.C. 2.6.4.2 shall be given at the time of the pre-construction meeting or thirty (30) days in advance of the applicable construction whichever is later.

2.6.4.4 For all lane and ramp closures more than two (2) weeks, the written notification required by subparagraph G.C. 2.6.4.2 shall be given at least three (3) business days in advance of closure.

2.6.4.5 For short-term lane or ramp closures for two (2) weeks or less, the written notification required by subparagraph G.C. 2.6.4.2 shall be given at least one (1) day in advance of closure.

2.6.4.6 The Contractor shall report all unforeseen effects on traffic to the Architect/Engineer promptly.

2.6.5 Traffic Control Devices

2.6.5.1 All traffic control devices shall be furnished, erected, maintained and removed by the Contractor in accordance with the Ohio Manual of Uniform Traffic Control Devices.

2.7 SAFETY PRECAUTIONS

2.7.1 The Contractor shall take reasonable, diligent precautions and shall be

responsible for the safety of individuals on or adjacent to the Project and shall comply with all applicable provisions of federal, State and municipal safety laws and buildings codes to prevent injury to individuals on or adjacent to the Project.

- 2.7.2 The Contractor shall comply with the rules and regulations of the Occupational Safety and Health Administration (OSHA). The Contractor shall be responsible for any fine or cost incurred as a result of any violation or alleged violation.
- 2.7.3 The Contractor shall take reasonable, diligent precautions and shall be responsible for the safety of the Project, including all materials and equipment incorporated or to be incorporated into the Project.
- 2.7.4 Prior to the start of any Work, the Architect/Engineer shall meet with all applicable Contractors to coordinate the Contractors' methods and equipment for protecting the Project, other property and individuals from fire damage, in accordance with applicable fire regulations. The Architect/Engineer's efforts at coordination shall not relieve the Contractor of any responsibility for safety or make the Architect/Engineer responsible for safety.
- 2.7.5 Methods and equipment for protecting the Project, other property and individuals shall be subject to inspection and approval of the appropriate authority having jurisdiction over the Project site.
- 2.7.6 Work Stoppage Due to Hazardous Materials
 - 2.7.6.1 In the event the Contractor, except a licensed abatement contractor, encounters materials reasonably believed to be containing asbestos, polychlorinated biphenyl (PCB) or other hazardous waste or material, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Authorized Representative and the Architect/Engineer in writing. A licensed abatement contractor shall report the condition to the Authorized Representative and the Architect/Engineer in writing and shall remove the waste or material or render it harmless.
 - 2.7.6.2 The Work in the affected area shall be resumed upon written notice from the Architect/Engineer that the waste or material has been removed or rendered harmless.
 - 2.7.6.3 The term "rendered harmless" shall mean that the level of exposure is less than any applicable exposure standards set forth in OSHA or other applicable regulations.
- 2.7.7 Hazardous Materials to be used at the Project shall be identified by a Material Safety Data Sheet (MSDS). The applicable MSDS shall be prepared by the Contractor and submitted to the Architect/Engineer prior to the Hazardous Material being brought to the Project site. The Contractor shall maintain all

applicable MSDSs on site whenever Work is in preparation or progress.

2.8 REPORTING OF VEHICLE DAMAGE CLAIMS

2.8.1 When a Person reports damage to a vehicle, whether orally or in writing, to the Contractor, the Contractor shall file a written report with the Authorized Representative within three (3) days.

2.9 USE OF FIRE HYDRANTS

2.9.1 The Contractor shall make any necessary arrangements with the applicable fire department for any use of fire hydrants in connection with the Work.

2.9.2 Unless otherwise specified in the Contract Documents, the Contractor shall provide all water necessary for the Contractor's Work.

2.10 TEMPORARY FACILITIES AND UTILITIES

2.10.1 Unless otherwise specified in the Contract Documents, the Contractor shall make all arrangements for temporary light and power services and shall pay all charges, both for service installation and removal, if required, and for energy consumed until Final Acceptance of the Project.

2.10.1.1 The Contractor shall be responsible for any electrical service requirements of any other Contractor relating to temporary hoists or elevators, cranes or welding equipment.

2.10.1.2 The Contractor requiring such services shall subcontract with a licensed contractor for such service requirements and shall be responsible for all costs of such services.

2.10.2 Unless otherwise specified in the Contract Documents, the Contractor shall provide, and maintain in a clean condition, adequate and approved sanitary facilities for use by all Persons at the Project in coordination with the Architect/Engineer and the other Contractors.

2.10.3 The Contractor shall be responsible for all temporary drainage necessary for the Contractor's Work and shall employ pumps, trenches, drains, sumps or other necessary elements as required to afford satisfactory working conditions for the protection, execution and completion of the Project.

2.11 PERMITS AND ENVIRONMENTAL PROTECTION

2.11.1 Construction Permits

2.11.1.1 The Contractor shall schedule and attend all the intermediate and final

inspections required for any permit certification. The Contractor shall give the Architect/Engineer and the Authorized Representative reasonable notice of the date arranged for any inspection.

2.11.2 Local Permits

- 2.11.2.1 Unless otherwise specified in the Contract Documents, the Contractor shall apply for, secure and pay the fees for any permit or license required by local authorities having jurisdiction over the Project and shall pay any related fees. The Contractor shall give the Architect/Engineer and the Authorized Representative reasonable notice of the date arranged for any related inspection.
- 2.11.2.2 The Contractor shall comply with all applicable federal, State and local laws and regulations relating to pollution of the environment.
- 2.11.2.3 When the Work area is located in or adjacent to streams and other watercourses, the area shall be separated from the main stream by a dike or barrier to keep sediment from entering the stream. The Contractor shall take care during the construction and removal of such barriers to minimize siltation of the stream and watercourse.
- 2.11.2.4 Control of ground water and water in excavations shall be accomplished in a manner that will prevent degradation of the quality of any surface water. Wells and well points shall be installed with suitable screens and filters where necessary to prevent the continuous pumping of fines. The discharge of sediment laden water from pumping shall be performed in a manner to prevent degradation of streams, watercourses, lakes, ponds, or other areas of water impoundment. Such prevention may require, without limitation, the use of ditch checks, sediment traps, sediment basins, sediment pits or other control devices and methods necessary to prevent adverse effects to surface waters as provided in Chapter 3745-1-04, OAC. The cost of constructing and maintaining these measures shall be borne by the Contractor.
- 2.11.2.5 Water from aggregate washing or other operations containing sediment shall be treated by filtration, settling basins or other measures sufficient to reduce the sediment concentration to not more than that of the stream, watercourse, lake, pond or the area of water impoundment.

2.12 TESTS

- 2.12.1 Unless otherwise specified in the Contract Documents, the Contractor shall apply, secure and pay for any inspection, testing or approval required by the Contract Documents, laws, ordinances, resolutions, rules, regulations or orders

of any public authority having jurisdiction over the Project.

- 2.12.1.1 The Contractor shall give the Architect/Engineer and the Authorized Representative reasonable notice of the date arranged for such inspection, testing or approval.
- 2.12.1.2 The Contractor shall provide an original report of the inspection, testing or approval to the Architect/Engineer for approval.
- 2.12.2 If after the commencement of the Work, the Architect/Engineer determines that any portion of the Work requires special inspection, testing or approval, in addition to any inspection, testing or approval provided for or required by the Contract Documents, in order to insure proper conformance to the Contract Documents, the Architect/Engineer may instruct the Contractor in writing to order such special inspection, testing or approval, or the Architect/Engineer may make the arrangements for same.
 - 2.12.2.1 If such special inspection, testing or approval reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall pay all costs associated with such special inspection, testing or approval.
 - 2.12.2.2 If such special inspection, testing or approval reveals that the Work is in compliance with the Contract Documents, the Contractor will be paid, by appropriate Change Order, for all costs associated with such special inspection, testing or approval.
- 2.12.3 Neither the observations of the Architect/Engineer in the performance of the Architect/Engineer's services, nor inspections, tests or approvals by Persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.

2.13 CLEANING UP

- 2.13.1 During the progress of the Work, the Contractor shall be responsible for the removal and off-site disposal of all waste, excess materials and rubbish attributable to the Work to an appropriate disposal site. Temporary on-site storage of waste, excess materials and rubbish shall be permitted as designated by the Architect/Engineer. The Contractor shall perform daily cleaning in the area of the Contractor's Work.
 - 2.13.1.1 The Contractor shall, at the end of each working day or upon notice from the Architect/Engineer, remove all waste, excess materials and rubbish from the Project.
 - 2.13.1.2 The Contractor shall, as required for the Project or upon notice from the Architect/Engineer, remove any waste, excess materials or rubbish from areas adjacent to the Project.

- 2.13.1.3 The Contractor shall, as required for the Project or upon notice from as directed by the Architect/Engineer, take all necessary actions to minimize and clean dust and mud from the Project and adjacent property.
- 2.13.2 If the Contractor fails to clean up during the progress of the Work, the provisions of paragraph GC 5.2 may be invoked.
- 2.13.3 If the Contractor fails to maintain the areas adjacent to the Project clean and free of dust, mud, waste, excess materials and rubbish, upon written notification by the Architect/Engineer, the Authorized Representative shall direct the local jurisdiction having responsibility for the area to clean the area.
 - 2.13.3.1 The cost of cleaning the area adjacent to the Project shall be deducted from the responsible Contractor as the Architect/Engineer recommends and the Authorized Representative determines to be appropriate.
 - 2.13.3.2 The decision of the Authorized Representative shall be final, subject to proceedings in accordance with Article GC 8.
- 2.14 SUBSTITUTES FOR STANDARDS OR APPROVED EQUALS
 - 2.14.1 Requests for substitutes for Standards or Approved Equals shall not be considered after the bid opening unless listed on the Substitution Sheet or the Contractor can conclusively demonstrate to the Architect/Engineer one of the following conditions:
 - 2.14.1.1 All applicable Standards or Approved Equals are not available through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers;
 - 2.14.1.2 All applicable Standards or Approved Equals are no longer produced;
 - 2.14.1.3 All applicable Standards or Approved Equals will not perform as designed.
- 2.15 EXPLOSIVES AND BLASTING
 - 2.15.1 Blasting will not be permitted and explosives may not be brought onto or kept on the site of the Project, except with prior written approval of the Authorized Representative and any other authorities having jurisdiction.
 - 2.15.2 All blasting and all purchasing, storing and handling of explosives shall be done as prescribed in any applicable federal, state, or City statutes, ordinances, resolutions or regulations.
 - 2.15.3 The Contractor shall carry appropriate liability insurance and shall be

responsible for any injuries to individuals or damages to property resulting from any blasting operation. The Contractor shall provide a copy of the policy of such insurance to the Architect/Engineer prior to bringing any explosives to the Project and to the Authorized Representative upon request.

2.15.4 The Contractor shall take all necessary precautions to protect the Project, existing or adjacent property, water lines, and other underground structures from blasting. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

2.15.5 The Contractor shall notify all owners of adjacent or utility property which may be affected of any intention to use explosives at least eight (8) hours before blasting is commenced. Any inspection of use of explosives by the Architect/Engineer does not in any way reduce the responsibility of the Contractor or its Surety for damages that may be caused by such use.

2.16 EMERGENCY

2.16.1 In the event of an emergency affecting the safety of the Project, other property or individuals, the Contractor, without special instruction or authorization, shall act to prevent any threatened damage, injury or loss.

2.16.2 The Contractor shall give the Architect/Engineer and the Authorized Representative written notice if the Contractor believes that any significant change in the Work or variation from the Contract Documents has been caused by any emergency or action taken in response to an emergency.

2.16.3 If the Architect/Engineer recommends that a change in the Contract Documents be made because of any emergency or action taken in response to an emergency, and the Authorized Representative approves, a Change Order will be processed, subject to final approval by the Board of Trustees, if applicable.

2.17 UNCOVERING THE WORK

2.17.1 If any Work is covered contrary to the requirements of the Contract Documents or to the written request of the Architect/Engineer, such Work must, if required by the Architect/Engineer in writing, be uncovered for observation and replaced, if not in conformity with the Contract Documents, and recovered at the Contractor's expense.

2.17.2 If any Work has been covered in accordance with the Contract Documents and is Work which the Architect/Engineer had not requested the opportunity to observe prior to covering, the Architect/Engineer may request that such Work be uncovered by the Contractor.

2.17.2.1 If such Work is found not to be in conformity with the Contract

Documents, the Contractor shall pay all costs of uncovering, replacing and recovering the Work, unless it is found by the Authorized Representative that such condition was caused by another Contractor.

2.17.2.2 If such Work is found to be in conformity with the Contract Documents, the cost of uncovering and replacing and recovering the Work shall, by appropriate Change Order, be paid to the Contractor, subject to final approval by the Board of Trustees or the Authorized Representative, as applicable.

2.18 CORRECTION OF THE WORK

2.18.1 The Architect/Engineer shall notify the Contractor in writing if any Work is found by the Architect/Engineer to be Defective, whether observed before or after Contract Completion. The Architect/Engineer shall specify in the written notice the time within which the Contractor shall correct the Defective Work.

2.18.2 The Contractor shall bear all costs of correcting such Defective Work, including without limitation the cost of any consequential damages.

2.18.3 If the Contractor fails to correct any Defective Work within the time fixed in the written notice, the TID and/or City may correct such Work and obtain recovery of all costs, including without limitation any consequential damages, from the Contractor or the Contractor's Surety.

2.19 INTERRUPTION OF EXISTING SERVICES

2.19.1 Whenever it becomes necessary to interrupt existing services in use by the City or its tenants, such as sewer, water, gas and steam lines, electric, telephone, data, or cable service, the Contractor responsible for the Work shall continue the Work on a non-stop 24-hour basis until the Work is completed and the service restored, or at such alternate time required by the Authorized Representative.

2.19.2 Before beginning such Work, the Contractor shall apply in writing to and receive approval in writing from the Authorized Representative and the Person with appropriate jurisdiction over the Project, to establish a time when interruption of the service will cause a minimum of interference with the activities of the City and its tenants and the public.

ARTICLE 3 - THE ARCHITECT/ENGINEER

3.1 PROJECT OVERSIGHT

3.1.1 The Architect/Engineer shall notify, advise and consult with the Authorized Representative and shall protect the TID and/or City against Defective Work throughout the completion of the Project.

3.1.1.1 The Architect/Engineer shall designate a representative, who shall be

approved by the Authorized Representative, to attend the Project, as required by any applicable agreement between the Architect/Engineer and the TID for the Project, to observe and check the progress and quality of the Work and to take such action as is necessary or appropriate to achieve conformity with the Contract Documents.

3.1.1.2 It shall be the duty of the Architect/Engineer to have any consultant attend the Project at such intervals required by any applicable agreement between the Architect/Engineer and the TID or the Contract Documents or as may be deemed necessary by the Authorized Representative to review the Work in order to achieve the results intended by the Contract Documents.

3.1.2 The Architect/Engineer shall have the authority to disapprove or reject any item of Work which is Defective, or that the Architect/Engineer believes will not produce a Project that conforms to the Contract Documents, or that will prejudice the integrity of the design concept of the Project as a functioning whole as indicated by the Contract Documents. The Architect/Engineer shall immediately notify the Contractor and the Authorized Representative at any time that Work has been disapproved or rejected.

3.1.3 The Architect/Engineer shall not be responsible for construction means, methods, manners, techniques, sequences, procedures, safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

3.2 CONTRACT ADMINISTRATION

3.2.1.1 The Architect/Engineer or the Architect/Engineer's designated representative shall attend any and all progress and coordination meetings. The Architect/Engineer or the Architect/Engineer's designated representative shall prepare an agenda and a written report of each progress and coordination meeting and distribute the report to the Authorized Representative and the Contractors within three (3) business days after the meeting. The Architect/Engineer or the Architect/Engineer's designated representative, as applicable, shall not delegate any duty to prepare the agenda and written report of any progress and coordination meeting.

3.2.1.2 The Architect/Engineer may authorize minor changes or alterations in the Work not involving additional costs and not inconsistent with the overall intent of the Contract Documents, but has no authority to authorize the Contractor to perform additional or extra work for which the Contractor will seek compensation to the Contract Price or extension of the time for Contract Completion.

3.2.1.3 The Architect/Engineer shall review and approve, or recommend

approval, of all forms required under the Contract Documents.

- 3.2.1.4 The Architect/Engineer shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Authorized Representative for enforcement of the Contract as necessary.
- 3.2.2 The Architect/Engineer will be the initial interpreter of all requirements of the Contract Documents. All decisions of the Architect/Engineer shall be subject to final determination by the Authorized Representative.
- 3.2.3 The Architect/Engineer shall authorize special inspection, testing or approval of the Work, as provided in paragraph GC 2.12, whenever in the Architect/Engineer's reasonable opinion such action is necessary or advisable to insure the proper conformance to the Contract Documents.
- 3.2.4 Based upon the Architect/Engineer's on-site observations and evaluation of the Contractor's Contractor Payment Request, the Architect/Engineer shall review and certify the amounts due the Contractor. The Architect/Engineer may recommend to the Authorized Representative that payment be withheld from, or Liquidated Damages be assessed against, a Contractor's Contractor Payment Request, stating the reasons for such recommendation. The Architect/Engineer's certification for payment shall constitute a representation to the TID that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, the Work is in conformity with the Contract Documents and the Contractor is entitled to payment in the amount certified.
- 3.2.5 The Architect/Engineer shall review and approve or take other appropriate action upon the Contractor's submittals, within the required time, for the purpose of checking for conformity with the Contract Documents.
- 3.2.6 The Architect/Engineer shall prepare all Bulletins and Change Orders, including a cost estimate and supporting documentation and data, and shall verify with the Authorized Representative that funds are available for any change to the Work.
- 3.2.7 The Architect/Engineer shall conduct inspections to determine the date of Contract Completion and shall receive, review and forward to the appropriate Person all Project record submittals required by the Contract Documents.
- 3.2.8 The Architect/Engineer shall render written analysis, recommendations or decisions, within the time specified, on all claims, disputes or other matters in question between the Contractor and the TID and shall provide information or services to the City until final disposition of all such claims, disputes and matters.
- 3.2.9 The Architect/Engineer shall consult with the Authorized Representative to obtain full knowledge of all City rules, regulations or requirements affecting the Project. The Architect/Engineer shall establish the regular working hours,

subject to approval of the City.

- 3.2.10 The Architect/Engineer shall schedule the Project as provided in Paragraph GC 4.2 and coordinate the Work of all Contractors with each other and with the activities and responsibilities of the Architect/Engineer, the Architect/Engineer and the City and/or TID to complete the Project in accordance with the Contract Documents and the Project Schedule.
 - 3.2.10.1 The Contractor shall supervise the Work in conformity with the direction and coordination of the Architect/Engineer.
 - 3.2.10.2 If the Contractor fails to prosecute the Work in accordance with the Construction Schedule, the provisions of paragraph GC 5.2 may be invoked.
 - 3.2.10.3 Coordination of the Work of the Contractors by the Architect/Engineer shall not relieve the Contractor from the Contractor's duty to supervise and direct the Contractor's Work in accordance with the Contract Documents.
- 3.2.11 The Architect/Engineer shall develop the Project Schedule in accordance with paragraph GC 4.2 and shall prepare and keep current a schedule of submittals which is coordinated with the Construction Schedule.
 - 3.2.11.1 The Construction Schedule shall not exceed the time limit specified in the Notices to Proceed, shall provide for reasonable, efficient and economical execution of the Work and shall be related to the entire Project to the extent required by the Contract Documents.
 - 3.2.11.2 The Construction Schedule shall be used to plan, organize and execute the Work, record and report actual performance and progress and show how the Architect/Engineer plans to coordinate all remaining Work by Contract Completion.
- 3.2.12 The Architect/Engineer shall monitor the progress of the Work for conformance with the Construction Schedule and shall initiate revisions of the Construction Schedule as required by the Contract Documents.
- 3.2.13 In the event of default by any Contractor, the Architect/Engineer shall cooperate with the City and/or TID and the defaulting Contractor's Surety to Contract Completion.
- 3.2.14 The Architect/Engineer shall keep a daily log containing a record of weather, number of workers on site for each Contractor including its Subcontractors, identification of equipment, Work accomplished, problems encountered and other similar relevant data.

ARTICLE 4 - CONSTRUCTION PHASE COORDINATION

4.1 RESPONSIBILITY OF CONTRACTOR

- 4.1.1 The Contractor shall afford other Contractors and such Contractors' Subcontractors and Material Suppliers reasonable opportunity for the introduction and storage of materials and equipment and execution of Work and shall properly connect and coordinate the Contractor's Work with the Work of other Contractors or Persons on the Project. The Contractor shall complete portions of the Work in such order and time as provided in the Project Schedule.
- 4.1.2 The Contractor shall perform the Work so as not to interfere with, disturb, hinder, delay or impact the Work of other Contractors. The sole remedy provided by the TID for any injury, damage or expense resulting from interference, hindrance, disruption, delay or impact caused by or between Contractors or their agents and employees shall be an extension of time in which to complete the Work. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with Section 4113.62, ORC, to the fullest extent permitted.
- 4.1.2.1 If the Contractor, or any of the Contractor's Subcontractors or Material Suppliers, causes damage or injury to the property or Work of any other Contractor, or by failure to perform the Work with due diligence, delays, interferes with, hinders, disrupts or impacts any other Contractor who suffers damage, injury or expense thereby, the Contractor shall be responsible to the other Contractor for such damage, injury or expense.
- 4.1.2.2 The intent of subparagraph GC 4.1.2.1 is to benefit the other Contractors on the Project and to demonstrate that each other Contractor who performs Work on the Project is a third-party beneficiary of the Contract.
- 4.1.2.3 Claims, disputes or actions between Contractors concerning such damages, injury or expense shall not delay completion of the Work which shall be continued by the parties to any such dispute, action or claim.
- 4.1.3 If any part of the Contractor's Work is preceded by the Work of another Contractor or Person, the Contractor shall inspect such preceding Work before commencing any Work, and report in writing to the Architect/Engineer any defects which render the preceding Work unsuitable as related to the Contractor's Work.
- 4.1.3.1 Failure of the Contractor to make such inspection and report in writing, as required by subparagraph GC 4.1.3, shall constitute an acceptance of the preceding Work as fit and proper for the reception of the Contractor's Work, except for latent defects which such an inspection would fail to disclose.
- 4.1.4 The Contractor shall supervise the Work in conformity with the coordination of

the Architect/Engineer and the Authorized Representative, as provided in the Contract Documents.

- 4.1.5 The Contractor shall give reasonable notice to the Architect/Engineer when the Architect/Engineer's presence is required for special consultations, inspections, testing, approvals or decisions.
- 4.1.6 If the Contractor fails to perform the Contract according to the requirements of the Contract Documents, such failure to perform may be just cause for the TID to find the Contractor is not best for future contract awards.
- 4.1.7 The Contractor shall consult with the Architect/Engineer and the Authorized Representative to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Contractor shall establish regular working hours, subject to approval by the Architect/Engineer and the Authorized Representative.
- 4.1.8 With the guidance of the Architect/Engineer and the Authorized Representative, the Contractor shall coordinate the Work with the work of all other Contractors and with the activities and responsibilities of the Architect/Engineer and the TID to complete the Project in accordance with the Contract Documents. Each Contractor shall cooperate with all other Contractors.
 - 4.1.8.1 The Architect/Engineer shall coordinate the Work of the Contractors to seek adherence to the Construction Schedule.
 - 4.1.8.2 In the event the Contractor fails to prosecute the Work in accordance with the Construction Schedule, the Architect/Engineer may recommend that the provisions of Paragraph GC 5.2 be invoked.
 - 4.1.8.3 Coordination of the Work of the Contractors by the Architect/Engineer shall not relieve the Contractor from the Contractor's duty to supervise and direct the Contractor's Work in accordance with the Contract Documents.
- 4.1.9 The Contractor shall cooperate with the Architect/Engineer and the Authorized Representative so as not to interfere with, disturb, hinder, delay or impact the Work of other Contractors or the responsibilities of the Architect/Engineer, the TID, and the City.

4.2 PROJECT SCHEDULE

- 4.2.1 Based upon information from all of the Contractors, the Architect/Engineer shall prepare the Project Schedule. Critical path scheduling methods shall be used.
 - 4.2.1.1 Unless otherwise provided in the Contract Documents, the Architect/Engineer shall furnish to each Contractor a preliminary Project Schedule for the prosecution of Work on the Project within

seven (7) days of the Notice to Proceed.

- 4.2.1.2 Unless otherwise provided in the Contract Documents, the Contractor shall, within seven (7) days of receipt of the preliminary Project Schedule and submit to the Architect/Engineer the Contractor's comments on the preliminary Project Schedule and the Contractor's proposal to coordinate the Contractor's Work with the work of all other Contractors, together with all information requested and required by the Architect/Engineer to prepare the Project Schedule.
 - 4.2.1.3 The Architect/Engineer shall provide comments to the Contractor on the Contractor's proposed Construction Schedule within seven (7) days of receipt. The Contractor shall revise the proposed Construction Schedule to incorporate those comments and submit four (4) copies of the revised Construction Schedule to the Architect/Engineer within seven (7) days of receipt of the comments.
 - 4.2.1.4 The Construction Schedule shall not exceed the time limits specified in the Notices to Proceed, shall provide for reasonable, efficient and economical execution of the Work and shall be coordinated with the Work of all other Persons on the entire Project to the extent required by the Contract Documents.
 - 4.2.1.5 The Project Schedule shall be used to plan, organize and perform the Work, record and report actual performance and progress and show how the Architect/Engineer and the Contractors plan to coordinate all Work to Contract Completion.
- 4.2.2 The Contractor shall cooperate with the Architect/Engineer to prepare a Project Schedule incorporating the Construction Schedule, within thirty (30) days of the Notice to Proceed or such larger period as mutually agreed by the Contractor and the Authorized Representative in writing upon a timely written request by the Contractor, by providing, without limitation, the following information. Any such information may be waived by the Authorized Representative in writing upon recommendation of the Architect/Engineer.
- 4.2.2.1 A graphic presentation of the sequence of the Work for the Project which includes, without limitation, the Contractor's resource loading curve in media and format required by the Architect/Engineer;
 - 4.2.2.2 Identification of each phase of the Work and any milestone completion dates;
 - 4.2.2.3 Identification of activities and durations for all Shop Drawings and other submittal review and approval, fabrication review and review of mock-up work product review and procurement, fabrication, shop inspection and delivery, including without limitation lead time, coordination drawing delivery, Punch List, Punch List corrections, Project close-out requirements, Contract completion and occupancy

or utilization requirements;

- 4.2.2.4 Identification of disruptions and shutdowns due to other operations, facilities and functions, if any;
 - 4.2.2.5 Identification of the critical path of the Work;
 - 4.2.2.6 Identification of crew size and total resource hours for each activity in the Construction Schedule;
 - 4.2.2.7 The Contractor's signature and date thereof on the Project Schedule.
- 4.2.3 The Architect/Engineer shall provide complete specifications for the paper and electronic formats of the Construction Schedule. The Contractor shall develop the Construction Schedule using commercially available personal computer software acceptable to the Architect/Engineer in graphic and tabular form. Final copies shall be provided in color and in such size as is appropriate for the level of detail and in order to clearly and legibly show all relevant information. All base line and updated schedules shall be submitted electronically to the Architect/Engineer, in graphic and tabular form. The Contractor shall provide clear graphics, legends and other necessary data, including without limitation, milestones, constraints and items required by the Project and the Architect/Engineer.
- 4.2.4 The Contractor shall provide monthly updates to the Construction Schedule to the Architect/Engineer and the Authorized Representative for incorporation into the Project Schedule. Each update shall show the Project Name and Contract and contain lines for signature of the Contractor and the date thereof. Each update shall provide activity identification and a description for each activity broken down to a maximum 15-day duration, responsibility of each applicable Contractor, the Contractor's resources and crew size for each activity, early start dates, early finish dates, late start dates, late finish dates, predecessor and successor activities for each activity, free float, total float and percentage completion. Each update shall identify the logic relationship between all activities and shall show all submittal dates, coordination drawing preparation, Shop-Drawing submittals and mock-up review and approval durations. Together with each update, the Contractor shall provide a list of all changes to the previously approved base line Project Schedule or the previous update including without limitation logic, float and actual start and finish dates.
- 4.2.5 The Project Schedule shall be used as a tool for scheduling and reporting sequenced progress of the Work using early start dates and early finish dates. Free float and total float are resources of the Project and the use of float associated with an activity is not permitted without the concurrence of the Architect/Engineer, the TID and the other Contractors.
- 4.2.6 Based on the updates provided under subparagraph GC 4.2.4 and the reports

provided under subparagraph GC 4.2.8 from all of the Contractors, the Architect/Engineer shall update the Project Schedule for the Project and the schedule of submittals on a monthly basis and upon approval of a time recovery plan in accordance with subparagraph GC 4.2.9.3 and shall furnish to each Contractor a copy of each updated Project Schedule. The Contractor shall review and sign each updated Project Schedule within ten (10) days of receipt. The Contractor's signature on any base line or updated Project Schedule shall serve as an affirmation of the Contractor's approval of and agreement to the Project Schedule and a representation that the Contractor can meet the requirements of the Project Schedule without additional compensation.

- 4.2.7 Immediately after all Contractors have signed the Project Schedule, the Architect/Engineer shall submit it and a schedule of submittals to the Authorized Representative or return them to the Contractors with recommendations for revision. No payment will be made without a Project Schedule approved by all the Contractors and accepted by the Authorized Representative. Alternatively, in the Authorized Representative's discretion, failure to sign any Project Schedule may result in a back-charge to the Contractor in accordance with Paragraph GC 5.2, may result in the scheduling responsibility being reassigned and may result in suspension or termination of the Contract in accordance with Article GC 13.
- 4.2.8 Unless otherwise specified by the Contract Documents, the Contractor shall, on a weekly basis, prepare and submit to the Architect/Engineer a written report describing activities begun or finished during the preceding week, Work in progress, expected completion of the Work, a projection of all activities to be started or finished in the upcoming two (2) weeks, including without limitation, the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested by the Architect/Engineer. This report shall be attached to the minutes of progress meeting by the Architect/Engineer on a timely basis.
- 4.2.9 Unless otherwise specified in the Contract Documents, the Architect/Engineer shall provide monthly progress reports to the Authorized Representative which shall include recommendations for adjusting the Project Schedule to meet milestone completion and Contract Completion dates.
- 4.2.9.1 When it is apparent to the Architect/Engineer that critical path activities, scheduled milestone completion dates, or Contract Completion dates will not be met, the Architect/Engineer shall submit to the Contractor a time recovery plan to avoid or minimize any delay.
- 4.2.9.2 Such a plan may include, without limitation, increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work, increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof, rescheduling of activities to achieve maximum practical concurrency of Work efforts and, if

appropriate, time extensions.

- 4.2.9.3 If all of the Contractors approve the time recovery plan within ten (10) days of receipt, a revised Construction Schedule shall be prepared by the Architect/Engineer and signed and approved by the Contractors in accordance with subparagraphs GC 4.2.6 and 4.2.7. If any Contractor fails to approve the plan within ten (10) days of receipt, such Contractor shall immediately propose an alternate time recovery plan to the Architect/Engineer in writing for review and approval of the Contractors in accordance with subparagraphs 4.2.6 and 4.2.7.

4.3 PARTNERING

- 4.3.1 In order to most effectively and efficiently accomplish the construction of the Project, the TID encourages the formation of a cohesive, mutually beneficial partnering arrangement among all Contractors, the Architect/Engineer and the Authorized Representative. Such an arrangement will strive to draw on the strengths, skills, and knowledge of each of those Persons in an effort to achieve a quality Project, within budget, and on schedule.
- 4.3.2 The purpose of the partnering arrangement is to build cooperative relationships between such Persons and avoid or minimize disputes and to nurture a more collaborative ethic characterized by trust, cooperation and teamwork. It is intended that this arrangement be a voluntary, non-binding, but formally structured agreement among such Persons, leading to an attitude that fosters risk sharing.
- 4.3.3 To create and implement the partnering arrangement, all such Persons shall meet prior to the construction of the Project for the purpose of developing a partnering agreement. The agreement shall identify common goals and objectives, develop a problem solution and dispute resolution strategy, and an implementation plan.
- 4.3.4 Formal contractual relations, responsibilities and liabilities shall not be affected by any partnering agreement. Any cost associated with effectuating partnering or the partnering agreement will be agreed to among such Persons and will be shared equally with no change in Contract Price.

4.4 PROGRESS MEETINGS

- 4.4.1 The Architect/Engineer shall schedule a weekly progress meeting for all Contractors and other Persons involved in the Project. The purpose of the progress meetings may include, without limitation, review of progress Work during the previous week, discussion of anticipated progress, and review of critical operations and existing and potential problems and safety matters.
- 4.4.2 The Contractor and the Architect/Engineer shall be represented at every progress

meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents.

4.4.2.1 The Architect/Engineer shall notify the Contractor of the time and place of the progress meeting which shall thereafter be the same day and hour of the week for the duration of the Project, unless the Architect/Engineer shall notify the Contractor of a different day and hour at least two (2) days in advance.

4.4.2.2 The Contractor shall have any of the Contractor's Subcontractors and Material Suppliers attend the progress meeting as deemed advisable by the Contractor or as requested by the Architect/Engineer.

4.4.3 The Architect/Engineer or the Architect/Engineer' designated representative shall prepare a written report of each progress meeting and distribute such report to the Authorized Representative, the Contractor and any other Person who was in attendance. The Architect/Engineer or the Architect/Engineer's designated representative, as applicable, shall not delegate the duty to prepare a written report of each progress meeting.

4.4.3.1 If the Contractor or any other Person who was in attendance objects to anything in a report of a progress meeting, the Contractor or Person shall notify the Architect/Engineer, the Authorized Representative and any other affected Person in writing explaining the objection before the next progress meeting.

4.4.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response thereto.

4.5 COORDINATION MEETINGS

4.5.1 Unless otherwise specified in the Contract Documents, the Architect/Engineer shall schedule a weekly coordination meeting for all Contractors and appropriate Subcontractors and Material Suppliers.

4.5.1.1 The purpose of the coordination meeting is to establish the exact location of each piece of equipment, pipe, duct, conduit, or other component of the Project; to discuss the sequence of construction consistent with the Construction Schedule, and to appropriately share available construction and storage space.

4.5.1.2 Unless otherwise specified in the Contract Documents, the Architect/Engineer shall prepare a written report of each coordination meeting and distribute the report to the Authorized Representative and the Contractor.

4.5.2 The Contractor shall be represented at every coordination meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents. The Contractor shall have any of the

Contractor's Subcontractors and Material Suppliers attend the coordination meeting as deemed advisable by the Contractor or as requested by the Architect/Engineer.

ARTICLE 5 – THE TID’S and CITY’S RIGHTS AND RESPONSIBILITIES

5.1 THE TID AND CITY

- 5.1.1 Information and services required of the TID and/or City may be furnished through the Architect/Engineer or the Authorized Representative and shall be furnished in good faith and in a timely manner to avoid interference with, delay, hindrance, disruption or impact in the progress of the Project.
- 5.1.2 The TID’s and City’s officials, employees, consultants, agents and representatives shall at all times have access to the Work whenever the Project is in preparation or progress.
- 5.1.3 Upon the issuance of the Notice to Proceed or at a reasonable time thereafter, the City shall provide the Contractor the Project site in such condition to permit the Contractor to perform the Work.
- 5.1.4 The foregoing are in addition to other rights and responsibilities of the TID and/or City enumerated herein and especially those in respect to the TID’s right to prosecute the Work, approve payments and accept the Project.

5.2 THE TID’S RIGHT TO PROSECUTE WORK AND BACKCHARGE CONTRACTOR

- 5.2.1 If the Contractor provides Defective Work or fails or neglects to prosecute the Work with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone completion date as set forth in the current Project Schedule, the Architect/Engineer shall notify the Contractor in writing of such failure or neglect.
- 5.2.2 If the Contractor fails or refuses to cure such Defective Work or failure or neglect within three (3) business days after receipt of the written notice, the Architect/Engineer shall recommend enforcement of the Contract to the TID pursuant to subparagraphs GC 3.1.2, 3.2.1.5 and 4.2.7. Without prejudice to any other remedy the TID may have, the TID may employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, to correct the deficiency in the Contractor's Work, as determined by the Authorized Representative.
 - 5.2.2.1 In such case, a Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs of correcting such Defective Work, failure or neglect, including without limitation Liquidated Damages.

- 5.2.2.2 If the payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor and the Contractor's Surety shall pay the amount of the insufficiency to the TID.
- 5.2.2.3 The decision of the Authorized Representative to backcharge the Contractor shall be final, subject to proceedings in accordance with Article GC 8.
- 5.2.3 The City and/or TID reserves the right to furnish at any time such materials and labor and to prosecute such work in addition to the Work of the Contractor as the City or TID may desire; provided, however, that if such prosecution of additional work should interfere with, disrupt, hinder, delay or impact the Work of the Contractor, the Contractor shall be entitled to a reasonable extension of time in accordance with the Standard Conditions. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

5.3 THE TID's RIGHT TO PARTIAL USE

- 5.3.1 If the TID finds it necessary to use a portion of the Project prior to Contract Completion, such use may be accomplished if the Architect/Engineer informs the TID that the portion in question has been approved for use.
- 5.3.2 If Partial Use is approved by the TID, the Architect/Engineer may process either a Change Order or a certificate listing the uncompleted or Defective Work under the Contract for approval by the TID, provided that no such occupancy or use shall commence before any insurers providing property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby.
- 5.3.3 From the date of execution of the Change Order or Partial Contract Completion certificate by the Authorized Representative, the Contractor shall be relieved of obligation to maintain the accepted portion of the Work, but shall remain obligated to complete and correct uncompleted or Defective Work, including without limitation any Punch List items then uncorrected. The Contractor shall continue to carry the appropriate insurance during performance of such Work.
- 5.3.4 Partial use of the Project by the TID shall not constitute acceptance of any Work not in conformity with the Contract Documents. Partial use shall not relieve the Contractor of liability for any express or implied warranties or from responsibility for Defective Work.

ARTICLE 6 - TIME

6.1 TIME OF ESSENCE

- 6.1.1 Time is of the essence to the Contract Documents and all obligations thereunder. By executing the Contract Form, the Contractor acknowledges that the time for

Contract Completion, is and by signing the Project Schedule that any specified milestone completion dates are, reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

- 6.1.1.1 The Contractor agrees that the Notice to Proceed shall establish the date for commencement of the Work.
- 6.1.1.2 The Contractor agrees that the TID has entered into, or may enter into, agreements for use of all or part of the Project based upon the Contractor achieving Final Acceptance within the time for Contract Completion.
- 6.1.1.3 The Contractor agrees that the Work will be prosecuted in a reasonable, efficient and economical sequence, in cooperation with the other Contractors and the Architect/Engineer and in the order and time as provided in the Project Schedule.
- 6.1.1.4 The Contractor shall perform the Work so as not to interfere with, disrupt, hinder, delay or impact the Work of other Contractors and such other Contractors' Subcontractors and Material Suppliers.
- 6.1.1.5 The Contractor agrees that the possibility that the Contractor may be subject to interference, disruption, hindrance, delay or impact in the progress of the Work from any and all causes is within the contemplation of the Contractor and the TID and that the sole remedy for such interference, disruption, hindrance, delay or impact shall be an extension of time granted pursuant to paragraph GC 6.2, except if otherwise required by Section 4113.62, ORC.

6.2 EXTENSIONS

- 6.2.1 If the Contractor is interfered with, disrupted, hindered, delayed or impacted at any time in the progress of the Work by any of the following causes, the time for Contract Completion, shall be extended for such reasonable time which the Authorized Representative determines, in consultation with the Architect/Engineer, has been caused by the interference, disruption, hindrance, delay or impact in the Work:
 - 6.2.1.1 Due to suspension of the Work for which the Contractor is not responsible; unusually severe weather conditions not normally prevailing in the particular season; labor dispute, excluding informational pickets; fire; or flood;
 - 6.2.1.2 Due to an act or omission of any other Contractor; or
 - 6.2.1.3 Due to any unforeseeable cause beyond the control and without fault or negligence of the Contractor.

6.3 SOLE REMEDY

- 6.3.1 Except when the cause for a delay is the proximate result of the TID's or City's act or failure to act as required by Section 4113.62, ORC, any extension of time granted pursuant to paragraph GC 6.2 shall be the sole remedy which may be provided by the TID. The Contractor shall not be entitled to additional compensation from the TID or mitigation of Liquidated Damages for any delay, interference, hindrance, disruption or impact, including, without limitation, costs of acceleration, consequential damages, loss of efficiency, loss of productivity, lost opportunity costs, impact damages, lost profits or other similar remuneration.
- 6.3.2 It is within the contemplation of the Contractor and the TID that the Contractor may accelerate the Contractor's performance to meet the Project Schedule and that such acceleration is solely within the discretion of the Contractor. This provision is intended to be, and shall be construed as consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted by law.

6.4 REQUEST FOR EXTENSION

- 6.4.1 Any request by the Contractor for an extension of time shall be made by written notice and delivered to the Architect/Engineer no more than ten (10) days after the initial occurrence of any condition which, in the Contractor's opinion, entitles the Contractor to an extension of time. Failure to timely provide such notice to the Architect/Engineer shall constitute a waiver by the Contractor of any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.
- 6.4.2 The Contractor's request shall provide the following information so that a timely response may be made in order to minimize any resulting damage, injury and expense.
 - 6.4.2.1 Nature of the interference, disruption, hindrance, delay or impact;
 - 6.4.2.2 Identification of Persons and events responsible for the interference, disruption, hindrance, delay or impact;
 - 6.4.2.3 Date (or anticipated date) of commencement of the interference, disruption, hindrance, delay or impact;
 - 6.4.2.4 Activities on the Project Schedule which may be affected by the interference, disruption, hindrance, delay or impact, or new activities created by the interference, disruption, hindrance, delay or impact and the relationship with existing activities;
 - 6.4.2.5 Anticipated duration of the interference, disruption, hindrance, delay or impact and any remobilization period;

- 6.4.2.6 Specific number of days of extension requested and specific number of days for remobilization requested; and
- 6.4.2.7 Recommended action to avoid or minimize any additional or future interference, disruption, hindrance, delay or impact.

6.5 EVALUATION OF REQUEST

- 6.5.1 Within ten (10) days of receipt of the Contractor's request, the Architect/Engineer shall evaluate the facts and extent of any interference, disruption, hindrance, delay or impact to the Work, consult with the Authorized Representative about the request and respond in writing to the Contractor. If the Contractor fails to timely provide the information required by paragraph GC 6.4, the Authorized Representative shall have discretion to reject the request for time extension. If a request for time extension is so rejected, the Contractor shall be deemed to have waived any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.
 - 6.5.1.1 The time for Contract Completion may only be extended by execution of an appropriate Change Order.
 - 6.5.1.2 The Architect/Engineer shall make any necessary change in the Project Schedule if an extension is granted.

6.6 CRITICAL PATH

- 6.6.1 Notwithstanding any other provision of the Contract Documents, time extensions will depend upon the extent to which the Work on the critical path of the Project Schedule is affected.
- 6.6.2 A Change Order granting a time extension may provide that the time for Contract Completion will be extended for only those specific elements so interfered with, disrupted, hindered, delayed or impacted and that remaining milestone completion dates will not be altered and may further provide for equitable adjustment of Liquidated Damages.

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGE ORDER

- 7.1.1 The TID or the Authorized Representative, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, including without limitation revisions resulting from an extension granted in accordance with paragraph GC 6.4. To the extent the time for Contract Completion or the Contract Price is affected, the Contract may be equitably adjusted by Change Order in accordance with this Article.
 - 7.1.1.1 The Contractor shall proportionately increase the amount of the Contract Bond whenever the Contract Price is increased.

- 7.1.1.2 If notice of any change affecting the Contract is required by the provision of any Contract Bond, the giving of any such notice shall be the Contractor's responsibility, and the amount of each applicable Contract Bond shall be adjusted accordingly.
 - 7.1.2 The Contractor shall not proceed with any change in the Work without the appropriate written authorization. If the Contractor believes that any item is not Work required by the Contract Documents, the Contractor shall obtain a Change Order before proceeding with such item. Except as provided in Article GC 8, failure to obtain such Change Order shall constitute a waiver by the Contractor of any claim for compensation for such item.
 - 7.1.3 The Contractor understands and agrees that agreement to a Change Order is final and without reservation of any rights. If the Contractor does not agree to, or fails or refuses to sign, a Change Order, the Contractor shall perform any Work related to the Change Order as required by the Authorized Representative; provided, however, the Contractor may seek compensation in accordance with paragraph GC 7.4 and Article GC 8 for any such Work performed.
 - 7.1.4 The TID reserves the right to cancel or modify any Change Order authorization.
- 7.2 PRICE DETERMINATION
 - 7.2.1 The maximum cost or credit resulting from a change in the Work shall be determined as described below.
 - 7.2.1.1 Proposals which do not set forth all information required by Paragraphs GC 7.3 and 7.4 will not be considered or accepted under any circumstances.
 - 7.2.1.2 A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order; provided, however that Unit Price Work set forth on the Bid Form, included in the Contract Price and which does not exceed the scheduled quantities on the Bid Form may be performed and paid for without a Change Order.
 - 7.2.1.3 The amounts allowed for overhead and profit are all-inclusive, include all Contractor project costs relating to field and home office operations, and no additional or other amounts for overhead or profit shall be allowed.
 - 7.2.1.4 The maximum cost or credit as determined by paragraph GC 7.4 includes all compensation for impact costs, and no additional or other amounts for impact costs shall be allowed.
 - 7.2.2 The Contractor shall not assign any portion of the Work to another Person whereby the Contractor would benefit directly or indirectly from the double

application of charges for overhead or profit.

7.2.3 If no agreement can be reached between the Contractor and the TID as to the cost or credit resulting from a change in the Work or the Contractor fails or refuses to sign a Change Order, the cost or credit shall be determined by the Authorized Representative, upon the recommendation of the Architect/Engineer.

7.2.3.1 The Contractor shall proceed with the Change Order Work when so directed by the Authorized Representative.

7.2.3.2 The Contractor may dispute the Authorized Representative's determination of the cost or credit by filing a claim in accordance with Article GC 8.

7.2.4 The TID reserves the right to require notarized invoices for material costs and reserves the right to audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.

7.3 CHANGE ORDER PROCEDURE

7.3.1 The Contractor must be certain to comply with the applicable procedures or payment may be delayed or denied.

7.3.2 The Architect/Engineer has responsibility for:

7.3.2.1 Preparing, reviewing, recommending, coordinating, monitoring and processing a Change Order and related documents.

7.3.2.2 Reviewing the Contractor's pricing within the stated time period, verifying the pricing complies with the Pricing Guidelines set forth in paragraph GC 7.4 and negotiating pricing, if necessary, to an equitable amount acceptable to the TID.

7.3.2.3 If the change is to have a not-to-exceed price based on performing the Work on a time and material basis or other cost-plus basis, monitoring the Contractor's progress toward completing the revised portion of the Work and requiring that the Contractor prepare daily records of additional labor, materials and equipment required along with a certification from the Contractor that the records are accurate and appropriate for the revised Work. The Architect/Engineer shall review these daily records and sign them, but solely for the purposes of signifying that the records are an accurate accounting of the items disbursed therein, and provide a signed copy to the Authorized Representative. The signed daily records are also to be attached to the Change Order.

7.3.2.4 Reviewing and resolving the Contractor's request for an extension of

time related to a Change Order in accordance with Article GC 6, paragraph GC 7.6.

7.3.2.5 Confirming that the TID concurs with the change and has available funds or a written commitment for funding the Change Order.

7.3.2.6 Monitoring the overall Change Order process for timeliness and follow up.

7.3.2.7 Informing the Contractor not to proceed with the Work until receipt of required authorization as provided by the Contract Documents.

7.3.3 The Contractor has responsibility for:

7.3.3.1 Responding to requests for pricing within the stated time period.

7.3.3.2 Preparing all necessary Proposals in sufficient detail for intelligent review with pricing and schedule impact, including those of all affected Subcontractors and Material Suppliers, according to the Pricing Guidelines in paragraph GC 7.4, and negotiating pricing, if necessary.

7.3.3.3 If the change is proposed to have a not-to-exceed price based on performing the Work on a time and material basis or the cost plus basis, furnishing and certifying detailed records of all labor and materials provided. If the changed Work should cost less than the maximum amount noted on the Change Order, the Contractor is also responsible for executing a deduct Change Order prepared for the cost difference.

7.3.3.4 Proceeding with the Work upon receipt of a fully signed Change Order.

7.3.3.5 If the Contractor performs Work without the appropriate required authorization, the Contractor does so at the Contractor's own risk that payment for such Work may not be approved or made, unless the City and/or TID has required the Contractor to perform the Work in accordance with subparagraph GC 7.1.3 or GC 7.2.3.1.

7.3.4 Change Order Process. When a change to the Work is to be ordered, the Architect/Engineer shall:

7.3.4.1 Prepare an estimate of the cost of the changed Work and verify with the Authorized Representative that the change is ordered and that funds are available in the amount of the Architect/Engineer's estimate for the Work, including costs for services by the Architect/Engineer.

- 7.3.4.2 Prepare a detailed scope of work in Bulletin form, including any necessary drawings.
- 7.3.4.3 Submit the Bulletin to the Authorized Representative for approval, along with a justification letter indicating the reason for the change in the Work.
- 7.3.4.4 Upon receipt of approval of the Authorized Representative, release the Bulletin to the Contractor with a date specified for the Contractor to return a Proposal. If the Contractor fails to respond to the Architect/Engineer within the time specified, or as otherwise agreed in writing by the Contractor and the Architect/Engineer, the Contractor shall be responsible for any additional costs incurred by the Contractors, the Architect/Engineer, the TID, and the City resulting from any attendant delay.
- 7.3.4.5 Review the Contractor's Proposal, verifying that pricing complies with the Pricing Guidelines set forth in paragraph GC 7.4 or Unit Prices, as applicable and negotiate the price if required to obtain an equitable price less than the maximum established by the Pricing Guidelines or different from the amount calculated using Unit Prices where appropriate. Within seven (7) days of receipt of the Contractor's Proposal, the Architect/Engineer shall notify the Contractor whether the Proposal is acceptable in form or advise the Contractor in writing of the reasons for disapproval. If negotiation of the price is necessary, any failure of the Contractor to respond appropriately and within the time specified or as otherwise agreed in writing by the Contractor and the Architect/Engineer shall cause the Contractor to be responsible for any additional costs incurred by the Contractors, the Architect/Engineer, the TID and the City resulting from any attendant delay.
- 7.3.4.6 Determine the basis for pricing the Work and confirm whether the Work is for a fixed price, or for a not-to-exceed price based on performing the Work on a time and materials basis or other cost plus basis. Verify that any Subcontractor and Material Supplier pricing is included and complies with the Pricing Guidelines set forth in paragraph 7.4 or Unit Prices, as applicable. Review any requested time extension with the Authorized Representative to be determined according to paragraph GC 7.6.
- 7.3.4.7
 - A. In an emergency or if the Contractor's Proposal is \$25,000 or less, submit the Proposal to the Authorized Representative for approval, along with written recommendation of approval or disapproval of the Proposal by the Architect/Engineer.
 - B. If the Contractor's Proposal is more than \$25,000 and no

emergency is involved, submit the Proposal to the Authorized Representative for approval by the Board of trustees, along with written recommendation of approval or disapproval of the Proposal by the Architect/Engineer.

7.3.4.8 Upon receipt of approval by the Authorized Representative or the Board of Trustees, as applicable, complete, sign and obtain the Contractor's signature on the Change Order. Prepare a package consisting of the Change Order and indication of the Authorized Representative's or the Board of Trustee's approval of the Contractor's Proposal, recommendation, if any, of the Authorized Representative, recommendation of the Architect/Engineer, and Authorized Representative's approval of the Bulletin.

7.3.4.9 Deliver multiple copies of the signed Change Order package to the Authorized Representative for signing and any necessary fund certification. Upon signing by the Authorized Representative, the Authorized Representative shall return copies of the executed Change Order to the Contractor and the Architect/Engineer. **The Contractor may bill for Work covered by the Change Order only after this final step.**

7.3.5 Paperwork Consolidation

7.3.5.1 Related transactions of one Contractor occurring at or about the same time shall, whenever possible, be consolidated into the same Bulletin or Change Order, or both.

7.3.5.2 Add and deduct items may be included on the same Change Order, as well as items with difficult reasons for changed Work as long as reason and pricing for each item is separately stated.

7.3.6 Change Order Numbering System

7.3.6.1 Unless otherwise provided in the Contract Documents, the Architect/Engineer shall assign a number to each change which shall be stated on the Bulletin, starting with number 001. All Contractors affected by the change will be recorded under the same number. The Architect/Engineer will establish and maintain a Change Order log to track all actions related to Change Order processing and taking care not to duplicate or reuse any number throughout the Project.

7.3.6.2 When Change Order numbers are assigned, the number shall consist of the Bulletin number, followed by a hyphen, and the Contractor's contract number.

7.3.7 Project Contingency Funds

- 7.3.7.1 Project contingency funds shall be reserved to pay costs resulting from Change Orders, unanticipated job conditions, to comply with rulings regarding building and other codes, to pay costs related to errors and omissions in Contract Documents, and to pay the cost of settlements and judgments related to the Project.

7.4 CHANGE ORDER PRICING GUIDELINES

- 7.4.1 For each change, the Contractor shall furnish a detailed, written Proposal itemized according to these Pricing Guidelines. Any Subcontractor or Material Supplier pricing shall also be itemized according to these Pricing Guidelines. Where Unit Prices were included in the Bid Form and the Contract Price, the Architect/Engineer may also require incorporation of such Unit Prices or preparation on alternate Proposal incorporating such Unit Prices. These Pricing Guidelines are intended to establish the maximum amount which the TID will pay for any Change Order, including without limitation all amounts due to the Contractor for interference with, delay, hindrance, disruption or impact of the Work. A Change Order may provide that the TID may pay less or receive more than the amount established by these Pricing Guidelines if such amount is negotiated by the Architect/Engineer in accordance with subparagraph GC 7.3.4 or is determined by the Authorized Representative in accordance with Article GC 8. As provided in subparagraph GC 9.1.2, the Contract Cost Breakdown may be used by the TID to determine any cost or credit. In order to expedite the review and approval process, all Proposals shall be prepared in the categories and in the order listed below. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.
- 7.4.2 LABOR - All field labor shall be priced at the current base rate, excluding fringe benefits, of the prevailing wage in the Project locality. The Proposal and documentation is to include number of hours and rate of pay for each classification of worker. If the Contractor pays an employee a base rate exceeding prevailing wage, the Contractor shall submit certified payroll records that substantiate that rate. Any Contractor performing time and material or cost-plus basis Work shall submit certified payroll records for all employees performing that Work.
- 7.4.3 FRINGES - All established payroll taxes, assessments and fringe benefits on the labor in subparagraph GC 7.4.2. This may include, without limitation, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Workers' Compensation and Apprentice Fund. Each of the fringes is to be a separate line item. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification.
- 7.4.4 EQUIPMENT RENTALS - All charges for certain non-owned heavy or specialized equipment at up to 100% of the documented rental cost. No rental

charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed. The Contractor shall submit copies of actual paid invoices to substantiate rental costs.

- 7.4.5 OWNED EQUIPMENT - All charges for certain owned heavy or specialized equipment at up to 100% of the cost listed by the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work will be the basis for the pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.
- 7.4.6 TRUCKING - A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck will not be allowed.
- 7.4.7 OVERHEAD - Overhead on items in subparagraphs GC 7.4.2, 7.4.3, 7.4.4, 7.4.5, and 7.4.6 up to 10%, which shall include all costs required to schedule the Work and coordinate with the Contractors.
 - 7.4.7.1 Overhead includes, without limitation, telephone, telephone charges, facsimile, electronic mail, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (1 level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering), all other home office expenses, legal services, travel and parking expenses.
 - 7.4.7.2 An exception from subparagraph GC 7.4.7.1 is allowed for shop or engineering labor, which shall not be subject to prevailing wage rates, for steel fabricators, sheet metal fabricators and sprinkler system fabricators. Recovery for such matters will be allowed under subparagraphs GC 7.4.2 and 7.4.3.
- 7.4.8 MATERIALS
 - 7.4.8.1 All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement of material costs shall only be allowed in the amount of the Contractor's actual cost, including any and all discounts, rebates or related credits.
 - 7.4.8.2 One-third (33%) of the cost of reusable materials for each use, such as formwork lumber, shoring or temporary enclosures.
- 7.4.9 PROFIT - Profit on items in subparagraphs GC 7.4.2, 7.4.3, 7.4.4, 7.4.5, 7.4.6, 7.4.7 and 7.4.8 up to 10%.

- 7.4.10 SUBCONTRACTOR - The reasonable cost of all labor and material provided by a Subcontractor whose pricing is included and which complies with these Pricing Guidelines.
- 7.4.11 CONTRACTOR MARK-UP ON SUBCONTRACTOR - Mark-up on items in subparagraph GC 7.4.10 up to 10%.
- 7.4.12 MISCELLANEOUS - The following items are allowable at the cost of the Work, **with no overhead or profit.**
- 7.4.12.1 The cost of extending the Contract Bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance.
- 7.4.12.2 Fees for permits, licenses, inspections, tests, etc.
- 7.4.12.3 When requested by the Contractor and approved in writing by the Authorized Representative due to special circumstances, reimbursement will be paid for overnight lodging, travel and food in an amount not to exceed the TID's travel guidelines, if any.
- 7.4.13 Costs which will not be reimbursed for Change Order Work include the following:
- 7.4.13.1 Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed.
- 7.4.13.2 Voluntary Employee Deductions - examples are United Way and U.S. Savings Bonds, etc.
- 7.4.14 State sales or use tax shall be allowed on items as defined by paragraph GC 20.1.

7.5 DIFFERING SITE CONDITIONS

- 7.5.1 Unless otherwise specified in the Contract Documents, borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions, if any, are incomplete, are not a part of the Contract Documents, and are not warranted to show the actual subsurface or concealed physical conditions and may not be relied upon by the Contractor. Such matters are provided solely to share information available to the City and/or TID and any use of, or reliance upon such items by the Contractor is at the risk of the Contractor. No part of the Contract Documents shall be deemed to show actual or anticipated subsurface or concealed physical conditions or are to be relied upon by the Contractor or as permitting any particular means, method or manner of construction with respect to such conditions.

- 7.5.2 If the Contractor encounters, during the progress of the Work, subsurface or concealed physical conditions at the Project, differing materially from those upon which the Contract Documents permit the Contractor to rely or differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract, the Contractor shall notify the Architect/Engineer in writing of such conditions, before they are disturbed.
- 7.5.3 Upon notice from the Contractor under subparagraph GC 7.5.2, the Architect/Engineer shall promptly investigate the conditions and if the Architect/Engineer find that such conditions do materially differ from those upon which the Contract Documents permit the Contractor to rely or differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract, and cause an increase or decrease in the cost of performing the Work, an appropriate Change Order shall be processed, subject to final approval by the Authorized Representative or the Board of Trustees, as applicable.
- 7.5.3.1 The Contractor will proceed only with a proper authorization, in writing, as provided by the Contract Documents.
- 7.5.3.2 No claim of the Contractor under subparagraph GC 7.5.3 shall be allowed unless the Contractor provided the notice required in subparagraph GC 7.5.2.

7.6 TIME EXTENSION

- 7.6.1 Notwithstanding any other provision of the Contract Documents, time extensions for changes in the Work will depend upon the extent to which the change causes delay in Work on the Critical Path of the Project Schedule as determined pursuant to paragraphs GC 6.4 and 6.5.
- 7.6.2 If extending the time for Contract Completion is not possible, the Contractor shall price, and shall separately state, all costs of accelerated performance in the Contractor's Proposal.
- 7.6.3 A Change Order granting a time extension may provide that the time for Contract Completion will be extended for only those specific elements actually delayed and that remaining milestone completion dates will not be altered and may further provide for adjustment of Liquidated Damages, to the fullest extent permitted by law.

ARTICLE 8 - DISPUTE RESOLUTION PROCEDURE

8.1 FILING OF NOTICE AND CLAIM

- 8.1.1 Whenever the Contractor intends to seek additional time or compensation or

mitigation of Liquidated Damages, whether due to delay, extra work, additional time or work, breach of Contract, or other causes arising out of or related to the Contract or the Project, the Contractor shall follow the procedures set forth in this Article. To the fullest extent permitted by law, failure by the Contractor to follow the procedures in this Article is a waiver of any claim for additional time or compensation or for mitigation of Liquidated Damages.

- 8.1.2 The Contractor shall file any claim with the Architect/Engineer, in accordance with subparagraph GC 8.1.4, provided the Contractor notified the Architect/Engineer in writing, no more than ten (10) days after the initial occurrence of the facts which are the basis of the claim. To the fullest extent permitted by law, failure of the Contractor to timely provide such notice shall constitute a waiver by the Contractor of any claim for additional time or compensation or for mitigation of Liquidated Damages. .
- 8.1.3 Every such written notice shall provide the following information to permit timely and appropriate evaluation of the claim, determination of responsibility and opportunity for mitigation.
 - 8.1.3.1 Nature of the claim and estimated amount of the claim, including all costs for interference, disruption, hindrance, delay and impact, which amount shall be calculated in accordance with the Pricing Guidelines set forth in paragraph GC 7.4, shall be based upon the Contractor's experience and shall be a fair and reasonably accurate assessment of the damages suffered (or anticipated) by the Contractor;
 - 8.1.3.2 Identification of Persons and events responsible for causing the claim, including without limitation the date (or anticipated date) of the commencement of any interference, disruption, hindrance, delay or impact;
 - 8.1.3.3 Identification of activities on the Project Schedule which will or may be affected by the claim or new activities which will or may be created and the relationship with existing activities;
 - 8.1.3.4 Anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay or impact and any remobilization period; and
 - 8.1.3.5 Recommended action to avoid or minimize any interference, disruption, hindrance, delay or impact.
- 8.1.4 With respect to every claim submitted in accordance with this Article, the Contractor shall file three (3) copies of its claim with the Architect/Engineer not more than thirty (30) days after the notice required by subparagraph GC 8.1.2 and, in all events prior to Contract Completion. The Contractor's claim shall

detail the amounts claimed and provide the following information to permit timely and appropriate evaluation of the claim, determination of responsibility and any remaining opportunity for mitigation. If the Contractor is unable to calculate any amount claimed in detail, the Contractor shall use its best efforts to provide a reasonable estimate of such amount.

- 8.1.4.1 A narrative of the event, or combination of events, claimed as resulting in interference, disruption, hindrance, delay or impact to the Contractor, including the start date of the event or events and the actual, or anticipated, finish date;
- 8.1.4.2 A quantification of the planned Work items and the changed scope of Work items claimed as having been impacted;
- 8.1.4.3 A time impact analysis, consistent with standard critical path methodology for scheduling, demonstrating the impact to the Contractor's scheduled activities;
- 8.1.4.4 Copies of the Contractor's daily log for each day of impact;
- 8.1.4.5 Copies of relevant correspondence and other information regarding or supporting Contractor entitlement;
- 8.1.4.6 Copies of Contractor payroll records for labor impacts claimed by Contractor and any Subcontractor affected by the event or events.
- 8.1.4.7 Copies of invoices for material impacts claimed by the Contractor and any Subcontractor affected by the event or events;
- 8.1.4.8 Copies of equipment records, or rental invoices, for any equipment, impacts claimed by the Contractor or any Subcontractor affected by the event or events;
- 8.1.4.9 Copies of the most recent Contractor Income Statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included;
- 8.1.4.10 A statement, signed by an authorized representative of the Contractor, certifying that the claims are made in good faith, the supporting data is accurate and complete to the best of the Contractor's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the Contractor believes the TID is liable in accordance with the Contract Documents, in particular the Pricing Guidelines set forth in paragraph GC 7.4.

8.2 CLAIM RESPONSE

- 8.2.1 Immediately upon receipt of any claim submitted by the Contractor in accordance with Subparagraph 8.1.4, the Architect/Engineer shall deliver two (2) copies to the Authorized Representative. Upon submission of the claim by the Contractor, the Architect/Engineer shall convene a meeting with the

Contractor and any applicable Subcontractors and Material Suppliers to review and discuss the claim. The Architect/Engineer shall review the Contractor's claims with all attendees and discuss any questions regarding the nature or content of the required items. Any items deemed deficient shall be corrected by the Contractor before the Architect/Engineer will commence review in accordance with subparagraph GC 8.3.1. The Architect/Engineer shall document the timeliness of notice provided under paragraph GC 8.1.2 and the actual date of corrected submission of the claim.

8.3 REVIEW AND DECISION

- 8.3.1 Upon corrected submission of the claim by the Contractor, the Architect/Engineer shall review the claim and prepare a written analysis of its content. The analysis may include a narrative of the examination of the facts giving rise to the claim, relevant Contract Documents and language therein, an analysis of claimed additional labor, materials and equipment for the scope of the Work items described and an analysis of any time extension for any interference, disruption, hindrance, impact or delay claimed (including the calculation of any concurrent delays affecting entitlement) and shall include confirmation of the calculation of claimed labor, materials and equipment as conforming to the Pricing Guidelines set forth in paragraph GC 7.4 and a concluding recommendation regarding Contractor entitlement to, and the appropriateness and reasonableness of, all or any part of, the claimed costs and time extension. The Architect/Engineer may include copies of contemporaneous documentation supporting any recommendation regarding the sufficiency or inadequacy of the Contractor's claim, the Contractor's performance or the rebuttal of the claim.
- 8.3.2 The Architect/Engineer shall prepare and submit the claim analysis to the Authorized Representative within thirty (30) days of the corrected submission of the claim.
- 8.3.3 The Authorized Representative shall examine the Contractor's claim, and the analysis of the claim submitted by the Architect/Engineer. The Authorized Representative shall approve or deny all or any part of, the Contractor's claim and forward a written decision to the Contractor and the Architect/Engineer within thirty (30) days after receipt of the Architect/Engineer's claim analysis.

8.4 APPEAL TO COUNCIL

- 8.4.1 The Contractor may appeal the decision of the Authorized Representative to the Board of Trustees by written notice to the Authorized Representative who shall provide the Contractor an opportunity to present the claim at the Council's next meeting. If the Authorized Representative receives the notice less than ten (10) days prior to the Council's next meeting, the Contractor shall be provided the opportunity to present the claim at the next succeeding meeting of the Council. The purpose of the meeting shall be to settle the issues in dispute.

8.4.1.1 The Board shall render a decision on the claim within thirty (30) days of the meeting unless a mutual agreement is made between the Contractor and the Board of Trustees to extend the time for decision.

8.4.1.2 The decision of the Council shall be final and conclusive, subject to litigation in a court of competent jurisdiction.

8.5 ALTERNATIVE DISPUTE RESOLUTION

8.5.1 If, upon consideration of a claim, the Contractor and the TID mutually agree in writing, the dispute resolution procedure provided in this Article may be waived, or the claim may be referred to a form of Alternative Dispute Resolution, including a procedure to equitably share the costs of the Alternative Dispute Resolution.

8.6 DELEGATION

8.6.1 No provision of this Article shall prevent the TID or the Authorized Representative from delegating the duties or authorities of the TID or the Authorized Representative to any third Person selected at the discretion of the TID or Authorized Representative, as applicable.

8.7 AUDITING OF CLAIMS

8.7.1 All claims by the Contractor shall be subject to audit at any time following the filing of such claim, whether or not such claim is part of litigation pending in the courts of this State. The audit may be performed by employees of the TID or by a consultant engaged by the TID. The audit may begin on ten (10) days' notice to the Contractor, Subcontractor or Material Supplier, as applicable. The Contractor, Subcontractor or Material Supplier shall use its best efforts to cooperate with the audit. Failure of the Contractor, Subcontractor or Material Supplier to maintain and retain sufficient records to allow the TID to verify the claim shall constitute a waiver of any portion of such claim that cannot be verified. Without limiting the foregoing, and as a minimum, the Contractor, Subcontractor or Material Supplier shall make available to the TID the following documents:

8.7.1.1 Daily time sheets and foreman's daily reports.

8.7.1.2 Union agreements, if any and employer agreements.

8.7.1.3 Insurance, welfare, fringes and benefits records.

8.7.1.4 Payroll register.

8.7.1.5 Earnings records.

- 8.7.1.6 Payroll tax returns.
- 8.7.1.7 Material invoices, purchase orders, Subcontractor contracts and all material and supply acquisition contracts.
- 8.7.1.8 Material cost distribution worksheets.
- 8.7.1.9 Equipment records (list of Contractor equipment, rates, etc.).
- 8.7.1.10 Vendor rental agreements, and Subcontractor invoices.
- 8.7.1.11 Subcontractor payment certificates.
- 8.7.1.12 Canceled checks (payroll and vendors).
- 8.7.1.13 Job cost reports.
- 8.7.1.14 Job payroll ledger.
- 8.7.1.15 General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
- 8.7.1.16 Cash Disbursements journal.
- 8.7.1.17 Financial Statements for all years reflecting operations on the Project.
- 8.7.1.18 Income tax returns for all years reflecting operations on the Project.
- 8.7.1.19 Depreciation records on all equipment utilized whether such records are maintained by the Contractor involved, its accountant, or others.
- 8.7.1.20 If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- 8.7.1.21 All documents which reflect the Contractor's actual profit and overhead, or the calculation of overhead multipliers, during the years the Project was being performed and for each of the five (5) years prior to the commencement of this Project.
- 8.7.1.22 All documents related to the preparation of the Contractor's bid, including the final calculations on which the bid was based.

8.7.1.23 All documents which relate to each and every claim together with all documents which support or negate the amount of damages as to each claim.

8.7.1.24 Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents which establish the time periods, individuals involved, the hours and rate of pay for the individuals.

8.7.1.25 All other documents required by the Council to intelligently review the claim.

8.8 FALSE CERTIFICATION OF CLAIMS

8.8.1 If any Contractor falsely certifies all or any part of a claim, the portion of the claim so certified shall be denied.

8.8.2 If any Contractor is found to have falsely certified all or any part of any claim, that fact may be used to support a finding of non-responsibility in future bids for the award of any TID Contract.

8.9 PERFORMANCE AND PAYMENT

8.9.1 The Contractor shall proceed with performance of the Work during any dispute resolution process, unless otherwise agreed by the Contractor and the Authorized Representative in writing. The TID shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a claim, unless otherwise agreed by the Contractor and the Authorized Representative in writing.

8.9.2 If the Contractor accepts the decision of the Authorized Representative or the Board of Trustees and foregoes litigation of the claim, any payment to be made, credit to be provided or extension of time to be granted pursuant to such recommendation or decision shall be evidenced by a Change Order package consisting of a completed Change Order form signed by the Contractor, the Architect/Engineer and the Authorized Representative and approved by the Board of Trustees, if applicable, a copy of the recommendation or decision and any necessary supporting documentation, and any payment to the Contractor shall be made pursuant to an Contractor Payment Request in accordance with paragraph GC 9.2 or 9.7, as applicable.

ARTICLE 9 - CONTRACTOR PAYMENT

The following paragraphs describe measurement of and payment for the Work to be done under the respective items listed in the Bid Schedule.

Each unit or lump sum price stated in the Bid Schedule shall constitute full compensation for

not only labor, equipment, and materials necessary and required to complete all Work specified under that particular item, but also all costs for doing related Work as set forth in these Specifications and/or on the Contract Drawings or implied in carrying out their intent. No claim will be accepted from the Contractor for not using any item or for increasing or decreasing quantities on any item.

Additional quantities have been added to the calculated quantities of some of the bid items. No claim will be accepted from the Contractor for not using the extra quantities or for increasing or decreasing them. The bid items along with the approximate extra quantities are as follows:

Item No.	Description	Extra Quantity	Unit
Roadway			
3	Roadway Excavation	24.00	CY
4	Roadway Excavation (Undercuts)	3.00	CY
5	Roadway Embankment	8.00	CY
6	Subgrade Compaction	4.00	SY
7	Structural Geogrid (Tensar BX-1200 or Equal)	4.00	SY
8	12" #1's & #2's Aggregate	1.00	CY
9	10" Crushed Aggregate Base (ODOT 304)	5.00	CY
10	6" Asphalt Base Course (ODOT 302, PG64-22)	2.00	CY
11	2.5" Asphalt Concrete Intermediate Course (ODOT 448 Type 2 Medium, PG64-22 M)	2.00	CY
12	2.5" Asphalt Concrete Surface Course (ODOT 448 Type 1 Medium, PG64-22)	2.00	CY
13	8" Plain Portland Cement Concrete Pavement with 6" Crushed Aggregate Base (ODOT 304)	2.00	SY
14	Type 2 Concrete Curb (Modified)	7.00	LF
15	Type 2A Concrete Curb	2.00	LF
16	6" Perforated Corrugated HDPE Pipe (Storm) with Filter Sock, including No. 8 Stone & End Caps	7.00	LF
21	Topsoil (3")	11.00	CY
22	Seeding, Mulching & Fertilizer	30.00	SY
Sanitary Sewer			
24	12" PVC ASTM D3034 SDR 35 (Sanitary) Type B	8.00	LF
Storm Sewer			
28	12" Concrete Pipe ASTM C76 Class IV (Storm), Type B	3.00	LF
30	18" PVC F679 (Storm), Type C	10.00	LF
Waterline			
39	12" AWWA C900 (Class 150 & DR18) Type B	4.00	LF
40	12" AWWA C900 (Class 150 & DR18) Type C	5.00	LF

9.1 CONTRACT COST BREAKDOWN

9.1.1 The Contractor shall submit to the Architect/Engineer a full, accurate and

detailed estimate (the "Contract Cost Breakdown") of the various kinds of labor to be performed and material to be furnished, with separate amounts shown for labor and materials for each branch of Work, following the preferred titles and sequences of Sections of Construction Specifications Institute (CSI) format used by the Architect/Engineer in developing the Specifications.

9.1.2 The grand total shown on the Contract Cost Breakdown must equal the total Contract Price. The TID reserves the right to use the approved Contract Cost Breakdown to determine the cost or credit to the TID resulting from any change in the Work.

9.1.2.1 The first item shall be actual cost of Bond, insurance, permits and tests required for the Work.

9.1.2.2 The amounts for labor and material shall accurately reflect the cost for each item. Separate items shall not be shown for overhead or profit, but shall be included in the totals for labor and materials.

9.1.2.3 Whenever the material allocation exceeds 55% of the Contract Price, the Contractor shall provide, upon request, sufficient information to support such higher percentage.

9.1.2.4 Subcontract Work shall show amounts for labor and materials. Fringe benefits shall be shown as a part of labor costs.

9.1.2.5 When more than one (1) major structure is included in the Contract, the Contract Cost Breakdown shall be subdivided accordingly if requested by the Architect/Engineer, with cost details for each structure shown separately.

9.1.2.6 Unless otherwise specified in the Contract Documents mechanical and electrical Contractors shall include separate line items for all major pieces of equipment, and group smaller equipment items by type. Other Contractors shall include such information upon request of the Architect/Engineer or the Authorized Representative.

9.1.2.7 A line item shall be included for commissioning, Punch List Work, Project Record Document Submittals, delivery of attic stock and specified training.

9.1.3 The Contract Cost Breakdown will be returned to the Contractor for resubmittal if it does not meet the requirements set forth above or contains insufficient items or details of the Work.

9.1.4 No payment will be made without an approved Contract Cost Breakdown.

9.2 CONTRACTOR PAYMENT REQUEST

9.2.1 The Contractor shall submit monthly to the Architect/Engineer an itemized

Contractor Payment Request for Work performed based upon the Contract Cost Breakdown on a form satisfactory to the Authorized Representative.

- 9.2.1.1 The Contractor Payment Request shall be supported by documentation substantiating the Contractor's right to payment. The Contractor shall supply such additional documentation as the Architect/Engineer may request in connection with each Contractor Payment Request.
 - 9.2.1.2 Certified payroll reports for the period of time indicated shall be attached to one (1) copy of every Contractor Payment Request. See also paragraph GC 18.2 and Wage Rates.
 - 9.2.1.3 The Contractor shall list on the Contractor Payment Request any approved Change Orders processed and performed during the time covered by the Contractor Payment Request.
- 9.2.2 Payment of an approved Contractor Payment Request shall be made within thirty (30) days from the date of approval by the Architect/Engineer.
- 9.2.2.1 The TID reserves the right to require proof of the renewal of required insurance as a condition precedent to payment.
 - 9.2.2.2 Payments due and not paid to the Contractor, through no fault of the Contractor, within such 30-day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rate established at the commercial banks in the city of over 100,000 population that is nearest to the Project.
- 9.2.3 The amount of Liquidated Damages to which the TID is apparently entitled under the Contract Documents may be deducted from any Contractor Payment Request by the Architect/Engineer and the Authorized Representative.

9.3 LABOR PAYMENTS

- 9.3.1 Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of 92% of the amount invoiced through the Contractor Payment Request which shows the total Contract Completion at 50% or greater.
- 9.3.2 After the Contract is 50% complete, as evidenced by payments in the amount of at least 50% of the Contract Price to the Contractor, except in the case of Contracts the total of which is less than \$15,000, no additional funds shall be retained from payments for labor.

9.4 MATERIAL PAYMENTS

- 9.4.1 The TID shall pay to the Contractor a sum at the rate of 92% of the invoice cost,

not to exceed the applicable bid amount in a Unit Price or lump sum Contract, for material delivered on the site of the Project, or other point in the vicinity of the Project, or other storage site approved by the Architect/Engineer, provided the Contractor provides the following information with the Contractor Payment Request:

- 9.4.1.1 A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.
- 9.4.1.2 A certification of materials stored off site, prepared by the Contractor and signed by the Architect/Engineer to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. All costs incurred by the Architect/Engineer to visit a storage site, other than the areas adjacent to the Project, shall be paid by the Contractor.
- 9.4.2 The balance of such invoiced cost shall be paid when such material is incorporated into and becomes a part of the Project.
- 9.4.3 When payment is allowed on account of material delivered on the site of the Project or in the vicinity thereof or under the possession and control of the Contractor but not yet incorporated therein, such material shall become the property of the TID, but if such material is stolen, destroyed, or damaged by casualty before being used, the Contractor will be required to replace it at the Contractor's expense. Any material not ultimately incorporated into the Project may, at the option of the TID, be retained by the TID or returned to the Contractor for credit to the TID of the proportionate amount.
- 9.4.4 Completed line items concealed, underground and buried and not subject to final Punch List may be paid for at the rate of 100%. Completed line items subject to a final Punch List requiring testing or start-up shall be paid at the rate of 98%.

9.5 RETAINAGE

- 9.5.1 All funds retained for the faithful performance of the Work shall be deposited in an escrow account with a bank in the State in accordance with the terms and conditions provided in an escrow agreement executed by the Contractor, the Authorized Representative and the applicable bank.
- 9.5.2 When the major portion of the Project is occupied or in use, and there exists no other reason to withhold retainage, including without limitation compliance with Article GC 11, the retained percentages held in connection with such portion shall, upon request of the Contractor, be released from escrow and paid to, or upon the order of, the Contractor, withholding only that amount necessary to assure completion, in the discretion of the Authorized Representative.
 - 9.5.2.1 Any reduction or release of retainage, or portion thereof, shall not be a waiver of the TID's right to retainage in connection with other

payments to the Contractor, or any other right or remedy the TID has under the Contract Documents, at law or in equity.

9.5.2.2 Funds in the escrow account not previously paid shall be released to the Contractor within thirty (30) days of approval of a final Application for Payment by the TID and execution of the certificate of Contract Completion by the TID.

9.5.3 Upon consent by the Contractor's Surety, the TID may reduce the amount of funds retained for the faithful performance of Work by 50% of the amount of funds required to be retained, provided the Contractor's Surety remains responsible for all damages that may be caused due to default by the Contractor, including without limitation, the following:

9.5.3.1 Completion of the Work;

9.5.3.2 All interference, disruption, hindrance, delay, impact and claims;

9.5.3.3 All Liquidated Damages; and

9.5.3.4 All additional expenses incurred by the City and/or TID.

9.6 PAYMENTS WITHHELD

9.6.1 The Architect/Engineer shall have the authority to recommend to the TID that payments be withheld from, or Liquidated Damages be assessed against and withheld from, a Contractor's Contractor Payment Request, stating the reasons for such recommendation.

9.6.2 The TID reserves the right to decline to approve any Contractor Payment Request or part thereof, or because of subsequent evidence or inspection, may nullify any previous Contractor Payment Request, in whole or in part, to such extent as may be necessary in the Authorized Representative's opinion to protect the TID from loss because of:

9.6.2.1 Defective Work not remedied;

9.6.2.2 Damage caused by the Contractor;

9.6.2.3 Failure to comply with the requirements of Sections 4115.03 to 4115.22, ORC;

9.6.2.4 Liquidated Damages.

9.6.3 If the basis for withholding payment pursuant to subparagraph GC 9.6.2 is removed, payment shall be made for amounts withheld because of that basis.

9.6.4 Whenever the TID receives a Claim Affidavit, the Authorized Representative shall detain the stated amount from the Contractor's subsequent Contractor Payment Request unless the Contractor provides a release and waiver of lien

with the Contractor Payment Request.

9.6.4.1 The release and waiver of lien shall be executed by the Person supplying labor, materials or services on a Project, which has or may have a right of lien against the Contractor's proceeds.

9.6.4.2 If the TID detains an amount as set forth above, such action shall not be construed as conferring any right on such Subcontractor or Material Supplier, nor as enlarging or altering the application or effect of existing law.

9.7 FINAL CONTRACTOR PAYMENT REQUEST

9.7.1 The Contractor, as a condition precedent to execution of the certificate of Contract Completion and to final payment, shall provide all documents required pursuant to subparagraph GC 11.1.1 for approval by the Architect/Engineer.

9.7.1.1 The Contractor shall execute an affidavit to certify that the Contractor has complied with all requirements of Sections 4115.03 to 4115.22, ORC.

9.7.1.2 The Contractor shall execute an affidavit to certify that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project.

9.7.2 Payment of the final Contractor Payment Request shall be made within thirty (30) days from the date of approval by the Authorized Representative.

9.7.2.1 The inability of a Contractor, to complete Project close-out requirements within the time specified by the Architect/Engineer shall not be grounds for withholding final payment to another Contractor.

9.7.2.2 Payments due and not paid to the Contractor, through no fault of the Contractor, within such thirty (30) day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rate established at the commercial banks in the city of over 100,000 population that is nearest to the Project.

9.7.3 The making of final payment by the TID shall constitute a waiver of all claims by the TID except those relating to unresolved claims of the Contractor or the TID and those arising after Contract Completion including, without limitation, the following:

9.7.3.1 Defective or nonconforming Work resulting from latent defects, fraud or gross mistakes;

9.7.3.2 Outstanding liens;

9.7.3.3 Failure of the Contractor to comply with any Warranties or Guarantees required by the Contract Documents.

- 9.7.4 The acceptance of final payment by the Contractor shall constitute a waiver of all claims against the TID except those that the Contractor has previously made in writing in accordance with Article GC 8 and which remain unresolved at the time of final payment. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

ARTICLE 10 - FINAL INSPECTION AND ACCEPTANCE

10.1 CONTRACTOR'S PUNCH LIST

- 10.1.1 When the Work, or a designated portion thereof, is nearly complete, the Contractor shall prepare a list of all deficient items remaining on the Work or portion (the "Contractor's Punch List").
- 10.1.2 The Contractor shall proceed to correct all items listed on the Contractor's Punch List and verify that the deficient items have been corrected by signing the Contractor's Punch List.
- 10.1.3 The Contractor shall submit the signed Contractor's Punch list to the Architect/Engineer, together with a request for a final inspection of the Work (the "Final Inspection").

10.2 ARCHITECT/ENGINEER'S PUNCH LIST

- 10.2.1 The Architect/Engineer shall, within seven (7) days of receipt of the request for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, stating reasons for any rejection.
- 10.2.2 Upon acceptance of the Contractor's request, the Architect/Engineer shall conduct the Final Inspection to determine whether the Work, or a designated portion thereof, is in conformity with the Contract Documents. The Architect/Engineer shall notify the Contractor and the Authorized Representative of the scheduled time of the Final Inspection.
- 10.2.3 Within three (3) days of the Final Inspection, the Architect/Engineer shall notify the Contractor of any items remaining in a Defective, incomplete or unacceptable condition. The list of such items shall be known as the Architect/Engineer's Punch List.

10.3 CORRECTION OF PUNCH LIST ITEMS

- 10.3.1 Within thirty (30) days of receipt of the notice required by paragraph GC 10.2.3, the Contractor shall complete and correct all items remaining on the Architect/Engineer's Punch List.
- 10.3.2 If the Contractor does not complete the items on the Architect/Engineer's Punch List within thirty (30) days of receipt of the notice, the provisions of paragraph

GC 5.2 may be invoked.

10.3.3 If the Work on the Architect/Engineer's Punch List cannot be completed within thirty (30) days of receipt of the notice, the Contractor shall justify to the reasonable satisfaction of the Architect/Engineer the reasons the items cannot be so completed, and the Contractor, for approval of the Architect/Engineer a time when such items will be completed.

10.3.4 Failure of the Architect/Engineer to include any items on the Architect/Engineer's Punch List shall not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents.

10.3.5 If multiple inspections of items on the Architect/Engineer's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall be responsible for any additional costs incurred by other Contractors, the Architect/Engineer and the TID resulting from any attendant delay.

10.4 CERTIFICATE OF CONTRACT COMPLETION

10.4.1 When all items on the Architect/Engineer's Punch List have been corrected to the satisfaction of the Architect/Engineer and the provisions of paragraphs GC 11.1 to 11.4 have been fulfilled, the Architect/Engineer shall process a certificate of Contract Completion. The TID reserves the right of Final Acceptance of the Project.

10.5 DEFERRED ITEMS

10.5.1 With the approval of the Architect/Engineer, when upon Final Inspection, items of Work cannot be completed because of seasonal conditions, such as bituminous paving or landscaping, or if the Authorized Representative agrees that a particular item need not be completed until a subsequent date, the Authorized Representative may release payment to the Contractor less twice the cost of completing the remaining Work as determined in the sole discretion of the Authorized Representative.

ARTICLE 11 - CONTRACT COMPLETION

11.1 PROJECT RECORD DOCUMENT SUBMITTALS

11.1.1 The Contractor, as a condition precedent to execution of the certificate of Contract Completion, release of retainage and final payment, shall provide all Project record documents to the Architect/Engineer for approval, which may include, without limitation:

11.1.1.1 Inspection Certificates required;

- 11.1.1.2 Operating and Maintenance Manuals, which shall be organized into suitable sets of manageable size. Indexed data shall be bound in individual binders, with pocket folders for folded sheet information and appropriate identification shall be marked on the front and the spine of each binder;
- 11.1.1.3 Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project;
- 11.1.1.4 Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;
- 11.1.1.5 Assignment to the TID of all Warranties and Guaranties, including the most recent address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;
- 11.1.1.6 An affidavit to certify that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project;
- 11.1.1.7 Final certified payroll reports;
- 11.1.1.8 An affidavit of the Contractor to certify that the Contractor has complied, and affidavits of each Subcontractor and Material Supplier that the Subcontractor or Material Supplier has complied with all requirements of Section 4115.03 to 4115.22, ORC.

11.2 RECORD DRAWINGS

- 11.2.1 Upon completion of the Work, the Contractor shall organize the As-Built Drawings into manageable sets, bind the sets with durable paper cover sheets, certify to the accuracy of the As-Built Drawings by signature thereon, and deliver the As-Built Drawings to the Architect/Engineer.
- 11.2.2 The Architect/Engineer shall revise the original contract Drawing tracings or computer files with the information contained on the As-Built Drawings provided by the Contractor. The revised original contract Drawing tracings or computer files shall be labeled "Record Drawings" and reflect the date of the Architect/Engineer's revision of the As-Built Drawings.
- 11.2.3 The TID may thereafter use the Record Drawings for any purpose relating to the Project including, without limitation, additions to or completion or renovation of the Project.

11.3 GUARANTEE AND WARRANTY

- 11.3.1 The Contractor shall provide a Guarantee to the TID that all Work is in conformity with the Contract Documents and free from defects in workmanship, materials and equipment for a period of one (1) year or such longer period as

specified in the Contract Documents. The Contract Bond shall remain in effect until the expiration of such period, unless the Contractor shall provide a Maintenance Bond in form and substance, and from a Surety satisfactory to the TID.

- 11.3.1.1 The Guarantee time period shall commence on the date of approval of the certificate of Contract Completion by the Authorized Representative, unless otherwise provided in writing.
 - 11.3.1.2 The Guarantee time period for any incomplete or uncorrected Work at the time of Partial Occupancy, if any, shall commence with the date of approval of the certificate of Contract Completion by the Authorized Representative, unless otherwise provided in writing.
 - 11.3.1.3 The Guarantee provided in this Article shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy provided by law or by the Contract Documents.
- 11.3.2 The Contractor shall, prior to installing material or equipment which is subject to a Warranty, provide a copy of the Warranty to the Architect/Engineer for review and approval.
- 11.3.3 If defects in the material or equipment become apparent within the Guarantee or Warranty period, the Authorized Representative shall promptly notify the Contractor in writing and provide a copy of the notice to the Architect/Engineer.
- 11.3.3.1 Within ten (10) days of receipt of said notice, the Contractor shall visit the Project in the company of a representative of the City and the TID to determine the extent of all defects and the Contractor shall promptly repair or replace the Defective Work, including all adjacent Work damaged as a result of such defects or as a result of remedying the defects, whether or not such adjacent Work was originally provided by the Contractor.
 - 11.3.3.2 If the repair or replacement is considered by the Authorized Representative to be an emergency, the Authorized Representative may require the Contractor to visit the Project within one (1) day of receipt of the notice.
 - 11.3.3.3 The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the Defective Work.
- 11.3.4 If the Contractor does not promptly repair or replace the Defective Work, the City and/or TID may repair or replace the Defective Work and charge the cost thereof to the Contractor or the Contractor's Surety.
- 11.3.5 Work which is repaired or replaced by the Contractor shall be inspected and

accepted by a representative of the City and shall be guaranteed by the Contractor for one (1) year from the date of final acceptance of the corrective Work by the City and/or TID or the remainder of the original Guarantee time period, whichever is longer.

11.4 FINAL CLEANING

11.4.1 Unless otherwise authorized by the Contract Documents, at the completion of the Work the Contractor shall restore all property not designated for alteration by the Contract Documents to as near its original condition as practicable and clean the site of the Project of all waste materials and rubbish attributable to the Work.

11.4.2 At the completion of the Work, the Contractor shall clean areas adjacent to the Project of waste materials and rubbish attributable to the Work.

11.4.3 If any Work be performed after a final cleaning by the Contractor, the Contractor responsible for such Work shall clean any affected area again as provided above so that upon Contract Completion, the premises shall be left ready for occupancy by the City and its tenants.

11.4.4 Final cleaning shall be done to the satisfaction of the Architect/Engineer and the Authorized Representative.

11.4.4.1 If the Contractor fails to clean up at completion of the Work, the provision of paragraph GC 5.2 may be invoked.

11.4.4.2 If a dispute arises among Contractors as to responsibility for final cleaning and the Architect/Engineer may authorize another Contractor, employ City employees or engage a qualified cleaning company, to perform the cleanup and deduct the cost from amounts due to those Contractors responsible as the Architect/Engineer recommends and the Authorized Representative determines to be appropriate. The decision of the Authorized Representative on the responsibility for such cost shall be final, subject to proceedings in accordance with Article GC 8.

ARTICLE 12 - INSURANCE

12.1 CONTRACTOR'S LIABILITY INSURANCE

12.1.1 The Contractor shall purchase and maintain such liability and other insurance as will protect the Contractor from claims described below which may arise out of or result from the Contractor's performance or obligations under the Contract Documents, whether due to action or inaction by the Contractor or any Person for whom the Contractor is responsible.

12.1.1.1 Claims under workers' compensation, occupational sickness or

disease, disability benefit and other similar employee benefit acts;

12.1.1.2 Claims for damages because of bodily injury, disease, illness, death or personal injury, and other claims usually covered by bodily injury liability insurance;

12.1.1.3 Claims for damages because of injury to or destruction of property and other claims usually covered by property damage liability insurance.

12.1.2 A Commercial General Liability policy and Business Automobile Liability policy, shall be maintained to provide insurance as described below. An Umbrella or Excess Liability policy shall be used in combination with the Commercial General Liability and Business Automobile insurance to meet such limits.

12.1.2.1 Worker's Compensation (State Insurance Fund or evidence as qualified self-insurer in State.)

12.1.2.2 Ohio "Stop-Gap" Coverage -- not less than \$500,000 (coverage may be provided in a separate policy or endorsed to a commercial General Liability policy.)

12.1.2.3 Commercial General Liability (not less than \$1,000,000 Combined Single Limit, including Products and Completed Operations coverage until not less than three (3) years after date of Contract Completion and ISO Broadening Endorsement requirements.)

12.1.2.4 Umbrella/Excess Liability (not less than \$1,000,000 per occurrence and in the aggregate).

12.1.2.5 Business Automobile Liability (not less than \$1,000,000 Combined Single Limit including all non-owned and hired units and deletion of "Fellow Employee" exclusion.)

12.1.3 For any demolition, blasting, excavating, tunneling, shoring or similar operations, the Contractor shall provide and maintain Property Damage Liability insurance with a limit of liability equal to such limit as specified in the applicable sections of subparagraphs GC 12.1.2.

12.2 BUILDER'S RISK - NEW CONSTRUCTION

12.2.1 Unless otherwise specified in the Contract Documents, the Contractor shall provide and maintain, during the progress of the Work and until the execution of the certificate of Contract Completion by the Authorized Representative, a Builder's Risk insurance policy to cover all Work in the course of construction including false work, temporary buildings and structures, equipment and materials used in the construction process, stored on or off site, or while in transit. The amount of coverage shall equal the total completed value of the

Project (including the value of permanent fixtures and decorations). Such insurance shall be on a special cause of loss form, which provides coverage on an open perils basis insuring against direct physical loss of or damage to the covered property including flood and earthquake. It shall also include debris removal and demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the TID's, the City's, and the Architect/Engineer's services and expenses required to limit further loss.

12.2.1.1 Coverage must include provision to pay the reasonable extra costs of expediting temporary and permanent repairs to, or permanent replacement of, damaged property. This shall include overtime wages and the extra cost of "express" or other means for rapidly transporting materials, equipment and supplies necessary to such repair or replacement.

12.2.1.2 Such Builder's Risk policy shall protect both the Contractor and the TID from loss and provide coverage for materials in transit or stored off site and identified for the Project.

12.2.1.3 Coverage for other perils may be required if specified in the Special Conditions.

12.2.2 Unless otherwise specified in the Contract Documents, the Builder's Risk policy shall be written in the amount equal to 100% of the Contract price, including landscaping, paving and other site Work.

12.2.3 The Builder's Risk policy shall specifically permit and allow for partial occupancy by the TID prior to Final Acceptance of the Project by the TID.

12.3 BUILDER'S RISK - RENOVATIONS

12.3.1 When a Contractor is involved solely in installation of materials and equipment or renovation and not in new building construction, the Contractor shall purchase and maintain either a Builder's Risk, Builder's Risk-Renovations, or Installation Floater insurance policy. Such policy shall comply with the provisions of paragraph GC 12.2.

12.4 RAILROAD PROTECTIVE INSURANCE

12.4.1 Where the Contract requires Railroad Protective Insurance and no specific item is provided in the Bid Form for the payment of the premium therefor, the cost of such insurance shall be included in the various other bid items in the Contract.

12.5 INSURANCE POLICY REQUIREMENTS

12.5.1 Each policy of insurance required to be purchased and maintained by the Contractor shall name the TID, the City, and the Architect/Engineer (if the

Architect/Engineer is not the City's engineer) as additional insureds or loss payees, as applicable; provided, however, that such designation shall not cause any claim between the Contractor and the TID to be waived except as set forth in subparagraph GC 12.5.1. Each policy and the respective Certificate of Insurance shall expressly provide that no less than thirty (30) days prior written notice shall be given to the TID in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance. Each policy shall provide that the TID, the City and the Architect/Engineer shall be covered notwithstanding any action, omission or negligence of the Contractor.

- 12.5.2 The Contractor shall furnish the TID, when requested, a certified copy of any insurance or additional insured or loss payee endorsement required to be purchased or maintained by the Contract Documents. In no event shall any failure of the TID to demand a certified copy of any required insurance or endorsement be construed as a waiver of the obligation of the Contractor to obtain insurance required to be purchased or maintained by the Contract Documents.
- 12.5.3 The Contractor shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract Form until the date of approval of the certificate of Contract Completion by the Authorized Representative. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract.
- 12.5.4 Insurance policies required to be purchased and maintained by the Contractor may include a reasonable loss deductible, which shall be the responsibility of the Contractor to pay in the event of loss.
- 12.5.5 The prompt repair or reconstruction of the Work as a result of an insured loss or damage shall be the Contractor's responsibility and shall be accomplished at no additional cost to the TID.

12.6 WAIVERS OF SUBROGATION

- 12.6.1 The TID and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the TID as fiduciary.

ARTICLE 13 - CONTRACT TERMINATION

13.1 SUSPENSION OF THE WORK

- 13.1.1 If, in the judgment of the Authorized Representative, the Contractor is causing undue risk of damage to any part of the Project or adjacent property, the

Authorized Representative may suspend the Work temporarily, either wholly or in part, for such period until, in the judgment of the Authorized Representative, the safe and proper prosecution of the Work may be resumed. The Authorized Representative shall provide notice to the Contractor's Surety of any suspension ordered pursuant to this Article.

13.1.1.1 In case of such suspension, an extension of time, if appropriate, will be allowed as provided in the Contract Documents but no payment will be made to the Contractor for any expense or damages resulting therefrom. This provision is intended to be, and shall be construed as, consistent with, Section 4113.62, ORC, to the fullest extent permitted.

13.1.1.2 Any failure of the Authorized Representative to suspend the Work shall not relieve the Contractor of the Contractor's responsibility to perform the Work safely and in accordance with the Contract Documents.

13.1.2 The Contractor shall, upon receipt of notice of suspension, cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize costs with respect thereto. The Contractor shall furnish a report to the Authorized Representative, within five (5) days of receipt of the notice of suspension, describing the status of the Work, including without limitation, results accomplished, conclusions resulting therefrom, and such other information as the Authorized Representative may require.

13.1.3 In the event of suspension under this Article, the Contractor shall be entitled to payment of compensation due under the Contract Documents, upon submission of a proper invoice, for the Work performed prior to receipt of notice of suspension, which shall be payable based upon the Contract Cost Breakdown.

13.2 TERMINATION FOR CONVENIENCE

13.2.1 The TID may, at any time upon twenty (20) days written notice to the Contractor, terminate the Contract in whole or in part for the TID's convenience and without cause.

13.2.2 Upon receipt of the notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Authorized Representative, proceed with performance of the following duties.

13.2.2.1 Cease operation as specified in the notice;

13.2.2.2 Place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Project;

13.2.2.3 Terminate all subcontracts and orders to the extent they relate to the Work terminated;

- 13.2.2.4 Proceed to complete the performance of any Work not terminated;
 - 13.2.2.5 Take actions that may be necessary, or that the Authorized Representative may require, for the protection and preservation of the terminated Work.
- 13.2.3 Upon such termination, the Contractor shall be paid in accordance with the Contract Cost Breakdown for Work completed, including any amount retained, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them.
- 13.2.3.1 All materials, equipment, facilities and supplies at the Project site, or stored off site, for which the Contractor has been compensated, shall become property of the TID.
 - 13.2.3.2 The Contractor shall be entitled to a fair and reasonable profit for all Work performed. In no event shall the Contractor's compensation exceed the total Contract Price.
 - 13.2.3.3 Any dispute as to the sum then payable to the Contractor shall be resolved in accordance with the provisions of Article GC 8.

13.3 TERMINATION FOR CAUSE

- 13.3.1 If the TID determines that the Contractor has failed to prosecute the Work with the necessary force or in a timely manner, or has refused to remedy any Defective Work, the Authorized Representative shall notify the Contractor and the Contractor's Surety of such failure or refusal. The Contractor shall begin to cure such failure or refusal within five (5) days of receipt of the notice.
- 13.3.2 If the Contractor fails to cure such failure or refusal within twenty (20) days of receipt of the notice, the TID may terminate the Contract and employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, and may remove Defective Work.
- 13.3.3 If the Contractor is so terminated, the Contractor's Surety shall have the option to perform the Contract. If the Contractor's Surety does not commence performance of the Contract within ten (10) days of the date on which the Contract was terminated, the TID may complete the Work by such means as the Authorized Representative deems appropriate. The TID may take possession of and use all materials, facilities and equipment at the Project site or stored off site for which the TID has paid.
- 13.3.4 If the Contractor is so terminated, the Contractor shall not be entitled to any further payment. If the TID completes the Work and if the cost of completing the Work exceeds the balance of the Contract Price, including compensation for all direct and consequential damages incurred by the TID, other Contractors and the Architect/Engineer as a result of the termination, such excess shall be paid

by the Contractor or the Contractor's Surety.

13.3.5 If the Contractor's Surety performs the Work, the provisions of the Contract Documents shall govern the Surety's performance, with the Surety being substituted for the Contractor in all such provisions including, without limitation, provisions for payment for the Work and provisions about the right of the TID to complete the Work.

13.3.6 Upon a final determination, by a court having jurisdiction, that the termination pursuant to this paragraph 13.3 was improper, the termination will be deemed to be a termination for convenience pursuant to paragraph GC 13.2.

13.4 CONTRACTOR BANKRUPTCY

13.4.1 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed for all or a substantial part of the Contractor's business or property, the Authorized Representative shall serve written notice on the Contractor and the Contractor's Surety stating that any failure of the Contractor to provide adequate assurances of continued performance will be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court rejecting the Contract.

13.4.1.1 Upon a final determination, by a court having jurisdiction, that the termination pursuant to subparagraph GC 13.4.1 was improper, the termination will be deemed to be a termination for convenience.

ARTICLE 14 - SHOP DRAWINGS AND SAMPLES

14.1 DESCRIPTION

14.1.1 Shop Drawings, Samples and other submittals shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Drawings and Specifications, unless waived by the Architect/Engineer, and shall include, without limitation:

14.1.1.1 Construction of the various parts, method of jointery, type of material, grade, quality and thickness of material, alloy of material, profiles of all sections, reinforcement,

14.1.1.2 Capacities, types of materials and performance charts that are pertinent to the materials and performance charts that are pertinent to the equipment item, wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.

14.2 FORM OF SUBMITTALS

14.2.1 The Contractor shall provide a submittal letter and shall stamp and submit the Shop Drawings, Samples or other submittals to the Architect/Engineer in accordance with a schedule established by the Architect/Engineer and the Contractor.

14.2.1.1 Unless otherwise specified in the Contract Documents, the Contractor shall submit one (1) mylar and three (3) prints of all Shop Drawings and four (4) copies of any other submittal. Only one (1) print copy of all Shop Drawings will be returned to the Contractor by the Architect/Engineer. If the Contractor requires more than one (1) copy, additional copies must be provided to the Architect/Engineer at the time of the original submission. The Architect/Engineer will not produce copies of the Shop Drawings.

14.2.1.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the Architect/Engineer the materials and equipment which the Contractor proposes to provide.

14.2.1.3 Each Sample shall be identified clearly as to material, supplier, pertinent data such as catalog numbers and the use for which intended and other uses as the Architect/Engineer may require to enable the Architect/Engineer to intelligently review the submittal.

14.3 VARIATION FROM CONTRACT DOCUMENTS

14.3.1 If the Shop Drawings, Samples or other submittals show variations from the requirements of the Contract Documents, the Contractor shall make specific mention of such variations in the Contractor's letter of submittal to the Architect/Engineer.

14.3.1.1 If the variation is acceptable to the Architect/Engineer, the Architect/Engineer shall recommend acceptance of the variation to the Authorized Representative in writing. Upon written approval of the Authorized Representative, the variation shall be incorporated into the Contract Documents.

14.3.1.2 The Contractor shall not be relieved of any responsibility for deviations from the requirements of the Contract Documents by the Architect/Engineer's review of Shop Drawings, Samples or other submittals.

14.4 CONTRACTOR'S REVIEW

14.4.1 All Shop Drawings, Samples and other submittals shall be reviewed and stamped by the Contractor prior to submittal to the Architect/Engineer. If it is apparent to the Architect/Engineer that the Contractor has not reviewed the

submittals, or has conducted an incomplete review, the Architect/Engineer shall reject the submittals.

14.4.1.1 The Contractor shall field verify conditions as necessary and make corrections of dimensions, location of various items, encroachments of Work of other Contractors or variations from the requirements of the Contract Documents shall be made or corrected by the Contractor.

14.4.1.2 If required by the Contract Documents or applicable law, the Contractor shall have the Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a licensed architect, engineer or other professional.

14.5 ARCHITECT/ENGINEER'S REVIEW

14.5.1 The Architect/Engineer shall review and approve or disapprove Shop Drawings, Samples or other submittals within fifteen (15) days of receipt or in accordance with the approved submittal schedule or such other period of time as is mutually agreed by the Architect/Engineer and the Contractor.

14.5.1.1 The Contractor shall make any corrections required by the Architect/Engineer and shall resubmit the required number of corrected copies of Shop Drawings, Samples or other submittals until approved, which resubmission shall be acted upon by the Architect/Engineer with fifteen (15) days of receipt or in accordance with the approved submittal schedule or such other period of time as is mutually agreed by the Architect/Engineer and the Contractor.

14.5.1.2 When resubmitting submittals, the Contractor shall direct the Architect/Engineer's attention to any revisions made by noting such revisions on the resubmitted submittal.

14.5.1.3 All costs incurred by other Contractors, the Architect/Engineer, the TID, or the City due to the failure of the initial submittal to meet the requirements of the Contract Documents, or due to excessive resubmittals attendant delay, interference, hindrance, disruption or impact of the Project, shall be paid by the Contractor. Resubmittals in excess of two (2) may be deemed excessive by the TID.

14.6 RISK OF NONPAYMENT

14.6.1 No portion of the Work requiring a Shop Drawing, Sample or other submittal shall be commenced until the submittal has been reviewed and approved by the Architect/Engineer. Any Work commenced by the Contractor prior to final approval of the Shop Drawing, Sample or other submittal by the Architect/Engineer shall be performed by the Contractor under risk that no

payment will be approved or made by the TID for such Work.

14.7 SCOPE OF ARCHITECT/ENGINEER'S REVIEW

14.7.1 The Architect/Engineer's review and approval of Shop Drawings, Samples and other submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.

14.7.1.1 The Architect/Engineer's review and approval shall not extend to means, methods, manners, techniques, sequences, procedure of construction or to safety precautions or programs incident thereto.

14.7.1.2 The Architect/Engineer's review and approval of a separate item will not indicate approval of the assembly in which the item functions.

14.8 EQUIPMENT STATEMENT

14.8.1 Shop Drawings on all equipment shall include the following written statement from the manufacturer of the equipment:

14.8.1.1 "This equipment submitted for approval shall perform as specified when installed by the Contractor in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breachings, piping, controls and equipment not furnished by this manufacturer but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents."

ARTICLE 15 - SUBCONTRACTORS AND MATERIAL SUPPLIERS

15.1 TID'S APPROVAL

15.1.1 Within ten (10) days of the Notice to Proceed, the Contractor shall list the Contractor's proposed Subcontractors and Material Suppliers on forms approved by the Authorized Representative and submit such forms to the Architect/Engineer for approval by the Authorized Representative.

15.1.1.1 The TID reserves the right to reject any Subcontractor or Material Supplier. Failure of the Architect/Engineer to notify the Contractor of rejection within ten (10) days of receipt of the forms shall constitute notice that the TID has no objection.

15.1.1.2 If the TID rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier at no additional cost to the TID.

15.2 REPLACEMENT

15.2.1 The Contractor shall not replace any Subcontractor or Material Supplier after execution of the Contract Form without written approval of the Authorized Representative.

15.2.1.1 The Contractor shall submit to the Architect/Engineer amended approval forms and a written justification for the change of the Contractor's Subcontractors or Material Suppliers.

15.2.1.2 The Contractor shall submit to the Architect/Engineer amended forms whenever any listed information changes for the Contractor's Subcontractors or Material Suppliers.

15.3 CONTRACTOR'S RESPONSIBILITY

15.3.1 The Contractor shall be fully responsible for all acts and omissions of the Contractor's Subcontractors and Material Suppliers and shall be responsible for scheduling and coordinating the Work of the Contractor's Subcontractors and Material Suppliers.

15.3.2 Interference, disruption, hindrance, delay or impact attributable to the Contractor's Subcontractors or Material Suppliers shall be deemed to be interference, disruption, hindrance, delay or impact within the control and responsibility of the Contractor.

15.3.3 The Contractor shall require that each of the Contractor's Subcontractors have a competent supervisor at the Project whenever Work is being performed by the Subcontractor.

15.3.4 The Contractor agrees to bind the Contractor's Subcontractor and Material Supplier to the terms of the Contract Documents, so far as applicable to the Work of such Subcontractor or Material Supplier, and shall not agree to any provisions which seek to bind the TID to terms inconsistent with or at variance from the terms of the Contract Documents.

15.4 WARRANTY AND GUARANTEE

15.4.1 The Contractor shall require each Subcontractor and Material Supplier to fully warrant and guarantee, for the benefit of the TID, the effectiveness, fitness for the purpose intended, quality and merchantability of any Work performed or item provided or installed by such Subcontractor or Material Supplier.

15.5 PROMPT PAYMENT

15.5.1 If a Subcontractor or Material Supplier requests payment in time to allow the

Contractor to include the request in the Contractor's Contractor Payment Request, the Contractor shall pay within ten (10) days after receipt of payment from the TID:

15.5.1.1 To a Subcontractor an amount equal to percent of completion allowed by the TID for the Subcontractor's Work,

15.5.1.2 To a Material Supplier an amount equal to all or a portion of the Material Supplier's request for materials furnished.

15.5.2 The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to subparagraph GC 15.5.1 by the amount of any retainage withheld from the Contractor and may withhold amounts necessary to resolve disputed liens or claims involving the Work of the Subcontractor or Material Supplier.

15.5.3 If the Contractor fails to comply with the provisions of paragraph GC 15.5, the Contractor shall pay to the applicable Subcontractor or Material Supplier 18% interest on any unpaid amount beginning on the 11th day after receipt of payment from the TID.

15.6 CLAIM AFFIDAVIT

15.6.1 In order to establish rights for detainer of payments, Subcontractors and Material Suppliers not in privity of contract with the Contractor must serve a notice of furnishing on the Contractor whose contract is the contract under which the Subcontractor or Material Supplier is performing.

15.6.1.1 The notice of furnishing must be served upon the Contractor within twenty-one (21) days of performing the Work or furnishing the materials.

15.6.1.2 Subcontractors and Material Suppliers not in privity of contract with the Contractor must, at the time of filing a Claim Affidavit with the Authorized Representative, provide a copy of the notice of furnishing and proof that it was received by the Contractor.

15.6.2 In order to establish rights for detainer of payments, a claimant must file a Claim Affidavit with the Authorized Representative, within 120 days from the date of the last Work or furnishing of materials.

15.6.2.1 In order to receive priority over similar claims, the claimant must file a copy of the claim with the Henry County Recorder's office within thirty (30) days of serving the Authorized Representative.

15.6.2.2 All claimants who serve the Authorized Representative, and file with the Henry County Recorder within thirty (30) days, have no priority

among themselves and share in the funds pro rata.

15.6.2.3 Claimants who file with the Authorized Representative, but not with the Henry County Recorder, are paid only if there are sufficient funds left after paying those claimants who file with the Henry County Recorder.

15.6.3 The Authorized Representative shall notify the Contractor of the receipt of the claim within five (5) days of receiving the Claim Affidavit. A copy of the Claim Affidavit and a statement advising the Contractor of the Contractor's right to dispute the claim will accompany the notice.

15.6.3.1 The Contractor shall have twenty (20) days to dispute the claim.

15.6.3.2 If the Contractor does not notify the Authorized Representative in writing of an intention to dispute the claim within twenty (20) days after receipt of the Claim Affidavit, the Contractor is deemed to have assented to its correctness.

15.6.4 The TID shall detain the amount stated in the Claim Affidavit from subsequent Contractor Payment Request and deposit said amount in an escrow account in accordance with a general escrow agreement between the TID and a bank.

15.6.4.1 The escrow agent shall hold the deposit and any interest earned thereon until receipt of notice from the Authorized Representative specifying an amount to be released and the Person to whom the amount is to be released.

15.6.4.2 The TID reserves the right to pay a Claim Affidavit which is not timely disputed.

15.7 CLAIMS AGAINST THE BOND

15.7.1 Laborers, Subcontractors or Material Suppliers who have furnished or delivered labor or materials to the Project may, at any time after performing the labor or delivering the materials, but not later than ninety (90) days after Final Acceptance of the Work by the TID, furnish the Surety a statement of the amount due.

15.7.2 After furnishing the statement, laborers, Subcontractors or Material Suppliers must wait sixty (60) days to bring a suit for the amount due. If the Surety has not paid the claim at the expiration of sixty (60) days, laborers, Subcontractors or Material Suppliers may bring suit for amounts not paid, but must bring the suit within one (1) year of Final Acceptance of the Work by the TID.

ARTICLE 16 - INDEMNIFICATION

16.1 INDEMNIFICATION FOR INJURY OR DAMAGE

- 16.1.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City, the TID, and the Architect/Engineer, their respective members, officials, officers, consultants, agents, representatives and employees, in both individual and official capacities, from and against all claims, damages, losses and expenses, direct, indirect or consequential arising out of or resulting from the Work. This provision shall survive termination of contract.
- 16.1.1.1 In the event of any such injury, including death, or loss or damage, or claims therefor, the Contractor shall give prompt notice thereof to the Authorized Representative and the Architect/Engineer.
- 16.1.1.2 This provision is intended to be, and shall be construed, as consistent with, and not in conflict with, Section 2305.31, ORC, to the fullest extent permitted.
- 16.1.2 The indemnification obligations of the Contractor under subparagraph GC 16.1.1 shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's consultants, agents or employees for negligent preparation or approval of Drawings, Specification, Change Orders, opinions, and any other responsibility of the Architect/Engineer, except to the extent covered by the Contractor's insurance.

16.2 INDEMNIFICATION FOR PATENT OR COPYRIGHT USE

- 16.2.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the City, the TID, and the Architect/Engineer, their respective members, officials, officers, consultants, agents, representatives and employees, in both individual and official capacities from and against all claims, damages, losses and expenses arising out of the Contractor's infringement of patent rights or copyrights.

ARTICLE 17 - AUDITS AND RECORDS

17.1 EXAMINATION

- 17.1.1 The City and/or TID shall have the right to examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work, including without limitation for the purpose of evaluating any Proposal or claim.
- 17.1.2 The above referenced materials shall be made available at the office of the Contractor, Subcontractor or Material Supplier, as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of seven (7) years after the date of Final Acceptance of the Project by the TID. To the extent that the Contractor, Subcontractor or Material Suppliers, as applicable, informs the TID in writing that any documents copied by the TID are trade secrets, the

TID shall treat such documents as trade secrets of the Contractor, Subcontractor or Material Supplier, as applicable. If any dispute arises with any other Person about whether such other Person should be given access to the documents, the Contractor, Subcontractor or Material Supplier, as applicable, agrees to indemnify the TID and/or the City against all costs, expenses and damages, including without limitation attorneys' fees, incurred or paid by reason of such dispute, and agrees to assume defense of such dispute upon request of the TID.

17.1.3 The right of inspection, audit and reproduction shall extend to all documents necessary to permit intelligent evaluation of the cost of pricing data submitted along with the computations and projections used therein.

17.2 TERMINATION AND DISPUTES

17.2.1 If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the TID and/or the City for a period of seven (7) years from the date of termination or from the date of any applicable final settlement or payment, as applicable, whichever is later.

17.2.2 Records which relate to disputes, litigation, or claims arising out of the performance of the Work shall be made available until such dispute, litigation or claim has been finally decided or settled.

17.2.3 The Contractor shall not disclose, at any time during or after the Work, either directly or indirectly, any confidential records, knowledge or information which the Contractor may acquire about the Project or the TID and/or City, except as may be required by law or order of a court of competent jurisdiction.

17.3 NON-DISCLOSURE BY CONTRACTOR

17.3.1 The Contractor shall not disclose, at any time during or after the Work, either directly or indirectly, any confidential records, knowledge or information which the Contractor may acquire about the Project or the TID and/or the City, except as may be required by law or order of a court of competent jurisdiction.

ARTICLE 18 - PREVAILING WAGE PAYROLL SUBMITTALS

18.1 WAGE SCHEDULE

18.1.1 Within ten (10) days of the date of the Notice to Proceed, the Contractor shall provide the TID's Executive Director a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

18.2 PAYROLL REPORTS

18.2.1 The Contractor shall submit payroll reports with each Contractor Payment Request, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The Contractor shall be responsible for submitting all payroll

reports of the Contractor's Subcontractors.

- 18.2.1.1 The payroll report shall indicate the period covered and shall include a list containing the name, address and social security number of each employee of the Contractor and the Contractor's Subcontractors paid for the Work.
- 18.2.1.2 The payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, fringe benefits and all deductions from wages and net pay.
- 18.2.1.3 The payroll report shall also list each fringe benefit and state if it is paid as cash to the employee or to a named plan.
- 18.2.1.4 The Contractor and the Contractor's Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.

ARTICLE 19 - PERFORMANCE EVALUATION

19.1 CONTRACTOR PERFORMANCE

- 19.1.1 The Architect/Engineer shall, at the completion of the Project or as determined by the Authorized Representative, evaluate the Contractor's performance. The evaluation form shall be submitted to the TID.
 - 19.1.1.1 The Contractor may request a copy of the completed evaluation form. If the Contractor wishes to comment on or object to any rating or remark, the Contractor shall send a response in writing to the TID with a copy to the Architect/Engineer.
 - 19.1.1.2 The evaluation shall be used by the TID in determining whether the Contractor is best for award of future contracts.

ARTICLE 20 - MISCELLANEOUS

20.1 TAXES

- 20.1.1 Only those materials which ultimately become a part of the completed structure or improvement which constitutes the Project will be exempt from State sales tax as provided in Section 5739.02, ORC, and State use tax as provided in Section 5741.01, ORC.
- 20.1.2 The purchase, lease or rental of material, equipment, parts or expendable items such as form lumber, tools, oils, greases and fuels, which are used in connection with the Work, are subject to the application of State sales tax and State use tax.
- 20.1.3 The Contractor shall comply with the City's income tax requirements and shall

furnish a list of the names and addresses of all employees of the Contractor and its Subcontractors who are employed on the Project to the City's Tax Department prior to submitting the Contractor's first Contractor Payment Request.

20.2 ROYALTIES AND PATENTS

20.2.1 The Contractor shall pay all royalties, license fees and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

20.2.2 If a particular invention, design, process, product or device is specified in the Contract Documents and if, to the knowledge of the Architect/Engineer, use of the specified item is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Architect/Engineer in the Contract Documents.

20.2.2.1 If the Contractor has reason to believe that use of the specified item is subject to patent or copyright protection, the Contractor shall immediately notify the Architect/Engineer.

20.3 ASSIGNMENT OF ANTITRUST CLAIMS

20.3.1 By executing the Contract, the Contractor assigns, conveys and transfers to the TID any right, title and interest to any claims or causes of action it may have or acquire under State or federal antitrust laws relating to any goods, products, or services purchased, procured or rendered to the TID pursuant to the Contract.

20.4 USE OF DOMESTIC STEEL

20.4.1 It shall be the responsibility of the Architect/Engineer to specify and the Contractor to supply domestically produced steel as required by law. The TID reserves the right to reject any item or material provided or installed by a Contractor in violation of this requirement.

20.5 BOND REDUCTION

20.5.1 Upon notice and consent of the Contractor's Surety, the TID may reduce the Contract Bond by 25% of the total amount of the Contract Bond after at least 50% of the Work has been completed, and by 50% after at least 75% of the Work has been completed, provided that all of the following conditions are met:

20.5.1.1 The TID determines that the percentage of Work that has been completed at the time of determination has been satisfactorily performed and meets the terms of the Contract Documents, including a provision in regard to the time when the whole or any specified

portion of the Work must be completed;

20.5.1.2 The TID determines that no disputed claim caused by the Contractor exists or remains unresolved;

20.5.1.3 The bid upon which the Contract is based was not more than 10% below the next lowest bid or not more than 10% below the cost estimate for the Work as published in the Notice to Bidders.

20.6 PROJECT IDENTIFICATION SIGN

20.6.1 Unless otherwise specified in the Contract Documents, the Contractor shall furnish and erect a Project identification sign within thirty (30) days of the date of a Notice to Proceed, which sign shall be in accordance with a sketch provided by the Architect/Engineer.

20.6.2 The sign shall be maintained in good condition until the completion of the Project at which time it shall be removed by the Contractor.

20.6.3 Any cost associated with moving or repairing the Project identification sign during the progress of the Project shall be the responsibility of the Contractor.

20.7 KICKBACKS

20.7.1 The Contractor shall not provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any kickback nor will it provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any kickback during the term of this agreement; nor shall it knowingly include, directly or indirectly, the amount of any kickback in the estimated cost of the project, nor will it knowingly include, of any kickback in the estimated cost of the project, nor will it knowingly include, directly or indirectly, the amount of any kickback into any request for reimbursement.

APPENDIX B
MISCELLANEOUS FORMS

(THESE FORMS MAY OR MAY NOT BE UTILIZED)

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
NOTICE OF INTENT TO AWARD**

(To be filled out by the TID)

TO: _____ (Bidder) _____ (Surety Agent)

Project Description:

INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION

(according to the Contract Documents)

The TID has considered the bid submitted by you on _____ for the above described Contract in response to its Notice to Bidders dated _____ and the Contract Documents.

You are hereby notified that the TID intends to accept your base bid for the total amount of _____ Dollars (\$ _____) and to award you the Contract.

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

If you fail to execute the Contract Form and to furnish the Bond or to comply with the other conditions precedent for execution of the Contract Form set forth in the Instructions to Bidders within ten (10) days from the date of this Notice, the TID will be entitled to consider your bid as abandoned and seek forfeiture of your Bid Guaranty.

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

Dated this ____ day of _____, ____.

Henry County transportation Improvement District, Ohio

by _____
Patrick McColley, P.E., Executive Director

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Intent to Award and acceptance of the same is hereby acknowledged by:

(Bidder)

Further, the Bidder understands that all documentation required must be furnished to the TID in a timely manner and proper form. Moreover, that the Bond shall be issued by an Ohio agency licensed or registered in Ohio and a proper Power of Attorney shall be attached to the Bond.

Accepted this _____ day of _____, 20__

(Bidder)

By: _____

(Signature)

Title: _____

**CITY OF NAPOLEON
INCOME TAX REGISTRATION**

NAME OF CONTRACTOR _____

TRADE NAME OF BUSINESS (IF ANY) _____

ADDRESS LINE ONE _____

ADDRESS LINE TWO _____

CITY, STATE, ZIP _____

BUSINESS TELEPHONE NUMBER _____

FEDERAL ID NUMBER _____

CHARTER NUMBER _____

STATUTORY AGENT _____

STARTING DATE OF JOB OR BUSINESS ____/____/____

Ownership: -Individual Proprietor -Corporation -Non-profit Corporation
(Check One) -Partnership

Employees working within City Limits: -Yes -No

Are there Sub-Contractors on this Job: -Yes -No

If Yes, list ALL Sub-Contractors (Attach List as Necessary):

Name	Address	City, State Zip	Phone
------	---------	-----------------	-------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Signature _____ Date ____/____/____

Name (Type or Print) _____ Title (Type or Print) _____

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
CERTIFICATE OF CONTRACT COMPLETION**

OWNER'S PROJECT NO. _____ ARCHITECT/ENGINEER'S PROJECT NO. _____

PROJECT NAME: **INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION**

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____

This Certificate of Contract Completion applies to all Work under the Contract Documents or to the following specified parts thereof:

TO: HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

And to: _____
Contractor

The Work to which the certificate applies has been inspected by the Contractor, the Architect/Engineer and the Authorized Representatives, and that Work is hereby declared to be complete in accordance with the Contract Documents on:

DATE OF CONTRACT COMPLETION

The responsibilities between the TID and the Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties shall be as follows:

RESPONSIBILITIES:

City: Henry County Transportation Improvement District
660 North Perry Street
Napoleon, Ohio 43545

Contractor: _____

The following documents are attached to and made a part of this certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Recommended by _____ on _____, 20__.

Chad E. Lulfs, P.E., P.S., City Engineer

Contractor accepts this Certificate of Contract Completion on _____, 20__.

Contractor

By - (Signature)

Title: _____

TID accepts this Certificate of Contract Completion on _____, 20__.

Henry County Transportation Improvement District, Ohio

by _____
Patrick McColley, P.E., Executive Director

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
NOTICE OF COMMENCEMENT**

STATE OF OHIO

COUNTY OF HENRY, SS.

The undersigned, being duly sworn according to law, states that the information set forth in this Notice of Commencement is true to the best of the undersigned's knowledge, information and belief.

Notice is hereby given pursuant to Section 1311.252 of the Ohio Revised Code of the public improvement described and situated as follows:

1. The name of the public improvement is: **Industrial Drive Extension/Petro Expansion**
2. The location of the public improvement is: **Industrial Drive**
3. The number, if any, of the public improvement is:
4. The name of the public authority is: **Henry County Transportation Improvement District**
5. The address of the public authority is: **660 North Perry Street, Napoleon, Ohio 43545.**
6. The date the public authority first executed a contract with the principal contractor for the public improvement is: _____
7. The principal contractors and their sureties for the public improvement are:

Principal Contractor _____

Contractor's Address _____

Contractor's Trade _____

Contractor's Surety _____

Surety's Address _____

8. The name and address of the representative of the public authority upon whom service shall be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Patrick McColley, P.E.
Executive Director
Henry County Transportation Improvement District
660 North Perry Street
Napoleon, Ohio 43545

HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

By: _____

Patrick McColley, P.E.

Title: _____
Executive Director

STATE OF OHIO

COUNTY OF HENRY, SS.

Sworn to before me and subscribed in my presence by Patrick McColley, Executive Director of the Henry County Transportation Improvement District, Henry County, Ohio, this _____ day of _____, 20__.

(Notary Public)

**HENRY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT
APPLICATION FOR PAYMENT**

No. _____

Contractor _____
Contract For ~ Industrial Drive Extension/Petro Expansion

Application Date _____ **Application Amount** _____
For Period Ending _____

Total Schedule Labor	\$ _____
Total Schedule Material	\$ _____
Original Contract Amount	\$ _____
Total Contract Amount Including Change Order(s)	\$ _____
Material Suitably Stored Not Incorporated Into Work	\$ _____
Contract Change Order No. _____ Percent Complete	
Contract Change Order No. _____ Percent Complete	
Contract Change Order No. _____ Percent Complete	
	Gross Amount Due \$ _____
	Less Retainage \$ _____
	Amount Due to Date \$ _____
	Less Previous Payments \$ _____
	Amount Due This Application \$ _____

STATE OF OHIO
COUNTY OF _____, SS.

The undersigned CONTRACTOR hereby certifies under penalty of perjury that (1) - all previous progress payments received from the TID on account of WORK performed under the Contract referred to above have been applied by the undersigned to discharge in full all obligations of the undersigned incurred in connection with WORK covered by prior Applications for Payment under the Contract and (2) - all labor, materials and equipment incorporated in said Project or otherwise listed in or covered by this Application for Payment are free and clear of all liens, claims, security interested and encumbrances.

(Contractor)

BY: _____

Dated: _____, 201_____
STATE OF OHIO

TITLE: _____

COUNTY OF _____, SS.

Before me on this _____ day of _____, 201__, personally appeared _____, known to me, who being duly sworn, did depose and say that the above Application for Payment is true and correct to the best of the officer's knowledge and belief, and that the signing of the above Application for Payment is the officer's free and voluntary act as such officer on behalf of the Contractor.

(seal)

Notary Public

**CITY OF NAPOLEON
APPROVAL OF PAYMENT**

CITY ACCOUNT NO.

**ARCHITECT/ENGINEER'S
PROJECT NO. :**

CONTRACTOR _____

CONTRACT FOR: INDUSTRIAL DRIVE EXTENSION/PETRO EXPANSION

CONTRACT DATE _____

APPLICATION DATE _____

APPLICATION AMOUNT _____

FOR PERIOD ENDING _____

Attached hereto is the CONTRACTOR'S Application for Payment for WORK accomplished under the Contract through the date indicated above stating that all previous payments to the Contractor under the Contract have been applied by the Contractor to discharge in full all obligations in connection with the WORK covered by all prior Applications for Payment.

In accordance with the above Contract, the undersigned approved payment to the CONTRACTOR of the Amount Due as shown below.

CITY OF NAPOLEON

Date _____, 20_____

Chad E. Lulfs, P.E., P.S.
City Engineer

STATEMENT OF WORK

Original Contract Price \$ _____

Work to Date \$ _____

Net Change Orders \$ _____

Amount Retained \$ _____

Current Contract Price \$ _____

**Previous Payments
Approved** \$ _____

Work to be Done \$ _____

**AMOUNT DUE
THIS PAYMENT** \$ _____

CITY OF NAPOLEON
CHANGE ORDER
NO. _____

PROJECT ~
INDUSTRIAL DRIVE EXTENSION
PETRO EXPANSION

DATE OF ISSUANCE

OWNER
City of Napoleon
255 West Riverview Avenue
P.O. Box 151
Napoleon, Ohio 43545

CONTRACTOR

OWNER ~ CITY OF NAPOLEON

ARCHITECT/ENGINEER'S PROJECT NO. _____

CONTRACT FOR:

You are directed to proceed promptly with the following change(s):

DESCRIPTION:

PURPOSE OF CHANGE ORDER:

ATTACHMENTS: (list documents supporting change)

Contract Price prior to this Change Order	\$ _____
(Increase)(Decrease) resulting from this Change Order	\$ _____
Current Contract Price, including this Change Order	\$ _____
Time for Contract Completion prior to this Change Order	_____
(Increase)(Decrease) resulting from this Change Order	_____
Current time for Contract Completion, including this Change Order	_____

RECOMMENDED:

ACCEPTED:

CITY OF NAPOLEON

BY _____
Chad E. Lulfs, P.E., P.S.
City Engineer

BY: _____
Contractor

APPROVED:

City of Napoleon

BY _____
Monica Ireland; City Manager

**CITY OF NAPOLEON
AFFIDAVIT FOR RECORD DRAWINGS**

_____, the Contractor on
_____ hereby certifies that the enclosed Record
Drawings show all changes made during construction, as specified in paragraph 11.2 of the
General Conditions in the Contract Documents.

(Contractor)

BY: _____

Sworn to and subscribed before me this _____ day of _____, 201_____.

(seal)

Notary Public

My Commission Expires:

APPENDIX C

CDBG REQUIREMENTS

Does Not have to be submitted with bid. Must be completed prior to executing contract.

CDBG Requirements

CONFLICT OF INTEREST

Interest of Local Public Officials

No member of the governing body of the locality and no other officer, employee, agent or public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Contractor shall take appropriate steps to assure compliance.

Interest of Contractor & Employees

The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed.

Records & Audits

The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the City/County to assure proper accounting for all project funds. These records will be made available for audit purposes to the City/County or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the City/County.

Federal or State Officials Not to Benefit

No members of or delegate to the Congress of the United States of America, and no resident U.S. Commissioner, nor any officer or employee of the State of Ohio subject to Ohio Ethics Law (ORC. Sec. 102.03 (A)) will be admitted to any share or part hereof or to any benefit to arise herefrom.

SPECIAL CONDITIONS PERTAINING TO HAZARDS SAFETY STANDARDS & ACCIDENT PREVENTION

A. Lead-Based Paint Hazards

(Applicable to contracts for construction or rehabilitation of residential structures.)

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint Regulations, 24 CFR Part 35. The Contractor and Subcontractors shall comply with the provisions for the elimination of lead-base paint hazards under sub-part B of said regulations and certifications required under Section 35.14 (f) thereof.

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

The Contractor shall notify all owners of public utility property of intention to use explosives at least eight (8) hours before blasting is done, close to such property. Any supervision or direction of use of explosives by the Engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

C. Danger Signals & Safety Devices

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of the work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

SPECIAL EQUAL OPPORTUNITY PROVISIONS

- A. Activities and Contracts Not Subject to Executive Order 11246, as Amended
(Applicable to Federally assisted construction contracts and related subcontracts \$10,000 and under)

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that the applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: 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.
2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this non-discrimination clause.
3. Contractors shall incorporate foregoing requirements in all subcontracts.

- B. Executive Order 11246 (Contracts/ Subcontracts above \$10,000)

1. *Section 202 Equal Opportunity Clause*

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: 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. The Contractor agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Contractor or understanding, a notice to be provided by the Owner

advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places made available to the employees and applicants for employment.

- (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Ohio Department of Development's Office of Housing and Community Partnerships (OHCP), the U.S. Department of Housing and Urban Development (HUD) and/or the U.S. Department of Labor and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.
 - (6) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by the law.
 - (7) The Contractor will include the provisions of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a contractor becomes involved in, or as is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.
2. *Notice of Requirement for Affirmative Action to Ensure Equal Opportunity (Executive Order 11246).*

(Applicable to contracts/subcontracts exceeding \$10,000)

- (1) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- (2) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Goals for Minority
Participation**

4.4%

**Goals for Female
Participation**

6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered areas. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. 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 women evenly 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 Contractor's goals shall be in violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- (3) *The Contractor shall provide written notification to the manager of the Office of Housing and Community Partnerships, Ohio Department of Development, P.O. Box 1001, Columbus, OH 43216-1001 within ten (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; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.*
- (4) As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is (Insert description of the geographical areas where the Contract is to be performed giving the state, county, and city, if any):

3. *Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)*

- (1) As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer Identification Number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black: all persons having origins in any of the Black African racial groups not of Hispanic origin;
 - (ii) Hispanic: all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race;
 - (iii) Asian and Pacific Islander: all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and
 - (iv) American Indian or Alaskan Native: all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- (2) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- (3) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Each Contractor

or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- (4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- (5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collaborative bargaining agreement, to refer either minorities or woman shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- (6) In order for nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of organizations' responses.
- c. Maintain a current file of the name, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations: by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment,

layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Contractor's EEO policy externally by including in any advertising in the news media, specifically including minority and the female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on site and in other areas of the Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and

necessary changing facilities shall be provided to assure privacy between the sexes.

- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- q. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally assisted construction contract shall apply at the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting offices.

(8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7q). The efforts of a contractor association, joint contractor union, contractor community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7q of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be in defense for the Contractor's non-compliance.

(9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- (10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- (11) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- (12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- (13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- (14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by OHCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- (15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

C. Certification of Nonsegregated Facilities (Over \$10,000)

By the submission of this bid, the bidder, offerer, applicant or subcontractor certifies that he does not maintain or provide for his employees any segregated facility at any of his establishments, and that he does not permit employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for employees any segregated facilities at any of his establishments, and he will not permit employees to perform their services at any location under his control where segregated facilities are maintained. The bidder, offerer, applicant or subcontractor agrees that breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, time clocks, locker rooms, and other storage and dressing areas, parking lots, drinking fountains, recreation or entertainment areas provided for the employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he will retain such certifications in his files; and that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods.)

D. Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal finance assistance.

E. Section 109 of the Housing and Community Development Act of 1974

a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the direct benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

F. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. [Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.]

- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all the applicable rules and orders of Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

CONTRACTOR
Section 3 Plan Format

Peterson Construction Co agrees to implement the following specific affirmative action steps directed at increasing the utilization of lower income residents and businesses within Paulding County.

- A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the county the necessary number of lower income residents through: local advertising, media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.
- C. To maintain a list of all lower income area residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if vacancy exists.
- *D. To insert this Section 3 Plan in all bid documents, and to require all bidders on subcontracts to submit a Section 3 Affirmative Action Plan including utilization goals and the specific steps planned to accomplish these goals.
- *E. To insure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in Section 3 covered project area.
- *F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To insure that all appropriate project area business concerns are notified of pending subcontractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all of the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of this Section 3 Plan.
- J. To list on Table A, information related to proposed subcontracts.

K. To list on Table B, all projected workforce needs for all phases of this project by occupation, trade, skill level and number of positions.

As officers and representatives of _____
Name of Contractor

We the undersigned have read and fully agree to this Affirmative Action Plan, and become party to the full implementation of this program.

Signature

Date

Printed Name and Title

* Loans, grants, contracts and subsidies for less than \$10,000 will be exempt.

**TABLE B
ESTIMATED PROJECT WORKFORCE BREAKDOWN**

Job Category	Total Estimate Positions	Number Positions Currently Occupied by Permanent Employees	Number Positions Not Currently Occupied	Number Positions to Be Filled With L.I.P.A.R.*
Officers/ Supervisors				
Professionals				
Technicians				
Housing Sales/ Rental/ Mgmt.				
Office Clerical				
Service Workers				
Others				

Trade Carpenter

Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				

Trade Laborer

Journeyman				
Helpers				
Apprentices				
Maximum Number of Trainees				
Others				

*Lower income project area residents (L.I.P.A.R.) Are individuals residing within Paulding County of whose family income does not exceed _____ % of the median income of the SMSA.

Contractor

OHIO DEPARTMENT OF DEVELOPMENT
OFFICE OF HOUSING AND COMMUNITY PARTNERSHIPS
CERTIFICATION OF BIDDER REGARDING EQUAL EMPLOYMENT OPPORTUNITY

NAME OF PRIME CONTRACTOR

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless the report is submitted

CONTRACTOR'S CERTIFICATION

NAME AND ADDRESS OF BIDDER

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
 YES NO

2. Compliance reports were required to be filed in connection with such contract or subcontract.
 YES NO

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
 YES NO

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?
 YES NO

SIGNATURE

DATE

TYPED NAME AND TITLE

Modeled after form HUD-12

**OHIO DEPARTMENT OF DEVELOPMENT
OFFICE OF HOUSING AND COMMUNITY PARTNERSHIPS
CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING
EQUAL EMPLOYMENT OPPORTUNITY**

NAME OF SUBCONTRACTOR

INSTRUCTIONS

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless the report is submitted

SUBCONTRACTOR'S CERTIFICATION

NAME AND ADDRESS OF BIDDER

1. Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
 YES NO

2. Compliance reports were required to be filed in connection with such contract or subcontract.
 YES NO

3. Bidder has filed all compliance reports due under applicable instructions, including SF-100.
 YES NO

4. Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended?
 YES NO

SIGNATURE

DATE

TYPED NAME AND TITLE

Modeled after form HUD-12

**CERTIFICATION OF BIDDER REGARDING
SECTION 3 AND SEGREGATED FACILITIES**

Name of Prime Contractor

Project Name

The undersigned hereby certifies that:

- (a) Action 3 provisions are included in the Contract;
- (b) A written Section 3 Plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000);
- (c) No segregated facilities will be maintained.

Signature

Printed Name and Title

Date

**CERTIFICATION OF PROPOSED SUBCONTRACTOR REGARDING
SECTION 3 AND SEGREGATED FACILITIES**

Name of Subcontractor

Project Name

The undersigned hereby certifies that:

- (a) Action 3 provisions are included in the Contract;
- (b) A written Section 3 Plan was prepared and submitted as part of the bid proceedings (if bid equals or exceeds \$10,000);
- (c) No segregated facilities will be maintained.

Signature

Printed Name and Title

Date

CERTIFICATION OF COMPLIANCE WITH AIR & WATER ACTS

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$100,000)

Compliance with Air & Water Acts

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the Owner the following:

- (1) A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- (2) Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- (4) Agreement by the Contractor that he will include, or cause to be included; the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

**ENGINEER'S CERTIFICATION
COMPLIANCE WITH MINIMUM STANDARDS FOR
ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED**

Grantee Number: _____

Project Name: _____

Pursuant to the requirements of the Architectural Barriers Act of 1968, 42 USC 4151, and the regulations issued subsequent thereto, the undersigned certifies that the design on the above mentioned project is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible to and usable by, the Physically Handicapped, Number A-117.1R-1971 (as modified by 41 CFR 101-10.603).

Designer for the Project: _____
(Name and Address) _____

Signature: _____

Printed Name: _____

Date: _____

**Name of Chief Executive
Officer/Official:** _____

Signature: _____

Date: _____

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S
FEDERAL LABOR STANDARDS PROVISIONS,
HUD-4010 DATED 2/84 (REVISED)**

Applicability

The Project or program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions applicable to such Federal assistance.

1. (i) Minimum Wages.

All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act 29 CFR Part 3), the full amount of 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 29 CFR 5.5(a)(1)(iv); 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 Part 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 confirmed under 29 CFR Part 5.5(a)(1)(ii) 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.

(ii) (a) Any class of laborers or mechanics 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. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

- (b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representative, and HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
 - (c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
 - (d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph 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.
- (iii) 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.
 - (iv) 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 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. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding

HUD or its designee 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 (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). 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 cost 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 or trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

- (ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington D.C. 20402. The prime contractor is responsible for the submission of copies of payroll by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)
- (b) Each Payroll submitted shall be accompanied by a "Statement of Compliance", signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(I) and that such information is correct and complete;
 - (2) 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 deduction as set forth in 29 CFR Part 3;
 - (3) 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.
- (c) 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 A.3(ii)(b) of this section.
- (d) The falsification of any of the above certification 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.
- (iii) The contractor or subcontractor shall make the record required under paragraph A.3.(I) of this section available for inspection, copying, or transcription by authorized representative of HUD or its designee 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, HUD or its designee may, after written to the contractor, sponsor, applicant, or owner, 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 disbarment action pursuant to 29 CFR Part 5.12.

4. (i) Apprentices and Trainees

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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 thereto 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 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 approval.

(ii) Trainees

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 on the wage determination which provide for less than full fringe benefit for apprentices. Any employee listed on the payroll at a trainee rate that 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 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.

(iii) 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.

5. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(A)(1) through (10) and such other clauses as HUD or its designee may by appropriate instruction require, and also a clause requiring the subcontractors to include these clauses 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 Part 5.5.

7. Contractor Termination; Debarment

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

8. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. 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. 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 includes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility

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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) 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) or to be awarded HUD contracts or participate in HUD programs pursuant to CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of... influencing in any way the action of such Administration... makes, utter or publishes any statement, knowing the same to be false... shall be fined not more than \$5,000 or imprisonment not more than two years, or both".

11. Complaints, Proceedings, or Testimony by Employees

No laborer or mechanic to whom the wages, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against

by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act

As used in this paragraph, 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 subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore 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 subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph.

(3) Withholding for Unpaid Wages and Liquidated Damages

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or clause 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 contract, 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 subparagraph (2) of this paragraph.

(4) Subcontracts

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractor 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 subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulation issued by the Secretary of Labor pursuant to Title Part 1926 (formerly part 1518) and failure top comply may result in imposition of sanction pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat 96).
- (3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**CONTRACTOR
CERTIFICATE OF COMPLIANCE WITH FEDERAL
LABOR STANDARDS PROVISIONS**

I, the undersigned _____, the duly authorized representative of _____ hereinafter referred to as the contractor, do hereby certify that I have examined the Federal Labor Standards Provisions (HUD-4010) with related certificates and documents, and all of the conditions surrounding these provisions including, but not limited to the following:

1. The contractor is responsible for employing only eligible subcontractors who have certified eligibility in written contracts containing Federal Labor Standards Provisions.
2. The contractor is responsible for the payment of federal prevailing wage rates by its subcontractors while performing work under this contract. If the subcontractor fails to pay the prevailing wages as specified in this contract, the prime contractor may be required to make appropriate restitution to the underpaid workers.
3. The contractor is responsible for collecting weekly certified payrolls from its subcontractor, reviewing said payrolls for compliance with the federal wage rates, and forwards same to the local government contract authority.
4. The contractor also understands that only those classifications listed in the original bid documents are applicable to this job, and no special classifications may be incorporated after contract award.

The Prime Contractor hereby agrees to perform all of its responsibilities in conformance with the Federal Labor Standards Provisions both diligently and affectively.

Signature

Typed Name and Title

Date

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
CONTRACTOR'S CERTIFICATION
CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS

1. The undersigned, having executed a contract with _____ for the construction of the above-identified project acknowledges that:
 - (a) The Labor Standards provisions are included in the aforesaid contract;
 - (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontractors and any lower tier subcontractors, in his responsibility;

2. He certifies that:
 - (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6 (b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR Part 5) or pursuant to Section 3 (a) of the Davis-Bacon Act, as amended [40 U.S.C. 275a-2(a)].
 - (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. He certifies that:
 - (a) The legal name and the business address of the undersigned is:

 - (b) The undersigned is:
 - (1) A Single Proprietorship
 - (2) A corporation organized in the State of _____
 - (3) A Partnership
 - (4) Other Organization (Describe):

(c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

(d) The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are :(If none, so state):

NAME	ADDRESS	NATURE OF INTEREST
None		

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are: (If none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION
None		

Date: _____

Contractor Signature

Printed Name

WARNING

U.S. CRIMINAL CODE, Section 1010, Title 18, U.S.C., provides in part: "Whoever...makes, passes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."