

CITY OF DAYTON CMS MODIFICATIONS FOR ONLINE BIDDING

The City of Dayton Construction and Material Specifications are hereby modified by this Contract as follows:

100 GENERAL PROVISIONS

ITEM 101 ABBREVIATIONS

101 Abbreviations. The following abbreviations, when used in the Contract Documents, shall have the respective meaning shown below:

ANLA	American Nursery and Landscape Association
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
AWG	American Wire Gauge
AWP	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
CMS	Construction and Material Specifications of the Ohio Department of Transportation
DCE	District Construction Engineer
DDD	District Deputy Director
DET	District Engineer of Tests
DMA	Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization
DNR	Department of Natural Resources
EEI	Edison Electric Institute
EPA	Environmental Protection Agency
FHWA	Federal Highway Administration, Department of Transportation
FSS	Federal Specifications and Standards, General Services Administration
HRC	The Human Relations Council of the City of Dayton
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ISSA	International Slurry Seal Association
ITE	Institute of Transportation Engineers
JMF	Job Mix Formula
MSDS	Material Safety Data Sheet(s)

NCHRP National Cooperative Highway Research Program
NEMA National Electrical Manufacturers Association
NISTN National Institute of Standards and Technology
NPDES National Pollutant Discharge Elimination System
OAC Ohio Administrative Code
ODOT Ohio Department of Transportation
OMUTCD Ohio Manual of Uniform Traffic Control Devices
ORC Ohio Revised Code
ORDC Ohio Rail Development Commission
OSHA Occupational Safety and Health Administration
PCC Portland Cement Concrete
RCGO City of Dayton Revised Code of General Ordinances
REA Rural Electrification Administration
SSP Steel Structures Painting Council
STAR State Treasurer's Asset Reserve
UL Underwriters' Laboratories, Inc.

ITEM 102 DEFINITIONS

102 Definitions. The following words or terms, when used in the Contract Documents, are defined to mean as follows:

Addendum or Addenda A written or graphic instruction issued prior to the Bid Deadline which clarifies, amends or interprets the Contract Documents.

Alternate A proposed change in the work described in the Contract Documents providing the City with an option to select between alternative materials, products or systems, or to add or delete portions of the Work.

Alternative Dispute Resolution A method of resolving disputes other than arbitration or litigation.

Approved Equal Article, device, material, Equipment, form of construction or other item proposed by the Bidder and approved by the Engineer for incorporation or use in the Work as being equivalent to essential attributes of a standard specified in the Contract Documents.

As-built Drawings Drawings or computer files revised and submitted by the Contractor to show changes made during the construction process.

Authorized Representative Unless otherwise specified in the Contract Documents, the City Manager of the City or any of the City Manager's duly authorized assistants or designees.

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.

Bid The offer of a Bidder to perform the Work for the amount or amounts quoted, as applicable.

Bidder A Person who submits a Bid for a Contract with the City.

Bid Deadline The date and time established as the deadline for submission of Bids, either through the Electronic Bidding Service or as otherwise provided by the City, subject to modification by Addendum.

Bid Guaranty Bid Bond or other instrument of security furnished by the Bidder to provide assurance that the Bidder will execute the Contract Form.

Board of Review Committee consisting of the City Manager, City Attorney and Director of the Department of Public Works or any of their respective authorized assistants or designees.

Borrow Area A location from which natural materials are to be removed for use in the Work.

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

Length. The length of a Bridge Structure is the over all length measured along the center line of Roadway of the surface of the Roadway.

Roadway width. The clear width measured at right angles to the longitudinal centerline of the Bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot or less, the Roadway width shall be measured between the parapets or railings.

Building Department The City's Department of Building Services.

Bulletin A document issued by the 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. The Bulletin becomes a part of the Contract Documents when a Change Order related to the Bulletin is executed by all applicable Persons.

Certificate of Contract Completion A document signed by the Contractor and the Engineer certifying that Contract Completion has occurred.

Certificate of Partial Occupancy or Use A document signed by the Contractor and the Engineer certifying that City has chosen to occupy or utilize the Project or a designated portion thereof in accordance with 105.03.

Certified Test Data A test report from a manufacturer's Laboratory or an independent Laboratory approved by the City listing actual test results of samples tested for compliance with specified City requirements. The City will accept Certified Test Data from a manufacturer's Laboratory if its products have been used satisfactorily on prior City Contracts and its test data has been confirmed. The Contractor shall include a statement that the test data furnished is representative of the material furnished to a City Project or to a supplier. The report shall contain a characteristic number or date and shall identify the City Project or supplier to which the material is shipped. All reports shall be signed by an individual having legal authority to act for the manufacturer's Laboratory or independent Laboratory, as applicable.

Change Order A document issued by the City after execution of the Contract Form, which authorizes a change in the Work or an adjustment or alteration in the Contract price or the time for Contract Completion. A Change Order which requires only use of contingency funds (a "Field Change Order") may be approved by the Engineer. A Change Order which increases the Contract price must be approved by the City Manager and/or City Commission.

City The City of Dayton, an Ohio municipal corporation.

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.

Conduit Any pipe or similar passageway for electricity, gas, water, Sewer or other utility.

Construction Schedule The schedule for the construction of the Work showing the time for completion of the Work, the planned sequence for performing the Work, the Contractor's resource loading curve and the interrelationship of the Contractor's activities with the activities of other Contractors, if any, the Engineer, and the City.

Contingency Fund Moneys reserved by the City within the contract to pay costs resulting from Change Orders, unanticipated conditions, compliance with rulings on building or other codes, incompleteness or inaccuracy of Contract Documents and settlements on judgments related to the Project.

Contract The agreement between the City and the Contractor as set forth in the Contract Documents.

Contract Bond Performance and payment bond or bonds, as applicable, furnished by the Contractor and the Contractor's Surety to provide assurance that the Contractor will perform the Contract and make required payments.

Contract Completion The date upon which all deficiencies noted in the Punch List have been corrected, the Contractor's Work is one hundred percent complete, the as-built drawings have been approved by the Engineer, and the Contractor has complied with all conditions precedent to final payment and release of retainage. When the Contract Documents specify a date for Contract Completion, Contract Completion shall occur on or before the specified date, even if the specified date is a Saturday, Sunday or legal holiday. When the Contract Documents provide that Final Acceptance shall occur a specified number of consecutive days after the date for commencement of Work set forth in the Notice to Proceed, that period of time shall be the time for Contract Completion.

Contract Cost Breakdown A statement furnished by the Contractor to the City 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 Payment Requests.

Contract Documents Collectively, the Plans, plan notes, standard construction Drawings identified in Plans, Specifications, supplemental Specifications, Addenda, definitions,

Legal Notice, instructions to Bidders, equal opportunity requirements, electronic Bid, Bidder's affidavit, non-collusion affidavit, Bid guaranty, Substitution sheet, Contract Form, Contract Bond or Bonds, as applicable, wage rates and Special Provisions, Change Orders and approved Working Drawings, if any.

Contract Form The form furnished by the City that, when completed and signed by the Contractor and the City, evidences the entry into the Contract.

Contractor A Person with whom the City has entered into a Contract for the performance of Work on the Project in cooperation with other Persons and in accordance with the Contract Documents.

Culvert Any Structure not classified as a Bridge that provides an opening under a Roadway.

Day Calendar day, i.e., every day of the year, unless otherwise expressly specified to mean a business day. A business day is any day other than a Saturday, Sunday or legal holiday.

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 a Guarantee.

Director The Director of the City Department under which the Project is being performed, or the duly authorized designee of the applicable Director.

Drawings See Plans.

Electronic Bidding Service The electronic service used by the City to disseminate bidding information and documents to Bidders and to receive Bids and related documents from Bidders.

Engineer Unless otherwise specified in the Contract Documents, the Engineer of the Department of Public Works, the Water Engineering Manager of the Department of Water of the City of Dayton or the Planning and Engineering Manager of the Department of Aviation under which the Project is being performed, or the duly authorized designee of the Engineer or Manager, as applicable.

Engineer's Estimate An estimate of cost for a Project or a Contract for a Project prepared by the Engineer prior to Bid Deadline.

Equipment All machinery and Equipment, together with the necessary supplies for upkeep and maintenance, tools and apparatus necessary for the construction of the Work.

Fabricator The Subcontractor that fabricates structural metals or prestressed concrete members.

Final Acceptance The City's acceptance of the Work from the Contractor upon approval by the Authorized Representative of the Certificate of Contract Completion.

Final Inspection Final review of the Work of the Contractor by the Engineer to determine whether certification of Contract Completion is appropriate.

Guarantee Legally enforceable assurance, for a period after Contract Completion, of quality or performance of the Contractor's workmanship, material and Equipment.

Inspector A Person assigned by the Engineer to make detailed inspections of the Work.

Laboratory The testing Laboratory designated by the City or determined in accordance with the Contract Documents.

Legal Notice The public announcement inviting Bids for Work.

Liquidated Damages The sum established in the Contract Documents as the predetermined measure of damages to be paid to the City due to the Contractor's failure to complete the Work, or portions thereof, within a stipulated time.

Maintenance Bond A bond furnished by the Contractor and the Contractor's Surety to provide assurance that the Contractor will perform the Guarantee.

Materials Any substances, supplies, products or other items specified or reasonably intended for use in the construction of the Project and its appurtenances.

Material Supplier A Person who furnishes materials for Work on the Project, in any tier.

Mathematically Unbalanced The lump sum amount or Unit Price in a Bid that does not include reasonably sufficient amounts for labor, material, Equipment, overhead and other applicable costs and profit.

Notice of Commencement The notice prepared by the City identifying the Project, the Contractor, the Surety for the Contractor and the name of the Person upon whom a Claim Affidavit may be served.

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 City intends to execute a Contract Form with the Bidder.

Notice to Proceed A notice provided by the Engineer to the Contractor authorizing the Contractor to proceed with the Work and establishing the date for commencement of the Work.

Or Equal See Approved Equal.

Owner See City.

Partial Occupancy or 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 the designated portion thereof, for its intended use, if the City chooses.

Payment Request The form furnished by the City 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 payment requests are in proportion to the Work completed as shown by the Contract Cost Breakdown and that payments previously paid by the City 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 Payment Requests.

Pedestrian Bridge A Bridge designed and constructed to provide means of traverse for pedestrian traffic only; also known as a foot Bridge.

Permittee Any Person issued a permit by the City to perform Work in accordance with these Specifications in a street, alley, Public Way or place, but not having a Contract with the City.

Person An individual, corporation, business trust, estate, limited liability company, partnership, association or other entity, public or private.

Plans 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 Drawings, elevations, sections, details, schedules, diagrams, notes, and Specifications, in whole or in part.

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

Project The improvement to be constructed, of which the Work performed under the Contract Documents may be the whole or a part.

Project Schedule The schedule for the construction of the Project showing the time for completing the Work, the planned sequence for performing the Work, the Contractor's resource loading curve and the interrelationship between the activities of the Contractor, other Contractors, the Engineer, and the City.

Proposal The offer of the Contractor to complete the Work set forth in a Bulletin.

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.

Public Way (or Place) A street, road, walk, alley or path used for public travel.

Punch List A list of items of Work to be completed or corrected by the Contractor as a condition precedent to Contract Completion.

Record Drawings Drawings or computer files revised by the Engineer to show the changes made during the construction process, based on the As-built Drawings furnished by the Contractor to the Engineer.

Request for Information Written request from the Contractor to the Engineer seeking an interpretation or clarification of the Contract Documents.

Right-of-Way Land, property, or interest therein, usually in a strip, acquired for or devoted to a road and includes the Roadway, Shoulders or berm, ditch and slopes extending to the Right-of-Way limits under control of the City.

Road A Public Way for purposes of vehicular travel, including the entire area within the Right-of-Way.

Roadbed The graded portion of a road within top and side slopes, prepared as foundation for the pavement Structure and Shoulder.

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

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

Roadway The portion of a road within the limits of construction.

Samples Physical examples furnished by the Contractor to illustrate materials, Equipment or workmanship and to establish criteria by which the Work will be judged.

Schedule of Values See Contract Cost Breakdown.

Sewer Pipe or Conduit intended for carrying storm drainage or sanitary drainage.

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.

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

Sidewalk That portion of the road constructed for the use by pedestrians.

Special Provisions Amendments to the Specifications or supplemental Specifications, which describe conditions unique to a particular Project.

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 procedural details applicable thereto.

Standards The items named in the Specifications to denote kind, quality or performance requirement for the Work. All Bids and Proposals shall be based on the Standards as set forth in the Specifications.

State The State of Ohio.

Street See road.

Structure Bridge, Culvert, catch basin, curb inlet, drop inlet, retaining wall, cribbing, manhole, endwall, building, curb, pavement, Sewer, water main, service pipe, underdrain, foundation drain, and any other features which may be encountered in the Work and not otherwise defined herein.

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.

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

Substitution An item proposed by the Bidder to be used instead of a standard, but not considered in determining the lowest and best Bidder.

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

Superintendent The Contractor's Authorized Representative in charge of the Work.

Superstructure The entire structure except the Substructure.

Supplemental Specifications Detailed Specifications supplemental to or amending or superseding the Specifications.

Surety A Person providing a Bid guaranty, Contract Bond or Maintenance Bond to a Bidder or Contractor, as applicable, to indemnify the City against all direct and consequential damages suffered by failure of the Bidder to execute the Contract Form or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, Material Suppliers and laborers or to perform the Guarantee, as applicable.

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 cost shall include overhead, profit and any other expense for the applicable Work.

Warranty Legally enforceable assurance for the specified duration from Final Acceptance of quality or performance of Materials or Equipment.

Waste Area A location in which natural Materials are to be deposited when not used in the Work.

Work The construction services required by the Contract Documents, to include all labor, Materials, Equipment, tools, transportation, supplies, incidental and services performed or provided by the Contractor for the Project.

Working Drawings Stress sheets, shop Drawings, erection Plans, false work Plans, framework Plans, cofferdam Plans, bending diagrams for reinforcing steel, or any other supplementary Plans or similar data which the Contractor is required to submit for acceptance.

ITEM 103 INSTRUCTION TO BIDDERS

- 103.01 Contract Completion and Critical Path Scheduling
- 103.02 Delay Claims
- 103.03 Giving Notice
- 103.04 Examination of Contract Documents
- 103.05 Evaluation of Work Season and Project Site
- 103.06 Subsurface and Concealed Physical Conditions
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- 103.24 Bid Evaluation Criteria
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- 103.26 Lowest Bidder
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- 103.31 Withdrawal of Bid
- 103.32 Refusal to Accept Withdrawal
- 103.33 Effect of Withdrawal
- 103.34 Bid Estimate
- 103.35 Review of Low Bid
- 103.36 Bid Guaranty
- 103.37 Bid Guaranty Forfeiture
- 103.38 Exception to Bid Guaranty Forfeiture
- 103.39 Contract Bond
- 103.40 Personal Property Tax Statement
- 103.41 Conditions Precedent for Execution of Contract Form
by City
- 103.42 Time Limits
- 103.43 Notice to Proceed and Submittals
- 103.44 Wage Rates and Payment Dates
- 103.45 Written Submissions in lieu of Electronic Bidding Service

103.01 Contract Completion and Critical Path Scheduling. Unless otherwise provided in the Contract Documents, the time for completion of the Project indicated on the Bid or Electronic Bidding Service shall be the time for Contract Completion applicable to the Bidders. Critical path scheduling methods shall be utilized, unless waived by the Authorized Representative in writing.

103.02 Delay Claims. The only delays for which the Bidder is entitled to additional compensation are those delays which the Bidder has established were proximately caused by an improper action or failure to act by the Owner.

103.03 Giving Notice. 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. All notices provided to the Bidder by the Engineer shall be copied to the Authorized Representative. All notices provided to the Engineer by the Bidder shall be copied to the Authorized Representative. All notices provided to the Authorized Representative by the Bidder shall be copied to the Engineer.

103.04 Examination of Contract Documents. Contract Documents are available through the Electronic Bidding Service. 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. 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.

103.05 Evaluation of Work Season and Project Site. 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 prior to submitting the Bidder's Bid, including without limitation the following:

- (a) The condition, layout and nature of the Project site and surrounding area, including Borrow Areas and Waste Areas, if any;
- (b) The availability and cost of labor;
- (c) The availability and cost of Materials, supplies and Equipment;
- (d) The cost of temporary utilities required;
- (e) The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;
- (f) The usual weather conditions;
- (g) Conditions bearing upon transportation, disposal, handling, and storage of Materials and waste.

103.06 Subsurface and Concealed Physical Conditions. The Contractor may rely upon the general accuracy of the technical data contained in reports and drawings provided to the Contractor by the Owner and, except for such reliance on technical data, the Contractor shall not rely upon or make any claim against the City with respect to: (1) the completeness of such reports and drawings for the Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or (2) other data, interpretation, opinions, and information contained in such reports or shown or indicated in such drawings; or (3) any Contractor interpretation of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Contractor to estimate locations or quantities of subsurface strata are independent factual assumptions which the Owner does not warrant. Subject to the foregoing, if during the progress of the Work subsurface or concealed physical conditions are encountered at the site differing materially from those indicated in the Contract Documents, or if subsurface or concealed physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, the Contractor shall notify the Engineer of the specific differing conditions before they are disturbed or the affected Work is performed. Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, a Change Order may be issued in accordance with Item 117. The City may decline to issue a Change Order if the notice required by 117.11 is not timely provided by the Contractor. If the Contractor fails to timely provide the notice required by 117.11, the Contractor shall be deemed to have waived any and all claims for additional compensation or time extension for the related subsurface or concealed physical conditions.

103.07 Pre-Bid Meeting. All Bidders are required to attend the pre-Bid meeting, where the Engineer will answer questions regarding the Contract Documents. If not given in the Legal Notice, notice of the time and place of any pre-Bid meeting to be held will be given by the Engineer to each Person of record holding Contract Documents. A Bidder's failure to attend the pre-Bid meeting will result in his or her bid being rejected as non-responsive.

103.08 Request for Information or Clarification. 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 Contract Documents and any applicable provision of law, the Bidder shall submit a written request to the Engineer for an interpretation or clarification. Such requests must be submitted to the Engineer at least seven Days before the Bid Deadline.

103.09 Interpretation or Clarification by Addendum. If the Engineer determines that an interpretation or clarification is warranted, the Engineer shall issue an Addendum through the Electronic Bidding Service. Any interpretation or clarification of the Contract Documents made by any Person other than the Engineer, or in any manner other than an Addendum issued through the Electronic Bidding Service, shall not be binding and the Bidder shall not rely upon any such interpretation or clarification. 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 Deadline in compliance with 103.08.

103.10 Standards. The articles, devices, Materials, Equipment, forms of construction, fixtures and other items named in the Specifications to denote kind, quality or performance requirement for each significant portion of the Work shall be known as Standards and all Bids shall be based upon those Standards. Where two or more Standards are named, the Bidder may furnish any one of those Standards. Items which are not Standards may be used only if accepted pursuant to the requirements of 103.11 and 103.12.

103.11 Proposed Equals. If the Bidder proposes to use an article, device, material, Equipment, form of construction, fixture or item other than those Standards named in the Specifications, the Bidder shall submit such a proposal to the Engineer, not later than ten Days prior to the Bid Deadline, certifying that the item is equal in quality, and in all aspects of performance and appearance, to the Standards specified. In addition, the Bidder shall submit information to the Engineer not later than ten Days prior to the Bid Deadline, which information shall include:

- (a) 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;
- (b) A statement setting forth any changes which the Proposed Equal will require in the Contract Documents or the Project.

103.12 Approval or Disapproval of Proposed Equals. If the Engineer, in the exercise of the Engineer's sole unfettered discretion, approves the Proposed Equal as a Standard, the Engineer shall issue an Addendum to that effect through the Electronic Bidding Service. If the Engineer does not approve the Proposed Equal as a Standard, the Engineer shall inform the Bidder of the disapproval in writing, no later than ninety-six hours prior to the Bid Deadline, excluding Saturdays, Sundays and legal holidays, which decision shall be final. The Engineer shall have the discretion to reject a Proposed Equal for any reason, including, but not limited to, the Bidder's failure to provide sufficient information to enable the Engineer to completely evaluate the Proposed Equal without delaying the scheduled Bid Deadline.

103.13 Substitutions. If no Addendum is issued approving the Proposed Equal as a Standard, the Bidder may list the item on the Substitution sheet. 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 provided in the Electronic Bidding Service 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 Engineer by the Bidder promptly upon request. Any Substitution accepted by the City must be incorporated in the Contract in writing. Substitutions shall not be considered in determining of the lowest and best Bid but may be considered in rejecting all Bids.

103.14 Electronic Bid. Each Bid shall contain the name of every Person interested therein and be submitted through the Electronic Bidding Service. Instructions for using the Electronic Bidding Service are available on the City's website. Failure to properly submit a Bid through the Electronic Bidding Service may cause a Bid to be rejected as nonresponsive. Unless the Bidder withdraws the Bid as provided in 103.31, 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.

103.15 Alternates. When an Alternate is listed in the Electronic Bidding Service, the Bidder shall complete the applicable portion, indicating an amount which will increase or decrease the Base Bid. The City 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.

103.16 Submission of Bid. 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 submit and electronically sign the Bid through the Electronic Bidding Service. If the Bidder is a joint venture, an officer, member, partner or principal, as applicable, of each participant of the joint venture shall electronically sign the Bid on behalf of that participant, where applicable. By submitting a Bid, the Bidder warrants that it is not now, and will not become subject to an unresolved finding for recovery under Section 9.24 ORC, prior to the award of any Contract arising out of this Project, without notifying the City of such findings. Section 9.24, ORC prohibits the City from awarding a Contract to any Bidder against whom the Auditor of State has issued findings for recovery if the findings for recovery are unresolved at the time of award. The completed Bid submission of the Bidder with whom the City executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.

103.17 Submittals with Bid. Where indicated in the Electronic Bidding Service, the Bidder must download all documents that are shown as requiring a download and submit every document that is shown as requiring submission. A Bid shall be rejected if the Bidder fails to submit, or submits not fully complete, any document that is shown as requiring submission.

103.18 Unit Prices. When Unit Prices are requested in the Electronic Bidding Service, any scheduled quantities listed by the City are not binding upon the City 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. Unless otherwise specified in the Contract Documents, the Unit Prices and the totals or extensions thereof set forth shall include all Materials, Equipment, insurance, 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.

103.19 Changes to Unit Price Work. The Bidder agrees that the City 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. 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.

103.20 Change in Bid Amount. The Bidder may amend or withdraw its Bid through the Electronic Bidding Service at any time prior to the Bid Deadline.

103.21 Timely Submission of Bids. It is the responsibility of the Bidder to submit its Bid through the Electronic Bidding Service prior to the Bid Deadline. Bids arriving after the Bid Deadline shall not be considered.

103.22 Bid Letting. Bidders may submit Bids through the Electronic Bidding Service up to the Bid Deadline. At the Bid Deadline, all Bids will be tabulated and the tabulation made public. The public bid tabulation is for informational purposes only and is not to be construed as an acceptance or rejection of any Bid submitted. The electronic Bid submissions shall be a public record and open for inspection, upon request, at any time after the Bid Deadline, except for any information which is not subject to disclosure as provided by applicable law.

103.23 Bid Deadline Extension. If any Addendum is issued within Seventy-two hours prior to the published Bid Deadline, excluding Saturdays, Sundays and legal holidays, the Bid Deadline shall automatically be extended one week, with no further advertising required. If any Addendum is issued more than seventy-two hours prior to the published Bid Deadline, excluding Saturdays, Sundays, and legal holidays, the Bid Deadline may be revised by the Addendum, at the City's discretion.

103.24 Bid Evaluation Criteria. The City 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 City determines to be the lowest and best Bidder. The City 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 accepted or rejected in any order. The City may reject the Bid of any Bidder who has engaged in collusive Bidding, been involved in violations of 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. The City 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.

103.25 Bid Evaluation Procedures. The Contract will be awarded to the lowest and best Bidder as determined in the discretion of the City or all Bids will be rejected in accordance with the procedures set forth in 103.26 through 103.31.

103.26 Lowest Bidder. In determining which Bidder is the lowest, the City shall consider the Base Bid and any Alternate or Alternates which the City determines to accept. Substitutions shall not be considered. The total of the Bids for the accepted Alternate(s) shall be added to or deducted from the Base Bid, as applicable, for the purpose of determining the lowest Bidder. If the Project involves multiple Contracts, the City may also receive combined Bids for two or more Contracts, if provided in the Electronic Bidding Service, but no Contract for the entire job or for more than one Contract shall be awarded unless the separate Bids do not cover all the Work and Materials required or unless the combined Bid is lower than the applicable separate Bids in the aggregate. The City may also receive Bids for multiple Projects if provided in the Electronic Bidding Service.

103.27 Rejection of Bids. In addition to any other reason provided for in this Item, a Bid shall be rejected if:

- (a) the Bid fails to respond to the Contract Documents in all material respects;
- (b) the Bid contains irregularities or deviations from the Contract Documents which would affect the amount of the Bid or otherwise give the Bidder a competitive advantage;
- (c) the Bid contains a Bid guaranty executed by a Surety not licensed in Ohio; or
- (d) a Bid guaranty that is otherwise determined to be insufficient by the City.

In addition to any other reason provided for in this Item, a Bid may be rejected if:

- (a) the Bid is Mathematically Unbalanced;
- (b) the Bid does not contain an executed Non-collusion affidavit;
- (c) the Bidder fails to furnish Samples and a complete statement of the origin, composition and manufacture of any or all Materials to be used for the Work, when so requested; or
- (d) the Samples provided by the Bidder fail to demonstrate that Materials are of sufficient quality or fitness for the Work.

103.28 Best Bidder. In determining whether a Bidder is best, factors to be considered include, without limitation:

- (a) Preferences required by law, where applicable;
- (b) The experience of the Bidder;

- (c) The financial condition of the Bidder;
- (d) Compliance by the Bidder and related Persons with ethics laws and City ordinances and regulations, including without limitation submission of an affirmative action program in accordance with Section 35.16 R.C.G.O.;
- (e) The conduct and performance of the Bidder on previous Bids and Contracts with the City or other owners, which shall include, without limitation, compliance with prevailing wage laws, Workers' compensation, income tax laws and equal opportunity requirements;
- (f) The facilities of the Bidder, including without limitation machinery, plant and Equipment, as applicable;
- (g) The management skills of the Bidder;
- (h) The ability of the Bidder to execute the Contract properly, including whether the Bidder's existing workload may hinder or prevent timely completion of the Work;
- (i) The ability of the Bidder to perform at least fifty-one percent of the Work with its own employees;
- (j) The evaluation of a Bid below the median of other Bids pursuant to 103.37.

A Bidder who submits a Bid for Work for electrical, plumbing, hydronics, refrigeration or heating, ventilating and air conditioning shall provide evidence of a valid Contractor's license from the Ohio Construction Industry Licensing board or successor.

103.29 Information. A Bidder shall submit to the Engineer, upon request, 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:

- (a) Overall experience of the Bidder, including number of years in business under present and former business names;
- (b) Names and qualifications of key Bidder personnel;
- (c) Complete listing of all ongoing and completed public and private construction Contracts of the Bidder in the last three 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;
- (d) Complete listing of any EPA, (OSHA) or other regulating entity issues or citations in the last ten years;
- (e) Complete listing of all outstanding liens against the Bidder;
- (f) Certified financial statement with trade and bank references;
- (g) Description of relevant facilities of the Bidder;

- (h) Description of the management experience of the Bidder's Project manager(s) and Superintendent(s); who will be assigned to the Project;
- (i) Complete list of all Subcontractors and Material Suppliers;
- (j) 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;
- (k) Current Ohio Workers' Compensation Certificate.

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 through 4123.94, inclusive, ORC.

The Engineer may obtain such information from several Bidders simultaneously. Each Bidder shall provide requested information within such time limits as the Engineer shall establish.

103.30 Notice of Intent to Award. The City shall notify the apparent lowest and best Bidder that upon satisfactory compliance with all conditions precedent for execution of the Contract Form, within the time specified, the Bidder will be awarded the Contract. The City reserves the right to rescind any Notice of Intent to Award at any time prior to the execution of the Contract if the City determines the Notice of Intent to Award was issued in error.

103.31 Withdrawal of Bid. A Bidder may withdraw its Bid at any time prior to the Bid Deadline through the Electronic Bidding Service. All Bids submitted through the Electronic Bidding Service which were not withdrawn prior to the Bid Deadline shall remain valid and open for acceptance for a period of at least sixty Days after the Bid Deadline; 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. Notice of such a request to withdraw a Bid must be made in writing filed with the Authorized Representative within two business Days after the Bid Deadline. The City reserves the right to request that the Bidder submit evidence substantiating the Bidder's request to withdraw the Bid. No Bid may be withdrawn after the Bid Deadline when the result would be the awarding of the Contract on another Bid to the same Bidder. If a Bid is withdrawn after the Bid Deadline, the City may award the Contract to another Bidder that the City determines to be the lowest and best Bidder, or reject all Bids and advertise for other Bids. If the City advertises for other Bids, the withdrawing Bidder shall pay the costs incurred by the City in connection with the rebidding if the City finds that such costs would not have been incurred but for such withdrawal. A Bidder may withdraw its Bid at any time after the expiration of the described sixty Day period by written notice to the Authorized Representative.

103.32 Refusal to Accept Withdrawal. If the City intends to contest the right of the Bidder to withdraw a Bid after the Bid Deadline, a hearing shall be held by the Authorized Representative within ten Days after the Bid Deadline and an order shall be issued by the City allowing or denying the claim of such right within five Days after such hearing is concluded. The City shall give the withdrawing Bidder timely notice of the time and place of any such hearing. The City shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing. If the City denies the claim for withdrawal and the Bidder elects to litigate or otherwise refuses to perform the Contract, the City may reject all Bids or award the Contract to the next lowest and best Bidder, as determined by the City, without waiving any claims against the non-performing Bidder.

103.33 Effect of Withdrawal. No Bidder who is permitted to withdraw a Bid after the Bid Deadline 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 City. The Person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the City in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval. A Bidder who is permitted to withdraw a Bid after Bid Deadline may be considered not the best for future City Contracts.

103.34 Bid Estimate. In no instance shall Contracts be let either as a whole, or in aggregate, if Bids for parts of the Work are taken, which exceed one hundred ten percent of the estimate for the improvement contemplated.

103.35 Review of Low Bid. The City may reject a Bid which is

- (a) more than twenty percent below the median of all higher Bids received for a Contract where the estimate is one hundred thousand dollars or more; or
- (b) more than twenty-five percent below the median of all higher Bids received for a Contract where the estimate is less than one hundred thousand dollars.

In determining whether to reject such a bid, the City may at its discretion, but is not required to:

- (a) Conducts 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;
- (b) Require the Bidder to submit to the City a certified financial statement and a list of recent public Contracts which the Bidder has performed; and/or

(c) Notify the Bidder's Surety in writing that the Bidder with whom the City intends to enter a Contract submitted a Bid determined to be substantially lower than the median of all higher Bids.

103.36 Bid Guaranty. The Bidder must file with the Bid a Bid guaranty, payable to the City of Dayton, in the form of the signed Bid guaranty and Contract Bond contained in the Contract Documents, for the full amount of the Base Bid plus add Alternates. The Bid guaranty shall be submitted through the Electronic Bidding Service. The Bid guaranty shall be in form and substance satisfactory to the City and shall serve as an assurance that the Bidder will, upon acceptance of the Bidder's Bid, comply with all conditions precedent for execution of the Contract Form and execute the Contract Form within the time specified by the City. ANY BID GUARANTY MUST BE PAYABLE TO THE CITY OF DAYTON. A Bid may be rejected if the Bid guaranty is payable to any other Person. IF THE BLANK LINES FOR THE AMOUNT ON THE BID GUARANTY AND CONTRACT BOND ARE NOT FILLED IN, THE PENAL SUM WILL AUTOMATICALLY BE THE FULL AMOUNT OF THE BASE BID PLUS ADD ALTERNATES. If those blank lines are filled in, the amount must not be less than the full amount of the Base Bid plus add Alternates, stated in dollars and cents. A PERCENTAGE IS NOT ACCEPTABLE. The Bid guaranty and Contract Bond must be signed by an authorized agent with Power of Attorney from a Surety. The Bid guaranty and Contract Bond must be issued by a Surety authorized by the Department of Insurance to transact business in Ohio. The requirements of Section 3905.41, ORC, may be applicable to require the Bid guaranty and Contract Bond be countersigned by an Ohio resident agent. The Bidder must determine whether this requirement is applicable to the Bidder's Surety. Bid guaranties will be returned to all unsuccessful Bidders seventy-five Days after the Bid Deadline or upon execution of the Contract Form by the apparently successful Bidder, whichever is earlier.

103.37 Bid Guaranty Forfeiture. If for any reason, other than as authorized by 103.31 or 103.38, the Bidder fails to execute the Contract Form, and the City awards the Contract to another Bidder which the City determines is the lowest and best Bidder, the Bidder who failed to execute the Contract Form shall be liable to the City 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 of the defaulting Bidder's Bid amount, whichever is less. If the City then awards a Contract to another Bidder which the City 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 103.38, be the amount of the difference between the Bid amounts of such lowest and best Bidder and another Bidder which the City determines is the lowest and best Bidder, but not in excess of the liability specified in 103.31. Liability on account of an award to each succeeding lowest and best Bidder shall be determined in like manner. If the City does not award the Contract to the another Bidder which the City determines is the lowest and best Bidder but resubmits the Project for Bidding, the Bidder failing to execute the Contract Form shall, except as provided in 103.38, be liable to the City for a penal sum not to exceed ten percent of such Bidder's Bid amount or the costs incurred by the City in connection with the rebidding, whichever is less.

103.38 Exception to Bid Guaranty Forfeiture. A Bidder with the City for a Contract with the City costing less than five hundred thousand dollars 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 ODOT, costing less than five hundred thousand dollars 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 five hundred thousand dollars, 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. If a Bid is withdrawn pursuant to 103.38, the City may award the Contract to another Bidder which the City determines is the lowest and best Bidder or reject all Bids and resubmit the Project 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 City determines is the lowest and best Bidder, for a penal sum, or for the costs incurred by the City in connection with the rebidding.

103.39 Contract Bond. 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 City. The Contract Bond shall be in the full amount of the Contract to indemnify the City 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 therefore 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. A Contract Bond must be signed by an authorized agent with Power of Attorney from the Surety.

103.40 Personal Property Tax Statement. The successful Bidder shall provide a properly completed and executed affidavit in a form satisfactory to the City in order to fulfill the requirements of Section 5719.042 ORC, which provides as follows:

After the award by a taxing district of any Contract let by competitive Bid and prior to the time the Contract is entered into, the Person making a Bid shall submit to the district's fiscal officer a statement affirmed under oath that the Person with whom the Contract is to be made was not charged at the time the Bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such Person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within thirty Days of the date it is submitted.

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 103.40 applies unless such statement has been so incorporated as a part thereof.

103.41 Conditions Precedent for Execution of Contract Form by City. 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 within ten Days of the date of the issuance of the Notice of Intent to Award. Failure to execute the Contract Form or noncompliance with the conditions precedent for execution of the Contract Form within ten Days of the date of the issuance of the Notice of Intent to Award shall be cause permitting the City to cancel the Notice of Intent to Award for the Bidder's failure to be best, and to award the Contract to another Bidder which the City determines is the lowest and best Bidder or to resubmit the Contract for Bidding, at the discretion

of the City. The City 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. The conditions precedent for execution of the Contract Form by the City are as follows:

- (a) Contract Form;
- (b) Contract Bond and to support the Contract Bond, a power of attorney for any attorney-in-fact signing the Contract Bond and a certificate of compliance issued by the Ohio Department of Insurance showing the Surety is licensed to do business in Ohio;
- (c) Ohio Workers' Compensation Certificate;
- (d) Certificate of Insurance (ACORD form is acceptable) clearly setting forth all exclusions and deductibles and copy of additional insured or loss payee endorsement. The City reserves the right to request a certified copy of the Contractor's insurance policies, including all endorsements.
- (e) 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 will be required. 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 through 4123.94, inclusive, ORC.
- (f) Personal property Tax Statement; and
- (g) Evidence of registration of the Contractor and all of the Contractor's Subcontractors with the Building Department and the City's Department of Finance, Division of Revenue and Taxation.
- (h) Material Declaration of Assistance/Non-Assistance to Terrorist Organization, when required.
- (i) If requested by the City, the Bidder shall immediately submit evidence that the Person signing the Contract is authorized to bind the Bidder.

103.42 Time Limits. A Contract Form is not executed until it has been signed on behalf of both the Bidder and the City by Persons authorized to bind the Bidder and the City, respectively. The failure to award the Contract and to execute the Contract Form within ninety Days of the Bid Deadline invalidates the entire Bid process and all Bids submitted, unless the time is extended by written consent of the apparent lowest and best Bidder and the City concurs with such extension. If the Contract is awarded and the Contract Form is executed within ninety Days of the Bid Deadline, any increases in material, labor and subcontract costs shall be borne by the Bidder without alteration of the amount of the Bid. If the cause of the failure to execute the Contract within ninety Days of the Bid Deadline is due to matters for which the City is solely responsible, the Contractor shall be entitled to a Change Order authorizing payment of verifiable increased costs in Materials, labor or subcontracts. If the cause of the failure to execute the

Contract within ninety Days of the Bid Deadline is due to matters for which the Contractor is responsible, no request for increased costs will be granted.

103.43 Notice to Proceed and Submittals. 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 Days of the date of the Notice to Proceed, furnish the Engineer the following submittals:

- (a) Contract Cost Breakdown;
- (b) Preliminary schedule including shop Drawings and submittals;
- (c) List of Subcontractors;
- (d) List of Material Suppliers;
- (e) Outline of qualifications of proposed Superintendent.

103.44 Wage Rates and Payment Dates. The Bidder shall base its Bid upon the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour bureau or the U.S. Department of Labor, as applicable, for the Project as provided in Sections 4115.03 and 4115.14, ORC, or the Davis-Bacon Act, respectively. The Contractor shall, within ten Days of the date of the Notice to Proceed, provide to the Engineer for the prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

103.45 Written Submissions in lieu of Electronic Bidding Service. Where a Bidder is required by a provision in this Item 103 to make a submission through the Electronic Bidding Service, such submission may be made in paper form only upon prior written authorization from the Engineer. The determination whether to grant such prior written authorization is left to the Engineer and may be exercised by the Engineer's sole unfettered discretion. Submissions outside the Electronic Bidding Service without such prior written authorization may result in a determination that the Bid is non-responsive.

ITEM 104 GENERAL REQUIREMENTS

- 104.01 Contract Documents
- 104.02 Applicable Law and ODOT Matters
- 104.03 Jurisdiction
- 104.04 Assignment of Antitrust Claims
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- 104.06 Nondiscrimination Generally
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- 104.16 As-Built Drawings
- 104.17 Substitutes for Standards or Approved Equals
- 104.18 Sales and Use Taxes

104.01 Contract Documents. The Contractor, the Engineer and the Authorized Representative shall be familiar with all provisions of the Contract Documents.

104.02 Applicable Law and ODOT Matters. The Contractor and the City shall comply with all applicable Federal, State and local codes, statutes, ordinances and regulations in the performance of the Work on the Project. When the Federal government or the State pays all or any portion of the cost of the Project, the Work shall be subject to the inspection of the appropriate federal or State agency. No such inspection shall make the Federal government or State a party to the Contract and will in no way affect the rights and obligations of the City and the Contractor under the Contract. Any such inspection is solely for the benefit of the City and the Federal or State agency making it, and neither the Contractor nor the Surety shall be entitled to rely upon it for any purpose. References to ODOT matters shall be as set forth in the CMS current as of the Bid Deadline. In such instances, the CMS is incorporated only to the extent that it is not inconsistent with the Specifications.

104.03 Jurisdiction. The Montgomery County Court of Common Pleas, or the United States District Court for the Southern District of Ohio if required by law, shall be the exclusive jurisdiction in which any action or proceeding concerning any Bid, 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 which shall govern to the exclusion of the law of any other jurisdiction.

104.04 Assignment of Antitrust Claims. By executing the Contract Form, the Contractor assigns, conveys and transfers to the City 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 City pursuant to the Contract.

104.05 Captions. 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. Rights and responsibilities of the Contractor, the Engineer and the City are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience.

104.06 Nondiscrimination Generally. 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 or workers who are qualified and available to perform the Work to which the employment relates. 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. In the event of the Contractor's noncompliance with the nondiscrimination clauses, the contract may be terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further City Contracts or such other sanctions as provided by law. 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 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 journeyman membership, or otherwise has available for job referral without discrimination, qualified employees.

104.07 City's Nondiscrimination Requirements. The Contractor shall comply with RCGO, Section 35.14 which provides as follows and any amendments thereto:

(A) The [Contractor] shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. The [Contractor] shall take affirmative action in accordance with terms outlined in its [Proposal] and the provisions of this [Contract] to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap. 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 employees and applicants, notices to be provided by the [City] setting forth the provisions of the nondiscrimination clauses.

(B) The [Contractor] shall in all solicitations or advertisements for employees placed by or on behalf of the [Contractor], state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap.

(C) The [Contractor] shall send to each labor union or representative of workers with which [the Contractor] has a collective bargaining agreement or other contract or understanding, a notice to be provided by the [City] advising the labor union or workers' representative of the [Contractor's] commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(D) The [Contractor] shall comply with all rules, regulations, and relevant orders promulgated by the Human Relations Council pursuant to its duties created by ordinance.

(E) The [Contractor] shall file, and shall cause each of [the Subcontractors and Material Suppliers] to file, compliance reports with the Human Relations Council as may be directed. Compliance reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs and employment statistics of the [Contractor, Material Supplier, or Subcontractor] and shall be in such form as the Human Relations Council may prescribe.

(F) The [Contractor] shall furnish all information and reports required by this [Contract] and by the rules, regulations, and orders of the Human Relations Council pursuant hereto, and shall permit reasonable access to the [Contractor's] books, records, and accounts by the Human Relations Council or its representative, as necessary for purposes of investigation to ascertain compliance with this [Contract] and rules, regulations and orders.

(G) In the event of the [Contractor's] failure to comply with the equal employment opportunity and affirmative action provisions of this [Contract], including the affirmative action undertaking outlined in it is [Proposal], or with any of the rules, regulations, or orders herein referred to, it is agreed that the [City], at its option, may do any or all of the following:

(1) Cancel, terminate, or suspend this [Contract], in whole or in part [...].

(2) Declare the [Contractor] ineligible for further [City Contracts].

(3) Recover from the [Contractor] by set-off against the unpaid portion of the [Contract], or otherwise pursuant to this [Contract], the sum of fifty dollars per [Day], as [Liquidated Damages] and not as a penalty, for each [Day] that the [Contractor] shall fail to comply with these provisions of the [Contract], as determined by the Human Relations Council in accordance with its rules and regulations, the said sum being fixed and agreed upon by and between the [Contractor] and the [City] because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the [City] would sustain in the event of such a breach of contract, and that amount is agreed to be the amount of damages which the [City] would sustain.

(4) Impose such other sanctions as may be imposed by the Human Relations Council pursuant to ordinances passed by the Commission, or seek such other remedies as may be provided by law.

(H) The [Contractor] shall include the provisions of this [Contract] in every subcontract, so that such provisions shall be binding upon each [Subcontractor]. The [Contractor] shall take such action with respect to any subcontracts as the Human Relations Council may direct as means of enforcing such provisions, including sanctions for noncompliance. However, in the event the [Contractor] becomes involved in, or is threatened with litigation with a [Subcontractor] as a result of such direction by the Human Relations Council, the [Contractor] may request the City to enter into such litigation to protect the interests of the City.

104.08 Notice of Commencement. The Authorized Representative shall prepare a Notice of Commencement in affidavit form identifying the name and address of the City, the Project, the name, address of the Contractor, the date of execution of the Contract, and the name and address of the Surety for the Contractor, in addition to the name and address of the Authorized Representative upon whom a Claim Affidavit may be served. The Notice of Commencement shall be made available upon request.

104.09 Giving Notice. Whenever any provision of the Contract Documents requires the giving of any notice after 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. All notices provided to the Contractor by the Engineer shall be copied to the Authorized Representative. All notices provided to the Engineer by the Contractor shall be copied to the Authorized Representative. All notices provided to the Authorized Representative by the Contractor shall be copied to the Engineer.

104.10 Computation of Time. 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.

104.11 Facsimile Transmission and Electronic Mail. Any notice required to be given by the Contract Documents may be given by facsimile transmission or electronic mail, provided the original signed notice is delivered within two Days after the date of the facsimile transmission or electronic mail. Facsimile transmittals in excess of 10 pages are discouraged.

104.12 Intent. 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, Equipment and Materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferred therefrom to produce the intended results. The Specifications may not be superseded or amended by the Drawings

unless so provided in supplemental Specifications or Special Provisions prepared by the Engineer and approved in writing by the Authorized Representative. The Drawings shall generally govern dimensions, details and locations of the Work and calculated dimensions shall govern over scaled dimensions. The Specifications shall generally govern quality of Materials and workmanship. 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. In the event of inconsistencies 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. 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.

104.13 Requests for Information. 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 written Request for information to the Engineer for an interpretation or clarification. The Contractor shall be responsible for the prompt delivery of any such Request for information. The Engineer shall respond in writing to any and all requests for information within three business Days of receipt. Any interpretation or clarification of the Contract Documents made by any Person other than the 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. If any change to the Work is made to accommodate unforeseen circumstances, the Engineer shall initiate the appropriate action and notify the Authorized Representative.

104.14 Ownership and Use of Drawings and Specifications. All Drawings and Specifications are the property of the City. In making copies of the Drawings and Specifications available, the City does not confer a license or grant permission for any use other than Work on the Project. Unless otherwise specified in the Contract Documents, the Engineer shall furnish to the Contractor, free of charge, 7 sets of Drawings and Specifications if the Contract price is five hundred thousand dollars or less, and 10 sets of Drawings and Specifications if the Contract price is in excess of five hundred thousand dollars. The Contractor may obtain additional copies of the Contract Documents from the Engineer, upon request, at the cost of reproduction, if any.

104.15 Access to Documents. The Contractor shall maintain in good order at the Project site one copy of all Drawings, Specifications, Bulletins, Addenda, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, warranties, Change Orders, and other modifications, including As-built Drawings. The Contractor shall at all times permit access to the documents described in 104.15, and any other Contract Documents by the Authorized Representative and the Engineer.

104.16 As-Built Drawings. For Projects administered by the Water Engineering Manager of the City's Department of Water, or the Planning and Engineering Manager of the Department of Aviation, 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. During the performance of the Work, the Contractor shall record, prior to the submission of each 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 withheld or delayed. 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. The Contractor shall keep a record of any change made to the Specifications, noting particularly any variation from manufacturer's instructions and recommendations. 104.16 shall not apply to any Project administered by the Engineer of the Department of Public Works unless required in the supplemental Specifications or Special Provisions for the Project.

104.17 Substitutes for Standards or Approved Equals. Requests for substitutes for standards or Approved Equals shall not be considered after the Bid Deadline unless listed on the Substitution sheet or after the Contractor can conclusively demonstrate to the Engineer one of the following conditions:

- (a) All applicable standards and Approved Equals are not available through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers;
- (b) All applicable standards and Approved Equals are no longer produced;
- (c) All applicable standards and Approved Equals will not perform as designed or intended.

104.18 Sales and Use Taxes. 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. 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.

ITEM 105 CITY'S RIGHTS AND RESPONSIBILITIES

105.01 Generally

105.02 Right to Perform and Backcharge

105.03 Right to Partial Occupancy or Use

105.04 City's Right to File Suit

105.05 No Personal Liability of Public Officials

105.06 No Waiver of Legal Rights

105.07 No Estoppel

105.01 Generally. Information and services required of the City may be furnished through the 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 to the progress of the Project. The City and the City's officials, employees, consultants, agents and representatives as determined by the Engineer shall at all times have access to the Work whenever the Project is in preparation or progress. 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. The foregoing are in addition to other rights and responsibilities of the City enumerated herein and especially those in respect to the City's right to prosecute the Work, approve payments and accept the Project.

105.02 Right to Perform and Backcharge. If the Contractor provides Defective Work or fails or neglects to perform 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, the Engineer shall notify the Contractor in writing of such failure or neglect. If such Defective Work, failure, or neglect results in a threat to the safety of any person or property, the Contractor shall immediately commence to correct such Defective Work, failure, or neglect upon receipt of written or oral notice thereof. Otherwise, if the Contractor fails or refuses to cure such Defective Work or failure or neglect within three business Days after receipt of the written notice or immediately in the case of a threat to any person or property, the Engineer shall recommend enforcement of the Contract to the City pursuant to 106.02 and 106.03. Without prejudice to any other remedy the City may have, the City 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. In all such cases of Defective Work, failure, or neglect, a Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs arising out of or related to investigating and correcting such Defective Work, failure or neglect, including without limitation, the City's attorneys' and consultants' fees and Liquidated Damages. 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 City. The decision of the Authorized Representative to backcharge the Contractor shall be final, subject to proceedings in accordance with 118.01 through 11

The City 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 may desire; provided, however, that if such prosecution of additional Work should unreasonably 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 these Specifications.

105.03 Right to Partial Occupancy or Use. If the City finds it necessary to occupy or use the Project, or a designated portion of the Project prior to Contract Completion, such use may be accomplished if the Engineer informs the City that the portion in question has been approved for occupancy use, including by the Department of Building Services, if applicable. If Partial Occupancy or Use is approved by the City, the Engineer may process either a Change Order or a Certificate of Partial Occupancy or Use for the applicable portion of the Project listing the uncompleted or Defective Work under the Contract for approval by the City, 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. From the date of execution of the Change Order or Certificate of Partial Occupancy or Use by the Engineer, the Contractor shall be relieved of obligation to maintain the accepted portion of the Work, but shall remain obligated to correct any incomplete or Defective Work, including, without limitation any Punch List items then uncorrected. The Contractor shall continue to carry the appropriate insurance during performance of any such Work. Partial Occupancy or Use of the Project by the City shall not constitute acceptance of any Work not in conformity with the Contract Documents. Partial Occupancy or Use shall not relieve the Contractor of liability for any express or implied warranties or from responsibility for Defective Work.

105.04 City's Right to File Suit. The City may maintain an action in its own name for violations of any law relating to the Project, for any injury to Persons or property pertaining to the Work or for any other cause which is necessary in the performance of the City's duties.

105.05 No Personal Liability of Public Officials. In carrying out the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract Documents, there shall be no liability upon the officers and employees of the City, whether personally or as officials of the City, it being understood that in all such matters they act solely as agents and representatives of the City.

105.06 No Waiver of Legal Rights. No action or omission by the City or the City's officers and employees, nor any approval of any request for payment, claim, or Change Order, nor any payment for or acceptance of any Work, nor any extension of time, nor any possession taken by the City or the City's officers or employees shall operate as a waiver of any provision of the Contract Documents, or of any power herein reserved to the City, or any right to damages herein provided; nor shall any waiver of any breach of the Contract be held to be a waiver of any other subsequent breach.

105.07 No Estoppel. The City shall not be precluded or estopped by any return or certificate given by the Contractor either before or after the final completion and acceptance of the Work from showing the true and correct amount and character of the Work done and Materials furnished, or from showing at any time that any such return or certificate is untrue and incorrect or improperly made, or from showing that the Work, Materials or Equipment do not conform to the Contract Documents or from demanding and recovering from the Contractor such damages as the City may sustain by reason of the Contractor's failure to comply with the Contract Documents.

ITEM 106 THE ENGINEER

- 106.01 Project Inspection**
- 106.02 Rejection of Work**
- 106.03 Contract Administration**
- 106.04 Monitoring Progress**
- 106.05 Interpretation**
- 106.06 Authorization of Inspection, Testing and Approval**
- 106.07 Review of Payment Requests**
- 106.08 Review of Submittals**
- 106.09 Preparation of Change Orders**
- 106.10 Final Inspections**
- 106.11 Claims Services**
- 106.12 Project Rules and Hours**
- 106.13 Construction Schedule**

106.01 Project Inspection. The Engineer or Inspector shall inspect the progress and quality of the Work, including the preparation, fabrication or manufacture of Materials and Equipment, for conformity to the Contract Documents. The Engineer shall be provided access to all parts of the Project and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. Inspection by the Engineer or an Inspector is solely for the benefit of the City and shall not relieve the Contractor of any of its responsibilities under the Contract Documents. When any unit of government, political subdivision or railroad corporation is to pay a portion of the cost of the Work, its representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government, political subdivision or railroad corporation a party to the Contract, and shall in no way interfere with the rights of the City or the Contractor under the Contract. The Inspector is not authorized to issue instructions contrary to the Contract Documents or to act for, or for the benefit of, the Contractor. Changes to the Contract Documents must be made in accordance with 117.01 through 117.12. No inspection performed pursuant to this Section shall constitute acceptance of the Work.

106.02 Rejection of Work. The Engineer or an Inspector shall have the authority to disapprove or reject any item of Work which is Defective, or that the Engineer or Inspector 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 Engineer or Inspector shall immediately notify the Authorized Representative and the Contractor at any time that Work has been disapproved or rejected. The Engineer or Inspector 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. No failure of the Engineer or Inspector to reject the Work shall constitute acceptance of the Work.

106.03 Contract Administration. The Engineer or his designee shall provide administration of the Contract for the Project as provided by the applicable agreement between the City and the Engineer, if any, and the Contract Documents. The Engineer shall attend any

and all progress and coordination meetings. The Engineer shall prepare a written report of each progress and coordination meeting and transmit it to the Authorized Representative within three business Days of the meeting. The Engineer shall not delegate the duty to prepare the written report of any Project and coordination meeting attended. The Engineer or Inspector may authorize minor changes or alterations in the Work not involving additional costs or time 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 in addition to the Contract price or extension of the time for Contract Completion. The Engineer shall review and approve, or recommend approval, of all forms required under the Contract Documents. The 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.

106.04 Monitoring Progress. The 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. In the event of default by the Contractor, the Engineer may pursue the Contractor's Surety to Contract Completion. The Engineer shall keep a daily log containing a record of weather, number of workers on site, identification of Equipment, Work accomplished, problems encountered, and other similar relevant data.

106.05 Interpretation. The Engineer will be the initial interpreter of all requirements of the Contract Documents. All decisions of the Engineer shall be subject to final determination by the City. Contractor acknowledges that Engineer, within its limited agency for the City, may consult with the City's legal counsel and that all such consultation and communications are privileged.

106.06 Authorization of Inspection, Testing and Approval. The Engineer shall authorize special inspection, testing or approval of the Work, as provided in 107.31, whenever in the Engineer's reasonable opinion such action is necessary or advisable to insure conformity with the Contract Documents.

106.07 Review of Payment Requests. Based upon the Engineer's on-site observations and evaluation of the Contractor's Payment Request, the Engineer shall review and certify the amounts due the Contractor. The Authorized Representative may recommend to the City that payment be withheld from, or Liquidated Damages be assessed against, a Contractor's Payment Request, stating the reasons for such recommendation. The Engineer's certification for payment shall constitute a representation to the City that the Work has progressed to the point indicated and that, to the best of the 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.

106.08 Review of Submittals. The 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. Such review and approval shall not relieve Contractor of its duty to strictly conform to the Contract Documents.

106.09 Preparation of Change Orders. The Engineer shall prepare all Bulletins and Change Orders, including a cost estimate and supporting documentation and data. Once executed, a Change Order shall constitute the full and complete satisfaction for all claims of all direct and indirect costs, overhead costs of all kinds, inefficiency costs, acceleration costs, the cumulative impact of the Change Order and other Change Orders executed prior to it, the impact of the Change Order on unchanged work and interest related thereto, which has been or may be incurred by Contractor in conjunction with the change in scope and/or project extension set forth in the Change Order.

106.10 Final Inspections. The 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. Such inspection shall not constitute acceptance of the Work, nor shall it relieve Contractor from its duty to correct defective or non-confirming work not noted during the inspection.

106.11 Claims Services. The Engineer shall render analyses, written recommendations, or decisions, within the time specified, on all claims, disputes, or other matters in question between the Contractor and the City and shall provide information or services to the City until final disposition of all such claims, disputes, and matters. If Engineer does not approve a Contractor claim or fails to act within the required time, Contractor's claim shall be considered to be denied.

106.12 Project Rules and Hours. The Engineer shall consult with the Authorized Representative to obtain full knowledge of all City rules, regulations or requirements affecting the Project. The Engineer shall establish the regular working hours with the Contractors, subject to approval of the Engineer.

106.13 Construction Schedule. The Engineer shall review the Construction Schedule together with a schedule of submittals which is coordinated with the Construction Schedule in accordance with 109.05 through 109.09. If the Contractor fails to prosecute the Work in accordance with the Construction Schedule, the provisions of 105.02 may be invoked.

ITEM 107 THE CONTRACTOR

- 107.01 Construction Procedures
- 107.02 Cutting, Fitting and Patching
- 107.03 Excavation
- 107.04 Borrow and Waste Areas
- 107.05 Construction and Demolition Debris
- 107.06 Manufacturer's Recommendations
- 107.07 Construction Supervision
- 107.08 Protection of Project, Property and Utilities
- 107.09 Load Restrictions
- 107.10 Materials and Equipment
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- 107.12 Labor
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- 107.16 Work Stoppage Due to Hazardous Materials
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- 107.19 Engineer Facilities
- 107.20 Meeting Spaces
- 107.21 Temporary Heat
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- 107.23 Hoists and Elevators
- 107.24 Electricity
- 107.25 Temporary Facilities
- 107.26 Drainage
- 107.27 Environmental Protection
- 107.28 NPDES General Permit
- 107.29 Building Permits
- 107.30 Other Permits
- 107.31 Inspection, Testing, and Approval
- 107.32 Uncovering the Work
- 107.33 Correction of the Work
- 107.34 Interruption of Existing Services
- 107.35 Clean Up
- 107.36 Explosives and Blasting
- 107.37 Emergency
- 107.38 Royalties and Patents

107.01 Construction Procedures. 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. 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 required by the Contract Documents and for the preservation of all related stakes and markers.

107.02 Cutting, Fitting and Patching. The Contractor shall do any 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. If Contractor requires sleeves, the Contractor shall furnish and coordinate the installation of the 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. 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. 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.

107.03 Excavation. The Contractor shall not cut away any Structure or dig under any foundation or into any wall, or any other part of the Project, without the written approval of the Engineer. Unless otherwise specified in the Contract Documents, the Contractor, prior to starting excavation or trenching, shall give notice at least two business Days in advance to the Owners of 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 forty-eight 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 its approximate depth. If any underground utility Owner fails to timely perform, the Contractor shall immediately notify the Engineer and contact the Owner of the underground utility. If any underground utility must be moved or adjusted, the Contractor shall notify the Owner of the underground utility in a timely manner so that the Work will not be delayed. Unless otherwise provided in the Contract Documents, any movement or adjustment of any underground utility or utility appurtenances, including without limitation electrical and gas meters, water and gas valves and light standards within the Project site is made by the Owner of the utility at the utility Owner's expense. In performing any excavation or trenching, the Contractor shall exercise caution and implement appropriate safety precautions to avoid property damage and personal injury. The Contractor shall backfill any excavation with the material specified and approved by the Engineer. The right to construct or reconstruct any utility service in the street or right of way or to grant permits for same, at any time, is hereby expressly reserved to the City and the Contractor shall not be entitled to any damages for the digging up of the street or Right-of-Way in accordance with such a permit. Any Person wishing to make an opening in the street must secure a permit from the City. The Contractor shall allow Persons bearing such permits, and only those Persons, to make openings in the street or Right-of-Way. When required by the Engineer, the Contractor shall make all necessary repairs due to such openings under the same conditions as the Work. Any adjustment of the Contract price or of the time for Contract Completion resulting from any such opening or repair may be made by Change Order. When the Work includes construction of underground lines and Structures, the Contractor shall make temporary restoration of street surfaces immediately upon completion of the underground lines and Structures, shall remove surplus excavated Materials and shall grade the street and put it into a safe and passable condition. The Contractor shall immediately refill any settlement in or adjacent to trenches for such construction to the proper grade.

107.04 Borrow and Waste Areas. A Change Order may be issued in accordance with 117.01 to 117.12 to permit the Contractor to use natural Materials found on the site of the Project.

Whenever Materials are to be borrowed or wasted in borrow or Waste Areas or, if allowed by the Contract Documents, wasted on the Project site, the Contractor shall prior to beginning borrow or wasting operations, obtain the Engineer's written approval of a detailed operation plan that addresses the following concerns:

- (a) Control of drainage water;
- (b) Cleanup, shaping, and restoration of disturbed areas;
- (c) Disposal of regulated Materials;
- (d) Avoidance of regulated areas;
- (e) Excavation and filling of waste and Borrow Areas;
- (f) Saving of topsoil;
- (g) Measures to minimize sediment runoff, including keeping sediment and other contaminants from leaving the Project site and from entering streams, lakes, or reservoirs by using methods provided in the Contract Documents.

The Contractor shall use the current versions of ODOT's *Sediment and Erosion Control Handbook* and the *Location and Design Manual, Volume 2, Drainage Design* to design and plot a sedimentation and erosion control plan on Project plan sheets and ensure the plan complies with all current provisions of ORC, Chapter 6111 and the NPDES permit. The Contractor shall not waste material and discharge dredge or fill Materials into the "Waters of the United States" or an isolated wetland without the required permits from U.S. Army Corps of Engineers (404 Permit) and the Ohio EPA (401 Permit). The Contractor shall have the proposed borrow and Waste Areas reviewed by a qualified environmental consultant approved by the City and have the environmental consultant certify that the proposed borrow and waste operations will not impact the "Waters of the United States" or an isolated wetland. If consultant certification is not provided, the Contractor shall obtain the 404/401 Permits necessary to perform the operations as proposed and have the environmental consultant certify that the Work conforms to the requirements of the permits. The Contractor shall provide copies of all documentation submitted to obtain the appropriate permits and copies of the permits to the Engineer. The Contractor shall not waste or borrow material from a cultural resource site or a site eligible for the national Register of Historic Places. For sites found to have historic or prehistoric human remains, the Contractor shall comply with the requirements of Sections 2909.05 and 2927.11, ORC. If the Contract Documents require a cultural resource investigation, a qualified environmental consultant approved by the City for cultural resource investigation shall be used to review and certify that the waste or Borrow Area:

- (a) does not impact a cultural resource;
- (b) is not a cultural resource;
- (c) is not eligible for the national Register of Historic Places; or
- (d) does not consist of historic or prehistoric human remains.

If burning is permitted under the OAC-3745-19 and Section 1503.18, ORC, the Contractor shall submit a copy of the Ohio EPA permit and the Ohio DNR permit to the Engineer and copies

of all information used to obtain the permit. All damage to surrounding property resulting from the instability of borrow and Waste Areas, the removal of borrow Materials, the placement of waste Materials, or the hauling of material to and from these areas is the sole responsibility of the Contractor. Prior to the disposal of waste Materials outside the Project site, the Contractor shall submit to the City an executed copy of the Contract or permission statement from the property Owner. The Contract or permission statement must indicate that the waste Materials are not the property of the City, that the City is not a party to the Contract or permission statement and that the Contractor and property Owner will hold the City harmless from claims that may arise from their Contract or permission statement. Restoration of all borrow and Waste Areas includes cleanup, shaping, replacement of topsoil, and establishment of vegetative cover by seeding and mulching according to the Contract Documents. The Contractor shall ensure that the restored area is well drained unless approval is given by the Engineer to convert a pit area into a pond or lake, in which case the Contractor shall confine restoration measures to the disturbed areas above the anticipated normal water level, and that any proposed waste location is not within the FEMA mapped one hundred year floodplain. If the proposed waste location is within the FEMA mapped one hundred year flood plain, the Contractor shall submit written approval from the local floodplain coordinator for the site. The floodplain coordinator contacts for each county are available through the Ohio DNR, Division of Water, (614) 265-6750. No extension of time or additional compensation will be paid for any delays due to not having the written permit(s) to waste in a floodplain.

107.05 Construction and Demolition Debris. OAC-3745-37, OAC-3745-400, and Chapter 3714 ORC, regulate the use and disposal of construction and demolition debris. The Contractor shall notify the local Board of Health or the local Ohio EPA office seven Days before placing clean hard fill off the Project site or Right-of-Way and submit copies of this notification to the Engineer. The Contractor shall dispose of debris containing wood, road metal, or plaster at a licensed construction and demolition debris site. The disposal of brush, trees, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter is restricted. If allowed by the Contract Documents, the Contractor may waste brush, trees, stumps, tree trimming, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter within the Project site or the Right-of-Way. Otherwise, the Contractor shall submit a plan and any required permits to legally dispose of these Materials off the Project site or Right-of-Way to the Engineer and shall provide all documents submitted to obtain this permit to the Engineer. If the Project contains garbage or solid and hazardous waste, the Contractor shall comply with applicable laws and any applicable provisions of the Contract document for the removal of these items. When wasting PCC, the Contractor shall mix the PCC with at least thirty percent natural soil to construct an inner core in the Waste Area, cover this inner core with 3 feet of natural soil on the top and eight feet on the side slopes and place and compact the material according to the Contract Documents to prevent future settlement and sliding.

107.06 Manufacturer's Recommendations. The Contractor shall install all Work in accordance with the Contract Documents and any recommendations of the manufacturer, including required temperature and humidity for installation of the various Materials.

107.07 Construction Supervision. The Contractor shall provide continuous supervision at the Project by a competent Superintendent when any Work is being performed, unless waived by the Authorized Representative. The Superintendent shall have responsibility and authority to

act on behalf of the Contractor. All communications to the Superintendent shall be as binding as if given directly to the Contractor. The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed Superintendent, including references, to the Engineer within ten Days of the Notice to Proceed. The City 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 Days of receipt of the required information shall constitute notice that the City has no objection. If the City rejects the Contractor's proposed Superintendent, the Contractor shall replace the Superintendent at no additional cost to the City. The Contractor shall not change or terminate the Superintendent without written approval of the Authorized Representative. If the Contractor proposes to change or terminate the Superintendent, the Contractor shall submit to the Engineer a written justification for the change or termination, along with the name and an outline of qualifications experience of the Contractor's proposed new Superintendent, not less than ten Days prior to any change or termination. The procedure provided above shall be applied to evaluate the Contractor's proposed new Superintendent. If in the City's sole discretion, the performance of the Superintendent is unsatisfactory at any time, the City may require that Contractor replace such Superintendent with a Superintendent satisfactory to the City at no additional cost to the City.

107.08 Protection of Project, Property and Utilities. The Contractor shall protect the Work from weather, and shall maintain the Work and all Materials, including Materials delivered to the Contractor by the City, apparatus, fixtures and other items on or adjacent to the Project site free from injury or damage until Final Acceptance. Non-rubber tired vehicles or Equipment shall not be moved on City streets and off road vehicles shall not be used on bases or pavements without the written approval of the Engineer. Work or items likely to be damaged shall be covered or protected at all times to prevent damage. 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, as applicable, at the Contractor's expense. The Contractor shall perform the Work within the site of the Project and any applicable easement or Right-of-Way. 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. 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. When mailboxes, 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 the Engineer. After completion of the Work, the Contractor shall erect the mailboxes, road or street name signs and supports in a permanent location in accordance with the Drawings unless otherwise required by Change Order. Removal, temporary erection and permanent erection shall be in accordance with United States postal regulations. When cornerstones, monuments and property corner pins 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, Materials and Equipment required for such installations. 105.02 may be invoked for the cost to the City for repair, re-evaluation of location and replacement of any cornerstone, monument or property corner pin within the Project, damaged, destroyed or made inaccessible during the progress of the Work by the Contractor. Existing surface or overhead Structures or utility lines are not necessarily shown on the Drawings and the locations of those shown are approximations. The Contractor shall make such investigations as are necessary to determine the extent to which existing surface or overhead Structures may interfere with the

performance of the Work. Any sizes, locations, and depths for such Structures are approximations and the Contractor shall make such investigation or exploration as may be necessary to determine the actual sizes, locations and depths. The Contractor shall field locate all existing utilities before setting line and grade. 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.

107.09 Load Restrictions. 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. 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. The Contractor shall comply with all legal load restrictions in the hauling of Materials on public roads and shall operate Equipment of a weight or so loaded as to not cause damage to Structures, Roadway, or other construction. A special permit will not relieve the Contractor of sole liability for damage which may result from the moving of Equipment or Materials. The Contractor shall not haul on concrete pavement, base or Structures before the expiration of the curing period.

107.10 Materials and Equipment. The Contractor shall provide only new Materials and Equipment of the quality specified in the Contract Documents. The Contractor shall immediately remove Materials or Equipment not conforming to the requirements of the Contract Documents. The Contractor shall not incorporate Materials or Equipment, the defects of which have been corrected without written approval from the Engineer. If the City is to furnish any Materials, the City shall deliver them in accordance with the Contract Documents. The Contractor shall coordinate and schedule sufficient time for any such delivery. The Contractor shall provide domestically produced steel as required by law including Sections 153.011 and 5525.21, ORC, and Federal laws and regulations, if applicable. The Contractor shall furnish documentation to the Engineer evidencing the domestic origin of applicable steel and iron products before they are incorporated into the Project. Steel and iron products without a traceable, documented domestic origin will be treated as non-domestic products. The City may reject any item or material provided by a Contractor in violation of this requirement. The Contractor shall notify the Engineer of proposed sources of Materials prior to delivery. The Engineer may approve Materials at the source of supply before delivery. If the proposed source of supply cannot produce the specified Materials, the Contractor shall furnish Materials from Alternate sources without adjustment of the Contract price or the time for Contract Completion.

107.11 Storage. 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. The Contractor shall be responsible for the proper handling and storage of all material and Equipment brought or delivered to the Project to assure preservation of their quality and fitness for the Project and to facilitate inspection of them. Aggregates shall be transported from any storage site to the Project in tight vehicles so constructed as to prevent loss or segregation of Materials after loading and measuring in order that there may be no inconsistencies in the quantities of Materials intended for incorporation in the Project as loaded, and the quantities as actually received at the site of the Project. After any material or Equipment is no longer required for the Work, the Contractor shall promptly remove

such material and Equipment from the Project. The Contractor's Materials and Equipment shall not be stored in any Right-of-Way unless the location of such storage is approved by the Engineer. 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. No material or Equipment shall be stored within 20 feet of any fire hydrant. 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 Engineer, the Contractor shall provide a copy of the written permission to the Engineer. The Contractor shall restore all storage sites to their original conditions. 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. Any injury to any individual or damage to property resulting from the Contractor's material or Equipment shall be the responsibility of the Contractor.

107.12 Labor. The Contractor shall maintain a sufficient workforce to timely perform the Work 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. 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 Engineer, to be incompetent, guilty of misconduct, or detrimental to the Project. 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.

107.13 Maintenance of Utilities. 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. 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. The Contractor shall protect all above ground utilities, Structures and appurtenances and shall replace any damaged portions thereof. The Contractor shall protect 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 and shall replace any damaged portions thereof.

107.14 Maintenance of Traffic. Vehicular and pedestrian public traffic shall be maintained during the Project whether it is traffic through the Project or only cross traffic at intersections, unless otherwise provided in the Contract Documents. The Contractor shall make all repairs to roads necessary to maintain traffic to the satisfaction of the Engineer. If there are 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. The Contractor shall provide all necessary flaggers. The Contractor shall provide and maintain access to adjacent property including by constructing necessary temporary walks, driveways, Bridges, crossings, and Roadways. 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. In the event of the complete closure of any street,

alley or private drive, the City shall give notification to the occupants of all premises affected by the closure. The Contractor shall promptly notify the Engineer of all unforeseen effects of the Project on traffic. Unless the Contract Documents provide otherwise, all traffic control devices shall be furnished, erected, maintained and removed by the Contractor in accordance with the OMUTCD.

107.15 Safety Precautions. 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, regulations, and building codes to prevent injury to individuals on or adjacent to the Project. The Contractor shall comply with the rules, regulations and orders of OSHA. The Contractor shall be responsible for any fine or cost incurred as a result of any violation or alleged violation of such rules, regulations or orders. The Contractor shall take reasonable, diligent precautions and shall be responsible for the safety of the Project, including without limitations all Materials and Equipment incorporated or to be incorporated in the Project. Prior to the start of any Work, the Engineer shall meet with the Contractor and other applicable Person to coordinate the Contractor's methods and Equipment for protecting the Project, other property and individuals from damage or injury, in accordance with applicable regulations. The Engineer efforts at coordination shall not relieve the Contractor of any responsibility for safety or ensure the Engineer to become responsible for safety. 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.

107.16 Work Stoppage Due to Hazardous Materials. In the event the Contractor, except a licensed abatement Contractor, encounters Materials reasonably believed to contain 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 Engineer in writing. A licensed abatement Contractor shall report the condition to the Authorized Representative and the Engineer in writing and shall remove the waste or material or render it harmless. The Work in the affected area shall be resumed upon written notice from the Engineer that the waste or material has been removed or rendered harmless. The term "rendered harmless" shall mean that the level of exposure is less than any applicable exposure standards set forth by OSHA or other applicable regulations. Hazardous Materials to be used at the Project shall be identified by a MSDS. The applicable MSDS shall be prepared by the Contractor and submitted to the Engineer prior to a hazardous material being brought to the Project site. The Contractor shall maintain all applicable MSDS on site whenever Work is in preparation or progress.

107.17 Vehicle Damage Claims. When a Person reports damage to a vehicle, whether orally or in writing, to the Contractor, the Contractor shall file a written report, including copies of applicable police reports, with the Authorized Representative within three Days.

107.18 Fire Hydrants. The Contractor shall make any necessary arrangements with the City Department of Water for any use of fire hydrants in connection with the Work and shall pay for all water used from the hydrants. Permits from the Department of Water for use of fire hydrants shall be provided to the Engineer upon request.

107.19 Engineer Facilities. Unless otherwise specified in the Contract Documents, the Contractor shall provide and maintain in a clean condition the following temporary facilities, Equipment and services for use by the Engineer:

- (a) If space is available near the Project, 2 separate office spaces, both of which shall be adequately heated, lighted, air conditioned, and with doors which lock, the keys to which shall be provided to the Engineer;
- (b) If space is not available near the Project, a standard width job trailer shall be provided, which shall be adequately heated, lighted, air conditioned, and with doors which lock, the keys to which shall be provided to the Engineer;
- (c) Each office space shall be equipped with at least 1 desk, 1 desk chair and 2 side chairs and reasonable circulation space;
- (d) Each office space shall have 1 four-drawer filing cabinet or equivalent;
- (e) A plan rack and 4 by 8 foot plan table shall be provided in 1 office space;
- (f) Each office space shall have at least 1 telephone in service;
- (g) Use of a facsimile and copy machine shall be provided for use either in one of the office spaces or in an adjacent office space;
- (h) One office space shall have a computer to the City's criteria with electronic mail capabilities.

107.20 Meeting Spaces. Unless otherwise specified in the Contract Documents, the Contractor shall provide adequate space, Equipment and furnishings to conduct progress and coordination meetings for the Project. The meeting area shall be furnished with an appropriate meeting table and an appropriate number of folding or stacking chairs to adequately seat all participants at the meetings.

107.21 Temporary Heat. Unless otherwise specified in the Contract Documents, the Contractor shall provide temporary heat necessary so that the Work shall proceed expeditiously during inclement weather, and to protect the Contractor's Work and Materials from damage. From a date of partial occupancy, the City is responsible for the cost of providing heat for the occupied portion of the Project.

107.22 Water. Unless otherwise specified in the Contract Documents, the Contractor shall provide all water necessary for the Contractor's Work. From a date of partial occupancy, the City is responsible for the cost of water consumed for the occupied portion of the Project.

107.23 Hoists and Elevators. The Contractor shall provide and maintain adequate hoisting and elevator facilities as required for the Contractor's Work in coordination with the Engineer. If electric service requirements of hoisting or elevator facilities differ from that available at the Project site, the Contractor requiring use of such hoisting or elevator facilities shall make

and pay for all necessary connections. Unless otherwise specified in the Contract Documents, the Contractor requiring use of hoisting or elevator facilities, after the Project is enclosed, shall be responsible for transporting individuals and Materials as required for the Contractor's Work.

107.24 Electricity. 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. Unless otherwise specified in the Contract Documents, the Contractor requiring any electrical service requirements relating to temporary hoists, cranes, welding Equipment or elevators shall subcontract with a licensed Contractor for such service requirements and shall be responsible for all costs of such services. From a date of partial occupancy, the City is responsible for the cost of energy consumed for the occupied portion of the Project.

107.25 Temporary Facilities. 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 Engineer.

107.26 Drainage. 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.

107.27 Environmental Protection. The Contractor shall comply with all applicable federal, State and local laws and regulations relating to pollution of the environment and shall take precautions to prevent pollution of water with fuels, oils, bitumens, calcium chloride, sediments and other Materials. 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. 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 check dams, sediment traps, sediment basins, sediment pits, filters, filtration bags 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. 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. The Contractor shall not cause or permit the handling or transporting or storage of any material in a manner which allows or may allow unnecessary amounts of particulate matter to become airborne or cause or permit the Project to be constructed, used, repaired or demolished without applying all such reasonable measures as may be required to prevent particulate matter from becoming airborne. The Engineer may require necessary measures to prevent particulate matter from becoming airborne including without limitation the paving or frequent cleaning of roads, driveways and parking lots,

the application of dust-free surfaces, the application of water and the planting and maintenance of vegetative ground cover. When dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from the Project or Equipment in such manner and amount as to cause a nuisance or to violate any regulation, the Engineer may require that the Project or Equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the Project or Equipment are treated by removal or destruction of air contaminants be discharged to the open air.

107.28 NPDES General Permit. The Contractor shall secure any required NPDES general permit by submitting a notice of intent application form to the Ohio EPA at least forty-five Days prior to the start of construction. When required by law, the Contractor shall prepare and certify a storm water pollution prevention plan and process the required notice of termination prior to completion of the Project. The Contractor shall comply with all requirements and conditions of any NPDES general permit, including, but not limited to, implementing and maintaining the control measures specified in the storm water pollution prevention plan, maintaining records of construction activities, and removing Materials no longer required and taking proper action if there is a reportable quantity spill.

107.29 Building Permits. Unless otherwise specified in the Contract Documents, the Contractor shall secure the required general building permits. The Contractor shall schedule and attend all intermediate and Final Inspections required for any permit certification. The Contractor shall schedule inspection for occupancy permits with the appropriate local fire authority and State Fire Marshal. The Contractor shall give the Engineer and the Authorized Representative reasonable notice of the date arranged for any inspection.

107.30 Other Permits. Unless otherwise specified in the Contract Documents, the Contractor shall apply for, secure and pay the fees for any permit, license or tap in required by State or local authorities having jurisdiction over the Project, except the NPDES permit and the general building permits secured by the Engineer in accordance with 107.29. The Contractor shall give the Engineer and the Authorized Representative reasonable notice of the date arranged for any related inspection.

107.31 Inspection, Testing and Approval. Unless otherwise specified in the Contract Documents, the Contractor shall apply for, secure and pay for any inspection, testing or approval required by the Contract Documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction over the Project. The Contractor shall give the Engineer and the Authorized Representative reasonable notice of the date arranged for such inspection, testing or approval. The Contractor shall provide an original report of the inspection, testing or approval to the Engineer for approval. If, after the commencement of the Work, the 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 conformance to the Contract Documents, the Engineer may instruct the Contractor in writing to order such special inspection, testing, or approval, or the Engineer may make the arrangements for same. 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. 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. Neither the observations of the Engineer in the administration of the Contract, nor any 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.

107.32 Uncovering the Work. If any Work is covered contrary to the requirements of the Contract Documents or contrary to the written request of the Engineer, such Work must, if required by the Engineer in writing, be uncovered for observation and replaced, if not in conformity with the Contract Documents, and recovered at the Contractor's expense. If any Work has been covered in accordance with the Contract Documents and is Work which the Engineer had not requested the opportunity to observe prior to covering, the Engineer may request that such Work be uncovered by the Contractor. If such Work is found not to be in conformity with the Contract Documents, the Contractor shall pay all costs of uncovering, correcting, replacing, and recovering the Work. If such Work is found to be in conformity with the Contract Documents, a Change Order will be processed to pay the Contractor for the cost of uncovering, correcting, replacing, and recovering the Work, subject to final approval by the City Commission.

107.33 Correction of the Work. The Engineer shall notify the Contractor in writing if any Work is found by the Engineer to be Defective, whether observed before or after Contract Completion. The Engineer shall specify in the written notice the time within which the Contractor shall correct the Defective Work. The Contractor shall bear all costs of correcting such Defective Work, including the cost of any consequential damages. If the Contractor fails to correct any Defective Work within the time fixed in the written notice, the City may correct such Work and obtain recovery of all costs, including without limitation any consequential damages, and all attorneys' and consultants' fees, from the Contractor or the Contractor's Surety.

107.34 Interruption of Existing Services. Whenever it becomes necessary to interrupt existing services in use by the City or its residents, such as Sewer, water, gas, and steam lines, electric or telephone and cable service, the Contractor shall continue the Work on a non-stop twenty-four hour per Day basis until the Work is completed and the service restored, or at such Alternate time required by the Authorized Representative. 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, its tenants, if any, and the public.

107.35 Clean Up. 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, including without limitation layout stakes, sediment control devices and temporary Structures, attributable to the Work to an appropriate disposal site. Temporary on-site storage of waste, excess Materials and rubbish may be permitted as designated by the Engineer. Unless otherwise provided in the Contract Documents, the Contractor shall perform daily broom cleaning in the area of the Contractor's Work and shall, at the end of each working Day or upon notice from the Engineer, remove all waste Materials and rubbish from the Project. The Contractor shall, as required for the Project or upon notice from the Engineer, clean and remove any waste Materials or rubbish from areas adjacent to the Project. The Contractor shall, as required for the Project or upon

notice from the Engineer, take all necessary actions to minimize and clean dust and mud from the Project and adjacent property in accordance with City ordinances and regulations. If the Contractor fails to clean up during the progress of the Work, the provisions of 105.02 may be invoked. 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 notice from the Engineer, the Authorized Representative shall direct the local jurisdiction having responsibility for the area to clean the area or shall employ City employees or another Person to clean the area. The cost of cleaning the area adjacent to the Project shall be deducted from the Contractor as the Engineer recommends and the Authorized Representative determines to be appropriate. The decision of the Authorized Representative shall be final, subject to proceedings in accordance with 118.01 through 118.11.

107.36 Explosives and Blasting. 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, including without limitation the City's Fire Department. All blasting and all purchasing, storing and handling of explosives shall be done as prescribed in any applicable federal, State or City statutes, ordinances or regulations by Persons experienced in such Work. The Contractor shall carry appropriate liability insurance and shall be responsible for any injuries to individuals or damage to property resulting from any blasting operation. The Contractor shall provide a copy of the policy of such insurance to the Engineer prior to bringing any explosives to the Project and to the Authorized Representative upon request. 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. The Contractor shall notify all Owners of adjacent or utility property which may be affected of any intention to use explosives at least eight hours before blasting is commenced. Any inspection of use of explosives by the Engineer does not in any way reduce the responsibility of the Contractor or its Surety for damages that may be caused by such use.

107.37 Emergency. 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. The Contractor shall give the Engineer and the Authorized Representative prompt 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. If the 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 City Commission, if applicable.

107.38 Royalties and Patents. The Contractor shall pay all royalties and 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. If a particular invention, design, process, product, or device is specified in the Contract Documents and if, to the knowledge of the 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 Engineer in the Contract Documents. 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 Authorized Representative.

ITEM 108 - SUBCONTRACTORS AND MATERIAL SUPPLIERS

108.01 Approval by City

108.02 Replacement

108.03 Contractor's Responsibility

108.04 Warranty and Guarantee

108.05 Prompt Payment

108.06 Prompt Payment Reduction and Interest

108.07 Affidavit of Claim

108.08 Claims Against Contract Bond

108.09 Assignment of Contract

108.01 Approval by City. Within ten 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 Engineer for approval by the Authorized Representative. The City reserves the right to reject any Subcontractor or Material Supplier for any reason, in its sole discretion. Failure of the Engineer to notify the Contractor of rejection within ten Days of receipt of the forms shall constitute notice that the City has no objection. If the City rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier at no additional cost to the City.

108.02 Replacement. The Contractor shall not replace any Subcontractor or Material Supplier after execution of the Contract Form without written approval of the Authorized Representative. The Contractor shall submit to the Engineer amended approval forms and a written justification for the change of the Contractor's Subcontractors or Material Suppliers. The Contractor shall submit to the Engineer amended forms whenever any listed information changes for the Contractor's Subcontractors or Material Suppliers. The City may withhold approval of any such proposed replacement for any reason, in its sole discretion.

The City may require the Contractor to replace any Subcontractor or Material Supplier previously approved at no additional cost to the City if the Contractor is in default because of the Subcontractor's or Material Supplier's performance.

108.03 Contractor's Responsibility. 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. 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. 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. 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 City to terms inconsistent with or at variance from the terms of the Contract Documents. Contractor shall require the City to be named as an intended third-party beneficiary of all contracts between Contractor and Subcontractors and Material Suppliers such that the City will be entitled to enforce any rights thereunder to its benefit.

108.04 Warranty and Guarantee. The Contractor shall require each Subcontractor and Material Supplier to fully warrant and Guarantee, for the benefit of the City, 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.

108.05 Prompt Payment. 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 Days after receipt of payment from the City:

- (a) To a Subcontractor an amount equal to percent of completion allowed by the City for the Subcontractor's Work;
- (b) To a Material Supplier an amount equal to all or a portion of the Material Supplier's request for Materials furnished.

108.06 Prompt Payment Reduction and Interest. The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to 108.05 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. If the Contractor fails to comply with the provisions of 108.05, the Contractor shall pay to the applicable Subcontractor or Material Supplier eighteen percent interest on any unpaid amount beginning on the eleventh Day after receipt of payment from the City.

108.07 Affidavit of Claim. In order to establish lien rights, 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. The notice of furnishing must be served upon the Contractor within twenty-one Days of performing the Work or furnishing the Materials. 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. In order to establish lien rights, a claimant must file a Claim Affidavit with the Authorized Representative, within one hundred twenty Days from the date of the last Work or furnishing of Materials. In order to receive priority over similar claims, the claimant must file a copy of the claim with the Montgomery County Recorder's office within thirty Days of serving the Authorized Representative. All claimants who serve the Authorized Representative, and file with the Montgomery County Recorder within thirty Days, have no priority among themselves and share in the funds prorata. Claimants, who file with the Authorized Representative, but not with the Montgomery County Recorder, are paid only if there are sufficient funds left after paying those claimants who file with the Montgomery County Recorder. The Authorized Representative shall notify the Contractor of the receipt of the claim within five 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. The Contractor shall have twenty Days to dispute the claim. If the Contractor does not notify the Authorized Representative in writing of an intention to dispute the claim within twenty Days after receipt of the Claim Affidavit, the Contractor is deemed to have assented to its correctness. The City shall detain the amount stated in the Claim Affidavit from subsequent Contractor Payment Requests and deposit said amount in an escrow

account in accordance with a general escrow agreement between the City and a bank. 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. The City reserves the right to pay a Claim Affidavit which is not timely disputed.

108.08 Claims Against Contract Bond. 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 Days after Final Acceptance of the Project, by the City, furnish the Surety a statement of the amount due. After furnishing the statement, laborers, Subcontractors or Material Suppliers must wait sixty Days to bring a suit for the amount due. If the Surety has not paid the claim at the expiration of sixty Days, laborers, Subcontractors or Material Suppliers may bring suit for amounts not paid, but must bring the suit within one year of Final Acceptance of the Project, by the City.

108.09 Assignment of Contract. The Contractor shall not sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of any right, title or interest therein, without written consent of the Authorized Representative. No sale, transfer, assignment or other disposition of the Contract shall in any case release the Contractor of liability under the Contract and the Contract Bond.

ITEM 109 CONSTRUCTION PHASE SCHEDULING

- 109.01 Compliance with Schedule**
- 109.02 Responsibility of Contractor**
- 109.03 Preceding Work**
- 109.04 Coordination with City**
- 109.05 Construction Schedule**
- 109.06 Schedule Information**
- 109.07 Construction Schedule Requirements**
- 109.08 Use of Schedule and Float**
- 109.09 Approval and Acceptance Schedule**
- 109.10 Weekly Contractor Reports**
- 109.11 Monthly Progress Reports**
- 109.12 Time Recovery Plan**
- 109.13 Project Meetings**

109.01 Compliance with Schedule. The Contractor shall complete portions of the Work in such order and time as provided in the current Construction Schedule.

109.02 Responsibility of Contractor. The Contractor shall afford other Persons on the Project 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 Persons on the Project. The Contractor shall perform the Work so as not to interfere with, disturb, hinder, delay, or impact the Work of other Persons on the Project. 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 Person on the Project, or by failure to perform the Work with due diligence, delays, interferes with, hinders, disrupts or impacts any other Person on the Project, who suffers damage, injury or expense thereby, the Contractor shall be responsible to the other Person for such damage, injury or expense. Claims, disputes or actions between the Contractor and other Persons on the Project concerning such damages, injury or expense shall not delay completion of the Work which shall be continued by the parties to any such claim dispute or action. The Contractor shall coordinate the Work with the activities and responsibilities of other Persons on the Project, the Engineer and the City to complete the Project in accordance with the Contract Documents. In the event the Contractor fails to prosecute the Work in accordance with the Project Schedule, the Engineer may recommend that the provisions of 105.02 be invoked.

109.03 Preceding Work. If any part of the Contractor's Work is preceded by the Work of another Person, the Contractor shall inspect such preceding Work before commencing any Work, and report in writing to the Engineer any defects which render the preceding work unsuitable as related to the Contractor's work. Failure of the Contractor to make such inspection and report in writing 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.

109.04 Coordination with City. The Contractor shall supervise and coordinate the Work in conformity with any coordination from the Engineer and the Authorized Representative, as provided in the Contract Documents. The Contractor shall give reasonable notice to the Engineer

when the Engineer's presence is required for special consultations, decisions or recommendations, as required by the Contract Documents. The Contractor shall consult with the Engineer and the Authorized Representative to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Contractor shall establish the regular working hours, subject to approval by the Engineer and the Authorized Representative. Night working hours and working hours on Sundays and holidays are not permitted without the prior written consent of the Engineer and the Authorized Representative. Such consent will not be provided unless the Contractor has given at least forty-eight hours' notice in writing to the Engineer. The Contractor shall cooperate with the Engineer and the Authorized Representative so as not to interfere with, disturb, hinder or delay the responsibilities of the Engineer and the City.

109.05 Construction Schedule. The Contractor shall prepare the Construction Schedule for the Project and a schedule of submittals which is coordinated with the Construction Schedule within thirty Days of the date of the Notice to Proceed or such longer period as mutually agreed between the Engineer and the Contractor in writing upon timely written request by the Contractor. The Contractor shall, within seven Days of the date of the Notice to Proceed, furnish to the Engineer a preliminary Construction Schedule for the prosecution of Work on the Project. The Engineer shall, within seven Days of receipt of the Contractor's preliminary Construction Schedule, provide comments on the preliminary Construction Schedule to the Contractor. The Contractor shall, within five Days of receipt of the comments, prepare a revised Construction Schedule to incorporate those comments and submit the revised Construction Schedule to the Engineer together with all information requested and required by the Engineer. The Engineer shall submit 4 copies of the revised Construction Schedule, together with any recommendation thereon in writing, to the Authorized Representative within three Days of receipt. The Construction Schedule shall not exceed the time limits specified in the Contract Documents and the Notice to Proceed, shall provide for reasonable, efficient and economical execution of the Work and shall be coordinated with the Work of all other Persons or the entire Project to the extent required by the Contract Documents. The Construction Schedule shall be used to plan, organize, and execute the Work, record and report actual performance and progress and show how the Contractor Plans to coordinate all Work to Contract Completion. In preparing the Construction Schedule the Contractor shall use critical path scheduling methods and shall provide without limitation, the information listed in 109.06, unless waived by the Authorized Representative in writing upon the written recommendation of the Engineer.

109.06 Schedule Information. In accordance with 109.05, the Contractor shall provide the following information:

- (a) A graphic presentation of the sequence of the Work for the Project which includes, without limitation, the Contractor's resource loading curve in the media and format required by the Engineer;
- (b) Identification of each phase of the Work and any milestone completion dates;
- (c) Identification of activities and durations for all shop drawing and other submittal review and approval, fabrication 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;

- (d) Identification of disruptions and shutdowns due to other operations, facilities and functions, if any;
- (e) Identification of the critical path of the Work;
- (f) Identification of crew size and total resource hours for each activity in the Construction Schedule;
- (g) The Contractor's signature and date thereof on the Construction Schedule.

109.07 Construction Schedule Requirements. The 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 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 shall clearly and legibly show all relevant information. The Contractor shall provide monthly updates of the Construction Schedule and shall update the Construction Schedule if a time recovery plan is approved in accordance with 109.12, in electronic and paper formats, to the Engineer in graphic and tabular form. All base line and updated schedules shall be submitted electronically to the 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 Engineer. Unless waived by the Authorized Representative in writing upon written recommendation of the Engineer, each baseline and updated schedule shall show the Project name and Contract and contain lines for signatures and dates of signature for all Contractors involved in the Project. Each baseline and updated schedule shall provide activity identification and a description for each activity broken down to a maximum fifteen 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 baseline and updated schedule shall identify the logic relationship between all activities and shall show all submittal dates, coordination drawing preparation, Working Drawing submittals and mark-up review and approval durations. Together with each updated schedule, the Contractor shall provide a list of all changes to the previously approved base line Construction Schedule or the previous updated Construction Schedule, including without limitation logic, float and actual start and finish dates of activities.

109.08 Use of Schedule and Float. The Construction Schedule and the Project Schedule, if applicable, 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 Engineer, and other Contractors, if any.

109.09 Approval and Acceptance Schedule. The Contractor shall review and sign each updated Construction Schedule. The Contractor's signature or any base line or updated Construction Schedule shall serve as an affirmation of the Contractor's approval of and agreement to the Construction Schedule and a representation that the Contractor can meet the requirements of the Construction Schedule without additional compensation. Immediately after the Contractor has signed the Construction Schedule, the Engineer shall submit it and the

schedule of submittals to the Authorized Representative or return them to the Contractor with recommendations for revision. In the absence of a Construction Schedule approved by the Contractor and accepted by the Authorized Representative, the City may withhold payment from the Contractor in accordance with 114.08 and 114.09. Alternatively, the City, in its sole discretion, may backcharge the Contractor in accordance with 105.02, reassign scheduling responsibility or suspend or terminate the Contract in accordance with 119.01 through 119.04.

109.10 Weekly Contractor Reports. Unless otherwise specified by the Contract Documents, the Contractor shall, on a bi-weekly basis, prepare and submit to the 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 weeks including without limitation the Contractor's workforce crew size with respect to each activity of Contractor, and total resource hours associated with such Work and any other information requested by the Engineer.

109.11 Monthly Progress Reports. Unless otherwise specified in the Contract Documents, the Engineer shall provide monthly progress reports to the Authorized Representative, which shall include recommendations for adjusting the Construction Schedule or the Project Schedule, as applicable, to meet milestone completion dates and Contract Completion dates.

109.12 Time Recovery Plan. When it is apparent to the Engineer that critical path activities, scheduled milestone completion dates, or Contract Completion dates will not be met, the Engineer shall submit to the Contractor a time recovery plan to avoid or minimize any delay. A time recovery 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. If the Contractor approves the time recovery plan within ten Days of receipt, a revised Construction Schedule shall be prepared by the Contractor and signed and accepted in accordance with 109.11 and, if applicable, a revised Project Schedule shall be prepared by the Engineer and approved and signed by the Contractors in accordance with 109.10. If the Contractor fails to approve a time recovery plan within ten Days of receipt, the Contractor shall immediately provide an Alternate time recovery plan to the Engineer in writing, for review and acceptance in accordance with 109.11 and, if applicable, 109.10.

109.13 Project Meetings. The Contractor and all appropriate Subcontractors shall attend Project meetings as requested by the Engineer. The purpose of the Project meetings may include, without limitation, review of progress in the Work, discussion of anticipated progress, and review of critical operations and existing and potential problems and safety matters. The Contractor shall be represented at every Project meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents. The Engineer shall notify the Contractor of the time and place of each Project meeting. The Contractor shall have any of the Contractor's Subcontractors and Material Suppliers attend a Project meeting as deemed advisable by the Contractor or as requested by the Engineer. The Engineer or the Engineer's designated representative shall prepare a written report of each Project meeting and distribute such report to the Authorized Representative and the Contractor. The Engineer or the Engineer's designated representative, as applicable, shall not delegate the duty to prepare a

written report of each Project meeting. If any Person objects to anything in a report of a Project meeting, the Person shall notify the Engineer, the Authorized Representative and any other affected Person in writing explaining the objection. The Engineer shall attach any objection made to a report of a Project meeting and any response thereto to the report.

ITEM 110 - WORKING DRAWINGS AND SAMPLES

- 110.01 Requirement to Provide**
- 110.02 Samples, Tests, Cited Specifications**
- 110.03 Source Sampling and Testing**
- 110.04 Form of Submittals**
- 110.05 Variation from Contract Documents**
- 110.06 Contractor's Review**
- 110.07 Engineer's Review**
- 110.08 Risk of Nonpayment**
- 110.09 Manufacturer's Statement**

110.01 Requirement to Provide. Working Drawings, Samples and other submittals, including without limitation stress sheets, erection Plans, falsework Plans, cofferdam Plans, bending diagrams for reinforcing steel, formwork, Plans, and tunneling Plans, 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 Engineer, and shall include, without limitation:

- (a) 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, anchorage, type and grade of finish;
- (b) Capacities, types of Materials and performance charts that are pertinent to the Materials and performance charts that are pertinent to the Work. Wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and Specifications;
- (c) Notwithstanding any measurements in Drawings or Specifications, where the Work involves repair, renovation, extension or alteration of, or addition to, an existing Structure, the Contractor shall make such measurements of the existing Structure as may be required to accurately attach the Work to the Structure.

110.02 Samples, Tests, Cited Specifications. Unless otherwise provided in the Contract Documents, the City shall test Samples of Materials in accordance with AASHTO, ASTM, AWWA or methods on file in the office of the Director at the expense of the City. Samples will be taken by a qualified representative of the City. References included in these Specifications to AASHTO, ASTM, AWWA, or federal Specifications shall be to the test method, sampling method or specification in effect upon the date of the notice to Bidders for the Contract. Copies of all test results will be furnished to the Contractor. The Contractor shall cooperate fully in the sampling and inspection of Materials and shall notify the Engineer immediately upon the arrival of Materials to be used in the Work. The City reserves the right to retest all Materials and Equipment that have been stored prior to incorporation of those Materials into the Project and to reject all Materials and Equipment which, when retested, do not meet the requirements of the Contract Documents. The Contractor, in all cases, shall furnish the required Samples without charge. Transports and distributors hauling bituminous material shall be equipped with an approved submerged bituminous Materials sampling device.

110.03 Source Sampling and Testing. The Engineer may undertake the sampling and testing of Materials at the source of supply. If source sampling and testing is undertaken:

- (a) The Contractor shall cooperate and assist the Engineer, including without limitation in compliance with applicable inspection, sampling and test requirements, and shall provide all necessary documentation;
- (b) The Contractor shall provide full entry at all times to the parts of the source as may concern the manufacture or production of the Materials being sampled and tested;
- (c) If required by the Engineer, the Contractor shall arrange for an approved building for the use of the inspection which building shall be located conveniently near the source and independent of any building used by the Materials producer;
- (d) The Contractor shall provide and maintain adequate safety measures at the plant at all times;
- (e) The City reserves the right to retest all Materials that were tested at the source prior to the incorporation of those Materials into the Project and to reject all Materials which, when retested, do not meet the requirements of the Contract Documents.

110.04 Form of Submittals. The Contractor shall provide a submittal letter and shall stamp and submit the working Drawings or other submittals to the Engineer in accordance with a schedule established by the Engineer and the Contractor. Unless otherwise specified in the Contract Documents, the Contractor shall submit 3 prints of all working Drawings and 4 copies of any other submittal. Only 1 print copy of all working Drawings will be returned to the Contractor by the Engineer. If the Contractor requires more than 1 copy, additional copies must be provided to the Engineer at the time of the original submission. The Engineer will not produce copies of the working Drawings. The data shown on the working Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, Materials and similar data to show the Engineer the Materials and Equipment which the Contractor proposes to provide. Each sample shall be identified clearly as to material, supplier, and pertinent data such as catalog numbers and the use for which intended and other uses as the Engineer may require to enable the Engineer to intelligently review the submittal. All working Drawings shall indicate the applicable plan sheet and Specifications.

110.05 Variation from Contract Documents. If the working Drawings 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 Engineer. If the variation is acceptable to the Engineer, the 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. The Contractor shall not be relieved of any responsibility for deviations from the requirements of the Contract Documents by the Engineer's review of working Drawings, Samples or other submittals.

110.06 Contractor's Review. All working Drawings, Samples and other submittals shall be reviewed and stamped by the Contractor prior to submittal to the Engineer. If it is apparent to the Engineer that the Contractor has not reviewed the submittals, or has conducted an incomplete

review, the Engineer shall reject the submittals. The Contractor shall field verify conditions as necessary and make corrections of dimensions, location of various items, encroachments of Work or variations from the requirements of the Contract Documents. If required by the Contract Documents or applicable law, the Contractor shall have the working Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a licensed Engineer, landscape architect, or other design professional.

110.07 Engineer's Review. The Engineer shall review and approve or disapprove working Drawings, Samples or other submittals within fifteen Days of receipt or in accordance with the approved submittal schedule or such other period of time as is mutually agreed by the Engineer and the Contractor. The Contractor shall make any corrections required by the Engineer and shall resubmit the required number of corrected copies of working Drawings, Samples or other submittals until approved, which resubmission shall be acted upon by the Engineer with fifteen Days of receipt or such other period of time as is mutually agreed by the Engineer and the Contractor. When resubmitting submittals, the Contractor shall direct the Engineer's attention to any revisions made by noting such revisions on the resubmitted submittal. All costs incurred by the Engineer, the City or other Persons due to the failure of the initial submittal to substantially meet the requirements of the Contract Documents, or due to excessive resubmittals, for attendant delay, interference, hindrance, disruption or impact of the Project, shall be paid by the Contractor. Resubmittals in excess of two may be deemed excessive by the City. The Engineer's review and approval of working Drawings, Samples and other submittals is to determine if the items covered by such 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. The 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. The Engineer's review and approval of a separate item will not indicate approval of the assembly in which the item functions.

110.08 Risk of Nonpayment. No portion of the Work requiring a Working Drawing, sample or other submittal shall be commenced until the submittal, has been reviewed and approved by the Engineer. Any Work commenced by the Contractor prior to final approval of the Working Drawing, sample or other submittal by the Engineer shall be performed by the Contractor under risk that no payment will be approved or made by the City for such Work.

110.09 Manufacturer's Statement. Working Drawings on all Equipment shall include the following written statement from the manufacturer of the Equipment:

"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."

ITEM 111 PREVAILING WAGE RATES

111.01 Prevailing Wages

111.02 Prevailing Wage Determination

111.03 Fines and Penalties

111.04 Wage Schedule

111.05 Payroll Reports

111.01 Prevailing Wages. 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 bureau, or the U.S. Department of Labor to laborers and mechanics performing Work on the Project, as applicable. The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Sections 4115.03 to 4115.22, ORC or the Davis-Bacon Act, as applicable.

111.02 Prevailing Wage Determination. The Contract Documents include pages setting forth the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau, or the U.S. Department of Labor for the Project, as applicable. The City shall, within seven business Days after receipt of a notice of a change in the prevailing rates, notify the Contractor of the change. The Contractor shall make the necessary adjustment in the prevailing wage rate and shall pay any wage increase during the term of the Contract.

111.03 Fines and Penalties. Whoever violates Section 4115.08 or 4115.09, ORC, shall be fined pursuant to the applicable provisions of the Ohio Revised Code. Whoever violates division (C) of Section 4115.071, or Section 4115.10 or 4115.11, ORC is guilty of a misdemeanor of the second degree for a first offense. For each subsequent offense such Person is guilty of a misdemeanor of the first degree. Fines and penalties under the Davis-Bacon Act shall be as determined by the U.S. Department of Labor and in accordance with applicable law.

111.04 Wage Schedule. Within ten Days of the date of the Notice to Proceed, the Contractor shall provide the City's prevailing wage Coordinator a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

111.05 Payroll Reports. The Contractor shall submit weekly 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. The payroll report shall indicate the week 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. 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. 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. The Contractor and the Contractor's

Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.

ITEM 112 INSURANCE

112.01 Contractor's Liability Insurance

112.02 Policy Limits

112.03 Explosion, Collapsed and Underground Insurance

112.04 Builder's Risk Insurance

112.05 Coverage Amount

112.06 Railroad Protective Insurance

112.07 Insurance Policy Requirements

112.08 Renewal Certificates

112.09 Waivers of Subrogation

112.01 Contractor's Liability Insurance. 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, a Subcontractor, any Person directly or indirectly employed by the Contractor or a Subcontractor or any Person for whom the Contractor or a Subcontractor is responsible, or by any Person for whose acts the Contractor or a Subcontractor may be liable:

- (a) Claims under workers' compensation, occupational sickness or disease, disability benefit and other similar employee benefit acts;
- (b) Claims for damages because of bodily injury, disease, illness, death or Personal injury, and other claims usually covered by bodily injury liability insurance;
- (c) Claims for damages because of injury to or destruction of property and other claims usually covered by property damage liability insurance.

The Contractor shall comply with all provisions of the Ohio Workers Compensation Act and all rules of the Ohio Bureau of Workers' Compensation. In addition, if a portion of the Work is performed from a barge or a ship or requires unloading Materials from a barge or a ship on a navigable waterway of the United States, the Contractor shall arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act, 33 U.S.C. Section 901, et seq., and the Jones Act, 5 U.S.C. Section 751, et seq. and shall provide proof of such coverage to the City. Comprehensive Automobile Liability Insurance shall cover owned, non-owned and hired vehicles.

112.02 Policy Limits. 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 may be used in combination with the Commercial General Liability and business Automobile insurance to meet such limits:

- (a) Policy Limits Commercial General Liability**
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Occurrence Limit
 - \$1,000,000 Personal and Advertising Injury Limit
 - \$100,000 Fire Legal Liability Limit
 - \$10,000 Medical Payments

- (b) Policy Limits Comprehensive Automobile Liability**
 - \$1,000,000 Bodily Injury & Property Damage Occurrence Limit

Contracts in the amount of one hundred thousand dollars or less shall require coverage in the amount of not less than two million dollars general aggregate and one million dollars per occurrence. Contracts in excess of one hundred thousand dollars, but not more than five million dollars shall require coverage in the amount of not less than three million dollars general aggregate and per occurrence. Contracts exceeding the amount of five million dollars shall require coverage in an amount to be determined by the Authorized Representative but in no case less than five million dollars general aggregate and per occurrence. Such policies shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's Projects. By requiring such insurance and insurance limits herein, the City does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the City.

112.03 Explosion, Collapsed and Underground Insurance. For any demolition, excavating, tunneling, shoring or similar operations, the Contractor shall purchase and maintain Explosion, Collapse and Underground (XCU) coverage with a limit of liability equal to such limit as specified in 112.02. In addition, if blasting is to be performed, the Contractor shall purchase and maintain XCU coverage providing a minimum Aggregate Limit of 5,000,000 dollars and Each Occurrence Limit of 1,000,000 dollars.

112.031 Pollution Liability Insurance. If required by the Contract Documents, Contractor shall purchase and maintain pollution liability insurance with a limit for any one incident of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000.

112.032 Completed Operations Insurance. Contractor shall purchase and maintain completed operations coverage to cover such claims for bodily injury or property damage arising out of the Contractor's completed operations, which coverage shall be maintained for no less than five (5) years following final payment.

112.04 Builder's Risk Insurance. 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 falsework, temporary buildings and Structures 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 the direct physical loss of or damage to 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 City's services and expenses required to limit further loss. 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. The builder's risk policy shall protect both the Contractor and the City from loss and provide coverage for Materials in transit or stored off site and identified for the Project. Coverage for other perils may be required if specified in the Special Provisions.

112.05 Coverage Amount. Unless otherwise specified in the Contract Documents, the builder's risk policy shall be written in the amount equal to one hundred percent of the Contract price, including landscaping, paving and other sitework. The builder's risk policy shall specifically permit and allow for partial occupancy by the City prior to Final Acceptance of the Project by the City.

112.06 Railroad Protective Insurance. Where the Contract requires railroad Protective Insurance and no specific Bid item is provided in the Proposal for the payment of the premium therefore, the cost of such insurance shall be included in the various other Bid items in the Contract.

112.07 Insurance Policy Requirements. Each policy of insurance required to be purchased and maintained by the Contractor shall be obtained from an insurance company authorized by the Ohio Department of Insurance to do business in the State and shall name the City as an additional insured or loss payee, as applicable; provided, however, that such designation shall not cause any claim between the Contractor and the City to be waived except as set forth in 112.09. Each policy and the respective certificate of insurance shall expressly provide that no less than thirty Days prior written notice shall be given to the City 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 City shall be covered notwithstanding any action, omission or negligence of the Contractor. Each policy shall be primary and non-contributory. Each policy must include contractual liability insurance covering the Contractor's indemnity obligations. The Contractor shall furnish the City, 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 City 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. Except for its completed operations insurance, 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. The Contractor shall require all Subcontractors to provide Workers' Compensation, CGL, and Automobile Liability insurance with the same minimum limits specified herein, unless the Owner agrees to a lesser amount and require the City be named as an additional insured and/or loss payee under such policies. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract. If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under these Specifications, the Owner may, but shall not be obligated to, upon three (3) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand. Insurance policies required to be purchased and maintained by the Contractor may include a reasonable loss deductible and exclusions, which shall be the responsibility of the Contractor to pay in the event of loss. 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 City.

112.08 Renewal Certificates. If the Contractor provides certificates of insurance showing expiration prior to the date of final completion, the Contractor shall provide new certificates to the City showing continuing coverage prior to expiration.

112.09 Waivers of Subrogation. The City 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 Item 112 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the City as fiduciary.

ITEM 113 INDEMNIFICATION

113.01 Indemnification for Injury or Damage

113.02 Indemnification for Patent or Copyright Use

113.01 Indemnification for Injury, Damage or Breach of Contract. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, the Engineer, any participating railroad or railway company, any property Owner or lessee of adjacent property, or utilities and any private Person providing financing for the Project, 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, including but not limited to all fees and charges of design professionals, attorneys, and other professionals and all court, arbitration, or other dispute resolution costs, arising out of or resulting from any claim or action, legal or equitable, caused or alleged to have been caused by the Contractor's performance of the Work or any breach of the Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

In the event of any such injury, including death, or loss or damage, or claims therefore, the Contractor shall give prompt notice thereof to the Engineer and the Authorized Representative. 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. The indemnification obligations of the Contractor under this 113.01 shall not extend to the liability of the Engineer, the Engineer's officials, consultants, agents, representatives or employees for negligent preparation or approval of Drawings, specification, Change Orders, opinions, and any other responsibility of the Engineer, except to the extent covered by the Contractor's insurance.

113.02 Indemnification for Patent or Copyright Use. To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend the City and the 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.

ITEM 114 CONTRACTOR PAYMENT

- 114.01 Contract Cost Breakdown**
- 114.02 Contractor Payment Request**
- 114.03 Payment Date**
- 114.04 Labor Payments**
- 114.05 Material Payments**
- 114.06 Retainage**
- 114.07 Retainage Reduction with Consent of Surety**
- 114.08 Payments Withheld**
- 114.09 Payments Detained**
- 114.10 Measurement of Quantities**
- 114.11 Final Payment Request**
- 114.12 Final Payment Date**
- 114.13 Waiver of City's Claims**
- 114.14 Waiver of Contractor's Claims**

114.01 Contract Cost Breakdown. The Contractor shall submit to the 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 in the format used by the Engineer in developing the Specifications. The grand total shown on the Contract Cost Breakdown must equal the total Contract price. The City reserves the right to use the approved Contract Cost Breakdown to determine the cost or credit resulting from any change in the Work. The first item should be actual aggregate cost of Contract Bond, insurance, permits and tests required for the Work. 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. Whenever the material allocation exceeds fifty-five percent of the Contract price, the Contractor shall provide, upon request, sufficient information to support such higher percentage. Subcontract Work shall show amounts for labor and Materials. Fringe benefits shall be shown as a part of labor costs. When more than one major Structure is included in the Contract, the Contract Cost Breakdown shall be subdivided accordingly if requested by the Engineer, with cost details for each Structure shown separately. A line item shall be included for commissioning, Punch List Work, Project record document submittals, delivery of inventory and specified training. 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. No payment will be made without an approved Contract Cost Breakdown.

114.02 Contractor Payment Request. The Contractor shall submit monthly to the Engineer an itemized Payment Request for Work performed based upon the Contract Cost Breakdown on a form satisfactory to the Authorized Representative. The Contractor Payment Request shall be supported by documentation substantiating the Contractor's right to payment. The Contractor shall supply any additional documentation the Engineer may request in connection with each payment to the Contractor. Certified payroll reports for the period of time indicated shall be attached to one copy of every Payment Request. The Contractor shall list on the Contractor Payment Request any approved Change Orders processed and performed during the time covered by the Payment Request.

114.03 Payment Date. Payment of an approved Payment Request shall be made within thirty Days from the date of approval by the Engineer. The City reserves the right to require proof of the renewal of required insurance as a condition precedent to payment. Payments due and not paid to the Contractor within such thirty Day period shall bear interest from the date payment is due under the Contract Documents at the rate paid by the STAR Account in accordance with 120.04. The amount of Liquidated Damages to which the City is apparently entitled under the Contract Documents may be deducted from any Payment Request by the Engineer and the Authorized Representative.

114.04 Labor Payments. Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of ninety percent of the amount invoiced through the Payment Request which shows the total Contract Completion at fifty percent or greater. After the Contract is fifty percent complete, as evidenced by payments in the amount of at least fifty percent of the Contract price to the Contractor, partial payments for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of ninety-five percent of the amount involved.

114.05 Material Payments. Through the Payment Request which shows total Contract Completion at fifty percent or greater, the City shall pay to the Contractor a sum at the rate of ninety percent 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 Engineer, provided the Contractor provides the following information with the Payment Request:

- (a) 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;
- (b) A certification of Materials stored off site, prepared by the Contractor and signed by the 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 Engineer to visit a storage site, other than the areas adjacent to the Project, shall be paid by the Contractor.

After the Contract is fifty percent complete, as evidenced by payments in the amount of at least fifty percent of the Contract price to the Contractor, partial payments for Materials furnished under either a Unit Price or lump sum Contract shall be made at the rate of ninety-five percent of the amount involved. 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 City, 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 such material not ultimately incorporated into the Project may, at the option of the City, be retained by the City or returned to the Contractor for credit to the City of a proportionate amount. Completed line items concealed, underground and buried and not subject to final Punch List may be paid for at the rate of one hundred percent. Such completed line items subject to a final Punch List requiring testing or start-up shall be paid at the rate of ninety-eight percent.

114.06 Retainage. The City will not deposit retainage in any escrow account and will not pay interest on retainage. Any contrary provisions of 153.12, 153.13, 153.14 and 153.63, ORC, do not apply to this Contract. Payment of retainage to the Contractor shall not be due until thirty Days after approval of a final Contractor Payment Request by the City and execution of the Certificate of Contract Completion by the City. Any reduction or release of retainage, or portion thereof, shall not be a waiver of the City's right to retainage in connection with other payments to the Contractor, or any other right or remedy the City has under the Contract Documents, at law or in equity.

114.07 Retainage Reduction with Consent of Surety. Upon consent by the Contractor's Surety, the City may reduce the amount of funds retained for the faithful performance of Work by fifty percent 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:

- (a) Completion of the Work;
- (b) All interference, disruption, hindrance, delay and impact claims;
- (c) All Liquidated Damages; and
- (d) All additional expenses incurred by the City.

114.08 Payments Withheld. The Engineer shall have the authority to recommend to the City that payments be withheld from, or Liquidated Damages be assessed against and withheld from, a Payment Request, stating the reasons for such recommendation. The City 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 Payment Request, in whole or in part, to such extent as may be necessary in the Authorized Representative's opinion to protect the City from loss because of:

- (a) Defective Work not remedied;
- (b) Damage caused by the Contractor;
- (c) Failure to comply with the requirements of Sections 4115.03 to 4115.22, ORC or the Davis-Bacon Act as applicable; and/or
- (d) Liquidated Damages.
- (e) Other damages the City has incurred or is expected to incur due to Contractor's fault.

If a basis for withholding payment is removed, payment shall be made for the amount withheld because of the basis.

114.09 Payments Detained. Whenever the City receives a Claim Affidavit, the Authorized Representative shall detain the stated amount from the Contractor's subsequent Payment Requests unless the Contractor provides a release and waiver of lien with a Payment

Request. 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 claim against the Contractor's proceeds. If the City 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 the existing lien law.

114.10 Measurement of Quantities. For all Contracts, except lump sum Contracts, after an item of the Work is completed and before final payment is made by the City, the Engineer will determine the quantities of various items of Work performed as the basis for final payment. The Contractor, in case of Unit Price items, will be paid as provided in 103.19. After issuance of a Certificate of Contract Completion in accordance with 115.05, the Engineer shall prepare a final estimate for payment based on the actual quantities of completed Work and deducting there from all previous payments made to the Contractor. Any prior estimate is subject to correction in the final estimate.

114.11 Final Payment Request. 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 115.06 for approval by the Engineer with the Contractor's final Payment Request.

114.12 Final Payment Date. Payment of the final Payment Request shall be made within thirty Days from the date of approval by the Engineer unless the City has reason to withhold amounts pursuant to the terms of this Agreement. Payments due and not paid to the Contractor within such thirty Day period shall bear interest from the date payment is due under the Contract Documents at the rate paid by the STAR Account in accordance with 120.04.

114.13 Waiver of City's Claims. The making of final payment by the City shall constitute a waiver of claims by the City except those relating to unresolved claims of the Contractor or the City and those arising after Contract Completion including, without limitation, the following:

- (a) Defective or nonconforming Work;
- (b) Error by Contractor;
- (c) Outstanding liens, claims, security interests, or other encumbrances arising out of the Contract Documents and unsettled;
- (d) Failure of the Contractor to comply with any warranties or Guarantees required by the Contract Documents;
- (e) audits performed by the City after final payment;
- (f) any claims, damages, losses, or expenses for indemnification under Item 113;
- (g) Inadvertent overpayment by the City.

114.14 Waiver of Contractor's Claims. The acceptance of final payment by the Contractor shall constitute a waiver of all claims against the City except those that the Contractor has previously made in writing in accordance with 118.01 through 118.11 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.

ITEM 115 FINAL INSPECTION AND ACCEPTANCE

- 115.01 Contractor's Request**
- 115.02 Engineer's Punch List**
- 115.03 Completion and Correction of Punch List Items.**
- 115.04 Deferred Items**
- 115.05 Certificate of Contract Completion**
- 115.06 Project Record Document Submittals**
- 115.07 Record Drawings**
- 115.08 Guarantee**
- 115.09 Warranty**
- 115.10 Exercise of Guarantee or Warranty**
- 115.11 Final Cleaning**
- 115.12 Final Cleaning Remedies**
- 115.13 Work After Final Cleaning**

115.01 Contractor's Request. When the Work or a designated portion thereof, is nearly complete, the Contractor shall submit a request for a Final Inspection of the Work ("the "Final Inspection") to the Engineer in writing.

115.02 Engineer's Punch List. The Engineer shall, within seven 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. Upon acceptance of the Contractor's request, the Engineer shall conduct the Final Inspection to determine whether the Work or the designated portion thereof, is in conformity with the Contract Documents. The Engineer shall notify the Contractor and the Authorized Representative of the scheduled time of the Final Inspection. Within three Days of the Final Inspection, the Engineer shall notify the Contractor of any items of Work remaining in a Defective, incomplete or unacceptable condition. The list of such items shall be known as the Engineer's Punch List.

115.03 Completion and Correction of Punch List Items. Within fourteen Days of receipt of the notice required by 115.02, the Contractor shall complete and correct all items on the Engineer's Punch List. If the Contractor does not complete the items on the Engineer's Punch List within fourteen Days of receipt of the notice, the provisions of 105.02 may be invoked. If the Work on the Engineer's Punch List cannot be completed within fourteen Days of receipt of the notice, the Contractor shall justify to the reasonable satisfaction of the Engineer the reasons the items cannot be so completed, and the Contractor shall propose, for approval of the Engineer, a time when such items will be completed. If the Contractor fails to timely correct the items on the Punch List, the City, in its discretion, may perform the Work by itself or others and the cost thereof shall be charged against the Contractor. If the balance of the Contract price is insufficient, the Contractor and/or its surety will pay the Owner the balance on demand. The Contractor's warranties and obligations under the Contract Documents shall remain in full force and effect and cover any remedial work even if performed by others. Failure of the Engineer to include any items on the Engineer's Punch List shall not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents. If multiple inspections of items on the 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 the Contractor, other Persons, the Engineer and the City resulting from any attendant delay.

115.04 Deferred Items. With the approval of the 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.

115.05 Certificate of Contract Completion. When all items on the Engineer's Punch List have been corrected to the satisfaction of the Engineer and the provisions of 115.06 through 115.14 have been fulfilled, the Engineer shall process a Certificate of Contract Completion for execution by the Authorized Representative. The City reserves the right of Final Acceptance of the Project.

115.06 Project Record Document Submittals. 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 Engineer for approval, which may include, without limitation:

- (a) Certificate of occupancy, if required;
- (b) Any inspection certificates required such as pressure piping, elevator, boiler, electrical, plumbing or piping purification;
- (c) Letter of Approval for fire suppression system, if required;
- (d) Any 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;
- (e) Neatly and accurately marked sets of As-built Drawings and other Contract Documents reflecting the actual construction of the Project;
- (f) Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;
- (g) Assignment to the City of all warranties and guaranties, including the most recent address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;
- (h) An affidavit from the Contractor to certify that all Subcontractors and Material Suppliers have been paid in full for all Work performed or Materials furnished for the Project and an affidavit from each Subcontractor and Material Supplier that the Subcontractor or Material Supplier has been paid in full for all Work performed or Materials furnished for the Project;
- (i) Final certified payroll reports;

(j) Affidavit to certify that the Contractor and an affidavit from each Subcontractor to certify that the Subcontractor has complied with all requirements of Sections 4115.03 to 4115.22, ORC, or the Davis-Bacon Act, as applicable.

115.07 Record Drawings. Unless otherwise provided in the supplemental Specifications or Special Provisions, upon completion of the Work on Projects administered by the Water Engineering Manager of the City's Department of Water or administered by the Chief Engineer of the Department of Aviation, 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 Engineer. The Engineer shall revise the original Contract drawing tracings or computer files with the information contained on the As-built Drawings provided by the Contractor and create the Record Drawings. The City may thereafter use the As-built Drawings for any purpose relating to the Project including, without limitation, additions to or completion of the Project.

115.08 Guarantee. The Contractor shall provide a Guarantee to the City that all Work is in conformity with the Contract Documents and free from defects in workmanship, Materials and Equipment for full period permitted under Ohio law. The Contract Bond shall remain in effect for the full Guaranty period, unless the Contractor shall provide a Maintenance Bond in form and substance and from a Surety satisfactory to the City. 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. The Guarantee time period for any incomplete or uncorrected Work at the time of Partial Occupancy or Use, if any, shall commence with the date of approval of the Certificate of Contract Completion by the Authorized Representative, unless otherwise provided in writing. The Guarantee provided in this 115.08 shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy provided by law or by the Contract Documents.

115.09 Warranty. The Contractor shall, prior to installing material or Equipment which is subject to a Warranty, provide a copy of the Warranty to the Engineer for review and approval.

115.10 Exercise of Guarantee or Warranty. If defects in workmanship, material or Equipment become apparent within the applicable Guarantee or Warranty period, the Authorized Representative shall notify the Contractor in writing and provide a copy of the notice to the Engineer. Within ten Days of receipt of the notice, the Contractor shall visit the Project in the company of a representative of the City to determine the extent of all defects and shall promptly repair or replace the defects, including all adjacent property damaged as a result of such defects or as a result of remedying the defects. 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 Day of receipt of the notice. The Contractor shall be fully responsible for the cost of and all expenses associated with temporary Materials or Equipment required during the repair or replacement of the defects, including without limitation labor, permits and other incidentals. If the Contractor does not promptly repair or replace the defects, the City may repair or replace the defects and charge the cost thereof plus any Consultant and attorney fees incurred by the City in enforcing its Guaranty or warranty rights to the Contractor or the Contractor's Surety. 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 the remainder of the original Guarantee time period.

115.11 Final Cleaning. 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 and adjacent property of all dust, mud, waste Materials, and rubbish attributable to the Work and shall remove any temporary controls required pursuant to the storm water pollution prevention plan and permit.

115.12 Final Cleaning Remedies. Final cleaning shall be done to the satisfaction of the Engineer and the Authorized Representative. If the Contractor fails to clean up at completion of the Work, the provision of 105.02 may be invoked. If a dispute arises as to responsibility for final cleaning, the Engineer may employ City employees or engage a qualified cleaning company, to perform the clean up and deduct the cost from amounts due to the Contractor as the 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 118.01 through 118.11.

115.13 Work After Final Cleaning. If any Work is performed after a final cleaning by the Contractor, the Contractor shall clean any affected area again as provided in 115.11 and 115.12 so that upon Contract Completion, the Project shall be left ready for occupancy or utilization by the City.

ITEM 116 TIME

116.01 Time of Essence

116.02 Time Extensions

116.03 Critical Path

116.04 Extension Sole Remedy

116.05 Time for Contract Completion

116.06 Liquidated Damages

116.01 Time of Essence. 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 Construction Schedule and Project Schedule, if applicable, that any specified milestone completion dates are, reasonable taking into consideration the usual weather and other conditions prevailing in the locality of the Project. The Contractor agrees that the Notice to Proceed shall establish the date for commencement of the Work. The Contractor agrees that the City has entered into, or may enter into, agreements or representations for use of all or part of the Project based upon the Contractor achieving Final Acceptance within the time for Contract Completion. The Contractor agrees that the Work will be prosecuted in a reasonable, efficient and economical sequence, in cooperation with the Engineer and in the order and time as provided in the current Construction Schedule and Project Schedule, if applicable. The Contractor shall perform the Work so as not to interfere with, disrupt, hinder, delay or impact the Work of other Persons on the Project and of such other Persons' Subcontractors and Material Suppliers. 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 City and that the sole remedy for such interference, disruption, hindrance, delay or impact shall be an extension of time granted pursuant to 116.02, except where the Contractor establishes such interference, disruption, hindrance, delay, or impact was proximately caused by an improper action or failure to act by the Owner, in which case the Contractor may be entitled to additional compensation.

116.02 Time Extensions. 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 Engineer, has been caused by the interference, disruption, hindrance, delay, or impact in the Work:

- (a) 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; or
- (b) Due to any unforeseeable cause beyond the control and without fault or negligence of the Contractor;
- (c) The Contractor shall request any extension of time pursuant to 117.01 through 117.11.

116.03 Critical Path. 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 Construction Schedule is affected, or if the Project involves multiple Contractors the extent to which Work on the critical path of the Project Schedule is affected. 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 or delayed and that remaining milestone completion dates will not be altered and may further provide for adjustment of Liquidated Damages.

116.04 Extension Sole Remedy. Any extension of time granted pursuant to 116.02 shall be the sole remedy which may be provided by the City, unless Contractor has established that a delay was proximately caused by an improper action or failure to act by the Owner, in which case Contractor may be entitled to additional compensation. . It is within the contemplation of the Contractor and the City that the Contractor may accelerate its performance to meet the Construction Schedule and that such acceleration is solely within the discretion of the Contractor.

116.05 Time for Contract Completion. The Contractor shall diligently prosecute the Work and shall complete all Work so that Final Acceptance occurs on or before the number of consecutive Days set forth in the Contract Documents following the date set forth in the Notice to Proceed, unless the Contractor timely requests and the City grants an extension of time in accordance with the Contract Documents. The period of time established by the preceding sentence is referred to herein as the time for Contract Completion. Each applicable portion of the Work shall be completed upon the respective milestone completion date unless the Contractor timely requests and the City grants an extension of time in accordance with the Contract Documents.

116.06 Liquidated Damages. Upon failure to complete all Work within the time for Contract Completion, the City shall be entitled to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every Day thereafter until Contract Completion, unless the Contractor timely requests and the City grants an extension of time in accordance with the Contract Documents.

LIQUIDATED DAMAGES	Contract
Contract Amount	Completion
\$0 to \$50,000	\$150
more than \$50,000 to \$150,000	\$250
more than \$150,000 to \$500,000	\$500
more than \$500,000 to \$2,000,000	\$1,000
more than \$2,000,000 to \$5,000,000	\$2,000
more than \$5,000,000 to \$10,000,000	\$2,500
more than \$10,000,000	\$3,000

The amount of Liquidated Damages is agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of ascertaining the actual amount of damage the City, its taxpayers and the public would sustain. Liquidated Damages only replace the City's actual damages for delays, are not the City's exclusive remedy for breach by the Contractor and are not to be construed in any way as a limitation of any other rights or remedies available to the City under the Contract Documents or otherwise. If a delay of the critical path in

completion of the Project occurs which is caused by the City and the Contractor concurrently, the applicable Liquidated Damages shall be apportioned, and the specific number of Days for which the City is solely responsible for shall be deducted from the total number of Days of the concurrent delay used in calculating the Liquidated Damages and the Contractor shall pay Liquidated Damages for the remaining number of Days of delay. In addition to the amounts specified above, the City may charge the Contractor for all inspection regardless of any time extension.

ITEM 117 - CHANGES IN THE WORK

- 117.01 Change Order
- 117.02 Payment of Change Order
- 117.03 Requirement to Perform Changed Work
- 117.04 Change Order Price Determination
- 117.05 Change Order Procedures
- 117.06 Change Order Process
- 117.07 Paperwork Consolidation
- 117.08 Change Order Numbering System
- 117.09 Project Contingency Funds
- 117.10 Change Order Pricing Guidelines
- 117.11 Differing Site Conditions
- 117.12 Time Extension

117.01 Change Order. The City Commission 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 116.04. To the extent the time for Contract Completion or the Contract price is affected, the Contract may be adjusted by Change Order in accordance with 117.01 through 117.12. The Contractor shall proportionately increase the amount of the Contract Bond whenever the Contract price is increased. 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.

117.02 Payment of Change Order. The Contractor shall not proceed with any change in the Work without the required written Change Order. If the Contractor believes that any item is not Work required by the Contract Documents or reasonably inferred therefrom to produce the intended results, the Contractor shall obtain a Change Order before proceeding with such item. Except as provided in 118.01 through 118.11, failure to obtain such a Change Order shall constitute a waiver by the Contractor of any claim for additional compensation for such item. The Contractor understands and agrees that agreement to a Change Order is final and without reservation of any rights.

117.03 Requirement to Perform Changed Work. 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 in accordance with 117.04; provided, however, the Contractor may seek compensation and time extension in accordance with 117.04 and 117.10 through 117.12, as applicable, and 118.01 through 118.11 for any such Work performed. The City reserves the right to cancel or modify any Change Order authorization.

117.04 Change Order Price Determination. The maximum cost or credit resulting from a change in the Work shall be determined as provided in 117.04 through 117.10. Proposals which do not set forth all information required by 117.05 and 117.10 will not be considered or accepted under any circumstances. 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, included

in the Contract price and which does not exceed the scheduled quantities on the Bid may be performed and paid for without a Change Order. 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. The maximum cost or credit as determined by 117.10 includes all compensation for direct, indirect, and cumulative impact costs and no additional or other amounts for impact costs shall be allowed. The Contractor shall not assign any portion of the Work to another whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit. If no agreement can be reached between the Contractor and the City 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 Engineer. The Contractor shall proceed with the Change Order Work when so required by the Authorized Representative in writing. The Contractor may dispute the Authorized Representative's determination of the cost or credit by filing a claim in accordance with 118.01 through 118.11. The City reserves the right to require certified payrolls for labor costs and certified invoices for material costs, together with any other documentation the City deems in its sole discretion to be useful in analyzing the Contractor's claim and reserves the right to audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers. Failure by the Contractor to provide all requested documentation within 10 days shall constitute an irrevocable waive of Contractor's claim.

117.05 Change Order Procedures. The Contractor must be certain to comply with the applicable procedures or payment may be delayed or denied. The Engineer has responsibility for:

- (a) Preparing, reviewing, recommending, coordinating, monitoring and processing a Change Order and related documents;
- (b) Reviewing the Contractor's pricing within the stated time period, verifying the pricing complies with the pricing guidelines set forth in 117.10 and negotiating pricing, if necessary, to an amount acceptable to the City;
- (c) 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 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 described therein, and provide a signed copy of the daily records to the Authorized Representative. The signed daily records are also to be attached to the Change Order. If the changed Work should cost less than the maximum amount noted on the Change Order, the Engineer is also responsible for preparing a deduct Change Order for the cost difference;
- (d) Reviewing and resolving the Contractor's request for an extension of time related to a Change Order in accordance with 116.01 through 116.06 and 117.12;
- (e) Confirming that the City concurs with the change and has available funds or a written commitment for funding the Change Order;

(f) Monitoring the overall Change Order process for timeliness and follow up.

The Contractor has responsibility for:

(a) Responding to requests for pricing within the stated time period;

(b) 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 set forth in 117.10 or Unit Prices, as applicable, and negotiating pricing, if necessary;

(c) If the change is proposed to have a not-to-exceed price based on performing the Work on a time and material basis or other cost plus basis, furnishing and certifying detailed records of all labor, Materials and Equipment 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;

(d) Proceeding with the Work upon receipt of a fully signed Change Order;

(e) If the Contractor performs Work without the appropriate, required Change Order, the Contractor does so at the Contractor's own risk that payment for such Work may not be approved or made, unless the City has required the Contractor to perform the Work in accordance with 117.03 and 117.04;

(f) Providing the changed Work in a timely manner and as authorized by the Change Order, all in accordance with the requirements of the Contract Documents; and

(g) Timely providing to Engineer and the Authorized Representative all requested backup documentation.

117.06 Change Order Process. When a change to the Work is ordered, the Engineer shall:

(a) 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 estimate for the Work;

(b) Prepare a detailed scope of Work in Bulletin form, including any necessary Drawings;

(c) Submit the Bulletin to the Authorized Representative for approval, along with a justification letter indicating the reason for the change in the Work;

(d) Upon receipt of approval by 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 Engineer within the time specified, or as otherwise agreed to in writing by the Contractor and the Engineer, the Contractor shall be responsible for any additional costs incurred by the Contractor, the Engineer and the City resulting from any attendant delay;

(e) Review the Contractor's Proposal, verifying that pricing complies with the pricing guidelines set forth in 117.10 or Unit Prices, as applicable, and negotiate the price if required to obtain a price less than the maximum established by the pricing guidelines or different from the amount calculated using Unit Prices where appropriate. Within seven Days of receipt of the Contractor's Proposal, the 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 to in writing by the Contractor and the Engineer shall cause the Contractor to be responsible for any additional costs incurred by the Contractor, the Engineer and the City resulting from any attendant delay;

(f) 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 material 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 117.10 or Unit Prices, as applicable. Review any requested time extension with the Authorized Representative to be determined according to 116.01 through 116.06 and 117.12 and obtain written recommendation of approval of the Change Order from the Engineer and the applicable Director if other than the Engineer. Sign and obtain the Contractor's signature on the Change Order;

(g) Submit the Proposal to the Authorized Representative or the City Commission, as applicable, for approval along with the written recommendation of approval or disapproval of the Proposal of the City Engineer and other City Department head, if applicable;

(h) 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 Engineer. The Contractor may bill for Work covered by the Change Order only after this final step.

117.07 Paperwork Consolidation. Related transactions occurring at or about the same time shall, whenever possible, be consolidated into the same Bulletin or Change Order, or both. Add and deduct items may be included on the same Change Order, as well as items with different reasons for changed Work so long as the reason and pricing for each item is separately stated.

117.08 Change Order Numbering System. Unless otherwise provided in the Contract Documents, the 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 Engineer will establish and maintain a Change Order log to track all activities related to Change Order processing and taking care not to duplicate or reuse any Change Order number throughout the Project.

117.09 Project Contingency Funds. 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. Change

Orders for which there are sufficient moneys in the Contract price including the Project Contingency Funds must be approved by the Engineer and the Authorized Representative. Change Orders which would increase the Contract price must be approved by the City Commission.

117.10 Change Order Pricing Guidelines. 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 and the Contract price, the Engineer may also require incorporation of such Unit Prices or preparation of an Alternate Proposal incorporating such Unit Prices. These pricing guidelines are intended to establish the maximum amount which the City will pay for any Change Order, including without limitation all amounts for interference with, delay, hindrance, disruption or impact of the Work. A Change Order may provide that the City may pay less than the amount established by these pricing guidelines if such amount is negotiated by the Engineer in accordance with 117.06 or is determined in accordance with 118.01 through 118.11. As provided in 114.01 the Contract Cost Breakdown may be used by the City 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. The pricing guidelines are:

- (a) **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 Work on a time and material basis or the cost-plus basis Work shall submit certified payroll records for all employees performing that Work;
- (b) **FRINGES** - All established payroll taxes, assessments and fringe benefits on the labor. 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 for each worker classification;
- (c) **EQUIPMENT RENTALS** - All charges for certain non-owned heavy or specialized Equipment at up to one hundred percent 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;
- (d) **OWNED EQUIPMENT** - All charges for certain owned, heavy or specialized Equipment at up to one hundred percent 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;

(e) 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;

(f) OVERHEAD - Overhead on items in 117.10 (a)-(d) up to ten percent, which shall include all costs required to schedule and coordinate the Work. 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 expense, legal services, travel and parking expenses; provided, however, shop or engineering labor, which shall not be subject to prevailing wage rates, for steel Fabricators, sheet metal Fabricators and sprinkler system Fabricators will be allowed under 117.10 (a)-(d);

(g) MATERIALS - 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. One-third of the cost of reusable Materials for each use, such as formwork lumber, shoring or temporary enclosures;

(h) PROFIT - Profit on items in 117.10 (a)-(g) up to ten percent;

(i) SUBCONTRACTOR - The reasonable cost of all labor and material provided by a Subcontractor whose pricing is included and which complies with these pricing guidelines;

(j) CONTRACTOR MARK-UP ON SUBCONTRACTOR - Mark-up on items in 117.10 (i) up to five percent or 2,500 dollars, whichever is less;

(k) MISCELLANEOUS - The following items are allowable as the cost of the Work, with no overhead or profit:

.1 Any additional bond or insurance premium specifically incurred as a result of the Change Order;

.2 Fees for permits, licenses, inspections, test, etc.; and

(l) Costs which will not be reimbursed for Change Order Work include the following:

.1 Overnight lodging, travel and food;

.2 Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed; and

.3 Voluntary Employee Deductions - examples are United Way and U.S. Savings Bonds.

(m) State sales tax shall be allowed on items as described in 104.18.

117.11 Differing Site Conditions. Subject to 103.06, during the progress of the Work, if subsurface or concealed conditions are encountered at the site differing materially from those indicated in the Contract Documents or if subsurface or concealed physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, the Contractor shall promptly notify the Engineer in writing of the specific differing conditions before they are disturbed or the affected Work is performed and if such notice is not possible, in no event later than 2 Business Days after Contractor first observed the conditions. Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, a Change Order may be issued in accordance with the 117.01 through 117.12, as applicable. The City may decline to issue a Change Order if the notice required by this 117.11 is not timely provided by the Contractor. If the Contractor fails to timely provide the notice required by this 117.11, the Contractor shall be deemed to have waived any and all claims for additional compensation or time extensions for the related subsurface or concealed physical condition.

117.12 Time Extension. 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 Construction Schedule or if the Project involves multiple Contractors of the Project Schedule as determined pursuant to 109.06 and 109.05, respectively. If extending the time for Contract Completion is not possible, the Contractor shall price, and separately state, all costs of accelerated performance in the Contractor's Proposal. 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. The Contractor shall not be entitled to any time extensions for delays caused by Contractor, its subcontractors, suppliers, normal weather conditions for the time of year and locality, or abnormal weather conditions that do not affect the critical path.

ITEM 118 DISPUTE RESOLUTION PROCEDURE

118.01 Notice and Claim Requirements

118.02 Filing of Notice

118.03 Filing of Claim

118.04 Claim Response

118.05 Claim Review and Decision

118.06 Appeal to Board of Review

118.07 Alternate Dispute Resolution

118.08 Delegation

118.09 Auditing of Claims

118.10 False Certification of Claims

118.11 Performance and Payment

118.01 Notice and Claim Requirements. 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 118.01 through 118.11. The Contractor acknowledges and agrees that the Owner may delay, interfere with, and/or disrupt the Work of the Contractor, and such actions do not constitute a material breach of contract by the Owner, since the Contractor is entitled to additional compensation by properly submitting and pursuing a Claim as permitted by these Specifications. To the fullest extent permitted by law, failure by the Contractor to follow the procedures in 118.01 through 118.11 is a waiver of any claim for additional time or compensation or for mitigation of Liquidated Damages. Compliance with all applicable procedures in 118.01 through 118.11 is a condition precedent to the filing by the Contractor of any litigation related to the Contract or the Project.

118.02 Filing of Notice. Unless a shorter notice period is provided elsewhere in this Agreement, the Contractor shall file notice of any claim with the Engineer, in writing, no more than ten Days after the initial occurrence of the events, which are the basis of the claim. To the fullest extent permitted by law, failure of the Contractor to timely and completely provide such notice shall constitute a waiver by the Contractor of any claim for additional time or compensation or for mitigation of Liquidated Damages. 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:

- (a) Nature of claim and estimated amount of the claim, including all costs for interference, disruption, hindrance, delay and any impact, which amount shall be calculated in accordance with the pricing guidelines set forth in 117.10, 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, as applicable;
- (b) Specific number of Days of extension requested and specific number of Days for remobilization requested;
- (c) Identification of Persons and events responsible for causing the claim, including without limitation the date or anticipated date, as applicable of the commencement of any interference, disruption, hindrance, delay or impact;

- (d) Identification of activities on the Construction Schedule and the Project Schedule, if applicable, which will or may be affected by the claim or new activities which will or may be created and the relationship with existing activities;
- (e) Anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay or impact and any remobilization period; and
- (f) Recommended action to avoid or minimize any interference, disruption, hindrance, delay or impact.

118.03 Filing of Claim. With respect to every claim submitted, the Contractor shall file three copies of its claim with the Engineer not more than thirty Days after the notice required by 118.02 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:

- (a) 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;
- (b) A quantification of the planned Work items and the changed scope of Work items claimed as having been impacted;
- (c) A time impact analysis, consistent with standard critical path methodology for scheduling, demonstrating the impact to the Contractor's scheduled activities;
- (d) Copies of the Contractor's daily log for each Day of impact;
- (e) Copies of relevant correspondence and other information regarding or supporting Contractor entitlement;
- (f) Copies of Contractor payroll records for labor impacts claimed by Contractor and any Subcontractor affected by the event or events;
- (g) Copies of invoices for material impacts claimed by the Contractor and any Subcontractor affected by the event or events;
- (h) Copies of Equipment records, or rental invoices, for any Equipment impacts claimed by the Contractor or any Subcontractor affected by the event or events;
- (i) Copies of the most recent Contractor's 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;
- (j) A copy of Contractor's original coded bid takeoff and estimating records that formed the basis of Contractor's bid;

(k) Contractor's coded Job Cost Report with a key to the coding;

(l) 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 City is liable in accordance with the Contract Documents, in particular the pricing guidelines set forth 117.10.

The City may request documents and information from the Contractor in addition to those listed in this 118.03, as the City determines necessary to evaluate and comment upon the Claim. Upon receipt of such request from the Owner, the Contractor shall provide all requested documents and information within ten (10) days. The Contractor shall provide the requested documents in the formats requested, which include both paper and electronic copies. If requested by the City, the electronic copies shall be provided in native computer language. The Contractor's provision of the requested documents to the City in the format requested by the City shall be a condition precedent to any further proceeding under the Contract Documents. Failure to provide the requested documents shall be a material breach of the Contract, and the Contractor shall indemnify the City for all of the City's costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the Contractor's failure to comply with this provision. If the Contractor fails to provide the requested documents, the Contractor shall be deemed to have irrevocably waived its claim.

118.04 Claim Response. Immediately upon receipt of any claim submitted by the Contractor in accordance with 118.03, the Engineer shall deliver 2 copies to the Authorized Representative. Upon submission of the claim by the Contractor, the Engineer shall convene a meeting with the Contractor and any applicable Subcontractors and Material Suppliers to review and discuss the claim. The 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 Engineer will commence review in accordance with 118.05. The Engineer shall document the timeliness of notice provided under paragraph 118.02 and the actual date of corrected submission of the claim.

118.05 Claim Review and Decision. Upon corrected submission of the claim and all requested documentation by the Contractor, the 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 117.10 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 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. The Engineer shall prepare and submit the claim analysis to the Authorized Representative within thirty Days of the corrected

submission of the claim. The Authorized Representative shall examine the Contractor's claim, and the analysis of the claim submitted by the 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 Engineer within thirty Days after receipt of the Engineer's claim analysis. The decision of the Authorized Representative shall be final and conclusive, unless the Contractor appeals the decision to the Board of Review in accordance with 118.06. In the event either the Engineer or the Authorized Representative fail to act in accordance with the foregoing schedule, the claim shall be deemed denied.

118.06 Appeal to Board of Review. The Contractor may appeal the decision of the Authorized Representative to the Board of Review by written notice to the Authorized Representative within ten Days of receipt of the Authorized Representative's decision or, in the absence of a decision, within 10 days of the expiration of the time set forth in 118.05. Failure by the Contractor to provide notice of an appeal within the said 10-day period shall result in the Engineer's decision becoming final and binding upon the Contractor. The Board of Review shall meet within thirty Days of receipt of the notice by the Authorized Representative. The Contractor shall be given an opportunity to present the claim at the meeting. The purpose of the meeting shall be to settle the issues in dispute. The Board of Review shall render a decision on the claim within thirty Days of the meeting unless a mutual agreement is made between the Contractor and the Board of Review to extend the time for decision. The decision of the Board of Review shall be final and conclusive, unless the Contractor provides written notice to the Authorized Representative of the Contractor's intention to file litigation within ten Days of receipt of the decision. The filing of an appeal and the provision of notice of intention to file litigation are each a condition precedent to the filing of any litigation related to the Project or the Contract by the Contractor and any failure by the Contractor to timely fulfill them will preclude the Contractor from filing any such litigation.

118.07 Alternate Dispute Resolution. If, upon consideration of a claim, the Contractor and the City mutually agree in writing, the dispute resolution procedure 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.

118.08 Delegation. No provision shall prevent the Board of Review or the Authorized Representative from delegating the duties or authorities of the Board of Review or the Authorized Representative to any third Person selected at the discretion of the Board of Review or Authorized Representative, as applicable.

118.09 Auditing of Claims. 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 City or by a consultant engaged by the City. The audit may begin on ten 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 City 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 City the following documents:

- (a) Daily time sheets and foreperson's daily reports;
- (b) Union agreements, if any and employer agreements;
- (c) Insurance, welfare, fringes and benefits records;
- (d) Payroll register;
- (e) Earnings records;
- (f) Payroll tax returns;
- (g) Material invoices, purchase orders, Subcontractor Contracts and all material and supply acquisition Contracts;
- (h) Material cost distribution worksheets;
- (i) Equipment records (list of Contractor Equipment, rates, etc.);
- (j) Vendor rental agreements, and Subcontractor invoices;
- (k) Subcontractor payment certificates;
- (l) Canceled checks (payroll and vendors);
- (m) Job cost reports;
- (n) Job payroll ledger;
- (o) 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;
- (p) Cash disbursements journal;
- (q) Financial statements for all years reflecting operations on the Project;
- (r) Income tax returns for all years reflecting operations on the Project;
- (s) Depreciation records on all Equipment utilized whether such records are maintained by the Contractor involved, its accountant, or others;
- (t) 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;
- (u) 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 years prior to the commencement of this Project;

(v) All documents related to the preparation of the Contractor's Bid, including the contemporaneous final calculations on which the Bid was based;

(w) 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;

(x) 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; and

(y) All other documents required by the City in its discretion to intelligently review the claim.

118.10 False Certification of Claims. The Contractor shall not knowingly present or cause to be presented to the Owner a false or fraudulent Claim. "Knowingly" shall have the same meaning as in Section 3729(b) USC of the Federal False Claims Act. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the Owner for the same civil penalty and damages as the United States Government would be entitled to recover under such Section 3729(a) USC and shall also indemnify and hold the City harmless from all costs and expenses, including the City's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages, and fees and expenses. If any Contractor falsely certifies all or any part of a claim, the portion of the claim so certified shall be denied. 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 ineligibility in future Bids for the award of any City Contract.

118.11 Performance and Payment. 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 City 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. If the Contractor accepts the decision of the Authorized Representative or the City Commission and foregoes litigation of the claim, any payment to be made, credit to be provided or extension of time to be granted pursuant to the decision shall be evidenced by a Change Order package consisting of a completed Change Order form signed by the Contractor, the Engineer and the Authorized Representative, a copy of the approval of the City Commission and any necessary supporting documentation and any payment shall be made pursuant to a Payment Request in accordance with 114.02 and 114.03 or 114.10 through 114.13, as applicable.

118.12 Settlement Offers. If the Contractor initiates a Claim, the City may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence. If at any stage of the litigation, including any appeals, the Contractor's Claim is dismissed or found to be without merit, or if the damages awarded to the Contractor on its Claim do not exceed the City's last settlement offer, the Contractor shall be liable to the City and shall reimburse the City for all of the City's attorneys' fees and expenses, and arising out of or related to such Claim since the date of such last settlement offer.

ITEM 119 CONTRACT TERMINATION

119.01 Notice to Surety

119.02 Suspension of Work

119.03 Termination for Convenience

119.04 Termination for Cause

119.05 Contractor Bankruptcy

119.01 Notice to Surety. The Authorized Representative shall provide notice to the Contractor's Surety of any Suspension or Termination pursuant to 119.01 through 119.05; provided, however, the failure to provide such notice shall not release the Surety from any of its obligations.

119.02 Suspension of Work. If, in the judgment of the Authorized Representative, the Contractor is causing undue risk of damage to any part of the Project or adjacent area, 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 may also suspend the Work either in whole or in part for a specified number of Days on account of public necessity, adverse weather conditions, or other similar reasons which are beyond the control of the Contractor. In case of such a suspension, an extension of time, if appropriate, may be allowed as provided in the Contract Documents but no payment will be made to the Contractor for any expense or damages resulting therefrom, except where Contractor has established that a delay was proximately caused by an improper action or failure to act by the Owner, in which case Contractor may be entitled to additional compensation. 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. 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 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. In the event of suspension, 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.

119.03 Termination for Convenience. The City may, at any time upon seven Days written notice to the Contractor, terminate the Contract in whole or in part for the City's convenience and without cause. 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:

- (a) Cease operation as specified in the notice;
- (b) 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;

- (c) Terminate all subcontracts and orders to the extent they relate to the Work terminated;
- (d) Proceed to complete the performance of any Work not terminated; and
- (e) Take actions that may be necessary, or that the Authorized Representative may require, for the protection and preservation of the terminated Work.

Upon termination for convenience, 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. 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 City. The Contractor may submit evidence of any reasonable expenses directly attributable to the termination of the Work for consideration by the City. The Contractor shall not be entitled to any profit or overhead for Work not performed and in no event shall the Contractor's compensation exceed the total Contract price. Any dispute as to the sum then payable to the Contractor shall be resolved in accordance with the provisions of 118.01 through 118.11.

119.04 Termination for Cause. If the City determines that the Contractor has failed to prosecute the Work with the necessary force or in a timely manner; failed to make payments to Subcontractors or Suppliers pursuant to the agreements between the Contractor and Subcontractors or Suppliers; disregards any applicable laws, statutes, ordinances, codes, rules, regulations, or lawful orders of a public authority; has refused to remedy any Defective Work; or is otherwise in substantial breach of the Contract Documents, 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 two Business Days of receipt of the notice. If the Contractor fails to continuously and diligently pursue and cure such failure or refusal within twenty Days of receipt of the notice, the City may, without prejudice to any of its other rights or remedies, 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. If the Contractor is so terminated, the Contractor's Surety may be given the option to engage another Contractor to perform the Contract, with the approval of the Authorized Representative. If the Contractor's Surety does not commence performance of the Contract within ten Days of the date on which the Contract was terminated, the City may complete the Work by such means as the Authorized Representative deems appropriate. The City may take possession of and use all Materials, facilities, and Equipment at the Project site or stored off site for which the City has paid. If the Contract is so terminated, the Contractor shall not be entitled to any further payment. If the City 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 Engineer and/or the City as a result of the termination, such excess shall be paid by the Contractor or the Contractor's Surety. 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 City to complete the Work. Upon a final determination, by a court of competent jurisdiction, that the termination pursuant to 119.04 was improper, the termination shall be deemed a termination for convenience pursuant to 119.03.

119.05 Contractor Bankruptcy. 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. In such event, Surety shall be immediately responsible for timely and property completion of the Work. Such termination of the Contract need not be evidenced by an order of any court rejecting the Contract. Upon a final determination, by a court having jurisdiction, that the termination was improper, the termination will be deemed to be a termination for convenience pursuant to 119.03.

ITEM 120 - AUDITS AND RECORDS

120.01 Examination

120.02 Termination and Disputes

120.03 Non-Disclosure by Contractor

120.04 Interest

120.01 Examination. The City 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. Such 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 years after the date of Final Acceptance of the Project by the City. To the extent that the Contractor, Subcontractor, or Material Supplier, as applicable, informs the City in writing that any documents copied by the City are trade secrets, the City shall treat such documents as trade secrets of the Contractor, Subcontractor, or Material Supplier, as applicable. In the event, 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 City against all costs, expenses and damages, including without limitation attorneys' fees, incurred or paid by reason of such dispute. The right of inspection, audit, and reproduction shall extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and Projections used therein.

120.02 Termination and Disputes. If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the City for a period of seven years from the date of any applicable final settlement or payment, as applicable. Records which relate to disputes, litigation, or settlement of claims arising out of the performance of the Work shall be made available until such dispute, litigation or settlement has been finally decided or settled.

120.03 Non-Disclosure by Contractor. 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 City, except as may be required by law or order of a court of competent jurisdiction.

120.04 Interest. Moneys owed to the Contractor by the City pursuant to the terms of the Contract Documents, which are not paid when due shall accrue straight interest at the rate paid by the STAR Account, from the date the moneys become due until the moneys are paid. Any contrary provisions of 153.12, 153.13, 153.14 and 153.63, ORC, do not apply to this Contract.