



**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

ADDENDUM NO. 1
ISSUED SEPTEMBER 30, 2021

to

RFP NO. 19-2021
FOR FIBER OPTIC AND ETHERNET NETWORK UPGRADE INSTALLATION SERVICES
ISSUED SEPTEMBER 22, 2021

PROPOSAL DUE DATE: 5:00 P.M. (EASTERN TIME), OCTOBER 13, 2021

ATTENTION OF RESPONDENTS IS DIRECTED TO:

QUESTIONS RECEIVED THROUGH 5:00 P.M. ON SEPTEMBER 28, 2021
AND
ADDITION TO RFP DOCUMENTS

APPENDIX C – MASTER INSTALLATION AND SERVICES AGREEMENT

Issued by the Ohio Turnpike and Infrastructure Commission through Aimee W. Lane, Esq., Director of Contracts Administration.

Aimee W. Lane

Aimee W. Lane, Esq.,
Director of Contracts Administration

September 30, 2021
Date

ANSWERS TO QUESTIONS RECEIVED THROUGH 5:00 P.M. ON SEPTEMBER 28, 2021:

Q#1 The Addendum wasn't with the list of attachments. When will this be sent out?

A#1 This Addendum No. 1 is issued on September 30, 2021, and includes Appendix C to the RFP, the form Master Installation and Services Agreement.

Q#2 Can you tell us what the amount of the bond will be and add any other details? Is this the same addendum as mentioned in our first question?

A#2 The Performance and Payment Bond must be in an amount equal to at least 100% of the contract's implementation cost plus any Change Orders. See Article 6, Bonds, of the Master Installation and Services Agreement which is attached to this Addendum No. 1.

End of Addendum No. 1

APPENDIX C

MASTER INSTALLATION AND SERVICES AGREEMENT

for

FIBER OPTIC NETWORK UPGRADE

between

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

and

[Insert complete legal name of Contractor here]

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MASTER INSTALLATION AND SERVICES CONTRACT
for
FIBER OPTIC NETWORK UPGRADE
between
OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION
and
[Insert complete legal name of Contractor here]

THIS MASTER INSTALLATION AND SERVICES CONTRACT (“Contract”) is made as of the last date written below (the “Effective Date”) between the **OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION**, located at 682 Prospect Street, Berea, Ohio 44017 (the “Commission”) and **[CONTRACTOR]** with its office located at [] (“Contractor”). The “Commission” and “Contractor” each may be referred to as a “Party” or collectively as the “Parties”.

RECITALS:

WHEREAS, the Commission desires to upgrade its fiber optic network which currently consists of 241 miles of outside fiber optic cabling connecting 55 Commission sites including, HQ administration building located in Berea Ohio, toll plazas, service plazas, maintenance buildings and small locations across the Commission’s geographic layout (“**Current Network**”); and

WHEREAS, the Commission desires to upgrade the Current Network and add three (3) new toll plazas to the network (the “Project”); and

WHEREAS, the Commission ordered the equipment necessary to complete the Project, separately from this Contract (“Ordered Equipment”); and

WHEREAS, the Commission issued Request for Proposal No. [] on [] for Fiber Optic Network Upgrade (the “RFP”) and Contractor timely submitted a proposal in response to the RFP; and

WHEREAS, Commission staff determined that Contractor’s proposal was the proposal that offers the best value in terms of price and service of those submitted and recommended to the Executive Director that Contractor be awarded the contract for the required services; and

WHEREAS, the Executive Director approved the recommendation to award the contract to Contractor for the required services and the Commission authorized this Contract under Resolution No. [], adopted []; and

WHEREAS, Contractor is a [*corporation/limited liability company*] engaged in the business of providing fiber optic network installation and implementation services in the State of Ohio, and is qualified to do business in the State of Ohio; and

WHEREAS, Contractor wishes to perform the work and provide the services to the Commission as more fully set forth herein including, without limitation, in the Work Scope.

NOW, THEREFORE, in consideration of the foregoing premises (incorporated herein) and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

ARTICLE 1 – DEFINITIONS

1.1 Definitions. The following terms, when used in this Contract with initial capitalization, shall have the meanings given below unless in any particular instance the context clearly indicates otherwise:

“**Affiliate**” means, with respect to a Party, any Person: (i) which such Party now or hereafter owns or controls directly or indirectly; (ii) which is owned or controlled by the same company or companies that own, directly or indirectly, a controlling interest in such Party; or (iii) which owns or controls, directly or indirectly, such Party. As used herein, “**control**” means direct or indirect possession of the power to direct or cause the direction of the management or policies of a legal entity, whether through ownership of voting securities, by contract or otherwise, and the terms “**controlled**” and “**controlling**” have meanings correlative to the foregoing.

“**Applicable Codes and Standards**” means the codes, standards or requirements set forth herein or in any Applicable Law, or which are set forth or listed in the design, drawings or specifications for the Project. In the event of an inconsistency or conflict between any of the Applicable Codes and Standards as contained in this Contract and any referenced attachment, exhibit, schedule or subcontract, the highest such performance standard shall govern Contractor’s performance under this Contract.

“**Applicable Law**” means any federal, state, or local statute, ordinance, rule, regulation, policy or guidance of any Governmental Authority or other body having jurisdiction over the Parties, the performance of the Work, the Services, or the Site(s) including, without limitation, any laws, regulations and rules relating to the environment or any health and safety. In addition, Applicable Law shall include any judicial or administrative order or judgment (whether or not by consent) and any provision or condition of any permit, license, or other operating authorization.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banking institutions in the State of Ohio are required to be closed.

“**Change Order**” means a written order issued by the Commission to Contractor after the execution and delivery of this Contract or a written instrument signed by both Parties after execution and delivery of this Contract in accordance with Article 7 that authorizes an addition to, deletion from, suspension of or other modification to the requirements of this Contract.

“**Changed Criteria**” has the meaning set forth in Section 7.1(A).

“**Contract**” has the meaning set forth in the Preamble to this Contract.

“**Commission**” has the meaning set forth in the Preamble to this Contract.

“**Commission’s Project Manager**” means that Person or Persons designated by the Commission in a written notice to Contractor who shall have authority to act on behalf of the Commission on matters pertaining to the Services and this Contract.

“**Contractor**” has the meaning set forth in the Preamble to this Contract.

“**Contractor’s Project Manager**” means Contractor’s designated authorized representative actively engaged in the supervision of the Services and in all matters relating to this Contract, who shall have authority to act on behalf of Contractor on matters pertaining to the Services and this Contract.

“**Contract Price**” means all amounts payable by the Commission to Contractor under Section 4.1.

“**Corrective Work**” has the meaning set forth in Section 12.2(B).

“**Current Network**” has the meaning set forth in the Recitals to this Contract.

“Data” means documentation, manuals, maps, plans, schedules, programs, specifications, calculations, software, reports, drawings, designs, diagrams and other relevant information and works of authorship.

“Effective Date” means the later of the date of execution by the Commission and Contractor of this Contract.

“Final Completion” has the meaning set forth in Section 5.4(A).

“Final Completion Date” means the date of Final Completion.

“Final Lien and Claim Waiver” means the waiver and releases provided to the Commission by Contractor and Subcontractors in accordance with the requirements of Section 5.4(A), which shall be in the form of Exhibit F.

“Force Majeure Event” means (i) an act of God, epidemic, pandemic, earthquake, flood, fire, tornado, or other unusual natural event of any kind affecting a Party that was not voluntarily induced or promoted by the affected Party and did not result from a breach of such Party’s obligations under this Contract or unlawful or negligent behavior by such Party, or (ii) acts of any Governmental Authority (not resulting from a violation, or failure to fulfill the requirements, of Applicable Law by the affected Party), or (iii) war, riot, civil disorder, terrorist act, embargo, strike (provided such strike is industry-wide or targeted to set an industry-wide pattern). Failure or delay to perform of any Subcontractor, inability to obtain or delay in obtaining Materials, or transport, lack of availability of laborers, Subcontractors or local materials, and economic hardship or changes in market conditions shall not be a Force Majeure Event as to a Party unless caused by a Force Majeure Event.

“Good Practices” means those practices, methods, equipment specifications, and standards of safety and performance, and that level of competence, care, skill and judgment, generally used by experienced and prudent contractors, engineers, manufacturers and professionals working in the same industry in the United States, lawfully and safely, and with due consideration for reliability, efficiency, operability and maintainability, and taking into account, as appropriate, the defined work plan and budget, and the recommendations and requirements of vendors of the Ordered Equipment.

“Governmental Authority” means any federal, state, or local governmental body, including any legislative, judicial, or executive body, or agency or subdivision thereof, in each case having jurisdiction to exercise authority or control over a Party or its agent or over any part of or all of the Services or the Site.

“Losses” has the meaning set forth in Section 15.1.

“Materials” means all materials and equipment furnished by Contractor and required for the completion of and incorporation into the Services.

Notice to Proceed” means a written notice to proceed with all of the Services on the Project, or with that portion of the Services identified in such notice (a partial Notice to Proceed).

“Ordered Equipment” has the meaning set forth in the Recitals of this Contract.

“Party” or **“Parties”** means the Commission and/or Contractor and their permitted successors and assigns.

“Permit” means any valid waiver, certificate, license, exemption, variance, franchise, permit, authorization or similar order from any Governmental Authority or other Person required to be obtained and maintained in connection with the Site or otherwise in relation to the Services.

“Person” means any individual, company, joint venture, corporation, partnership, association, joint stock company, limited liability company, trust, estate, unincorporated organization, Governmental Authority or other entity having legal capacity.

“Project” has the meaning set forth in the Recitals to this Contract.

“Project Schedule” means the schedule set forth in the Work Scope or otherwise approved by the Commission and Contractor in writing. The Project Schedule becomes the benchmark against which Project performance may be measured.

“Punch List” has the meaning set forth in Section 5.3.

“Response Period” has the meaning set forth in Section 12.2(C).

“Retention” has the meaning set forth in Section 4.5(A).

“Retention Amount” has the meaning set forth in Section 4.5(A).

“Representative” means, as to a Party, the directors, officers, employees, Affiliates, consultants, subcontractors, vendors, agents, or other representatives of such Party.

“Services” means the Work, design (if any), installation, scheduling, procurement (if any), permitting assistance, project management, construction, testing, training, and technical advisory services to be provided by Contractor under the Work Scope.

“Site” means the areas designated in the Work Scope at which the Services are to be performed.

“Subcontract” means an agreement by Contractor with a Subcontractor or by a Subcontractor with a lower tier Subcontractor for the performance of any portion of the Services.

“Subcontractor” means any vendor, subcontractor, materialman, laborer, agent or supplier of any tier providing services or work to Contractor for the purpose of performing the Services under this Contract.

“Substantial Completion” has the meaning set forth in Section 0.

“Substantial Completion Certificate” means a certificate signed by Contractor in the form of Exhibit E.

“Taxes” means any and all taxes, assessments, levies, duties, fees, charges and withholdings of any kind or nature whatsoever and howsoever described, including gross receipts, franchise, sales, use, value added, property, excise, capital, stamp, transfer, employment, occupation, generation, privilege, utility, regulatory, energy, consumption, lease, filing, recording and activity taxes, levies, duties, fees, charges, imposts and withholding, together with any and all penalties, interest and additions thereto, but excluding any taxes on the incomes of the Parties.

“Updated Project Schedule” means the most recent instance of the Project Schedule.

“Warranty” has the meaning set forth in Section 12.1.

“Warranty Non-Conformance” has the meaning set forth in Section 12.2.

“Warranty Period” has the meaning set forth in Section 12.1.

“Work” means all services, labor, materials, structures, supplies, Data, engineering, design, fabrication, installation, delivery, transportation, storage, inspection, and testing, each as applicable, together with miscellaneous expendable job supplies, installation-related equipment and tools, and any other services, work or things furnished or used or required to be furnished or used by Contractor and its subcontractors in the performance of this Contract including, any work performed pursuant to a warranty.

“Work Scope” means the work scope mutually determined by the Parties and attached hereto as Exhibit A, and such other matters as are mutually agreed by the Parties.

1.2 Entire Agreement; Modification. The terms and conditions set forth in this Contract (including all exhibits, schedules, and attachments hereto), in each case as they may be amended and supplemented from time to time by written agreement of the Parties, shall constitute the entire agreement between the Commission and Contractor with respect to the performance of the Services (including, Work), and supersedes any and all other prior understandings, correspondence and agreements, oral or

written, between them. This Contract may not be altered, amended, or modified in any way except by a written modification signed by all Parties in accordance with this Section 1.2 or except by a unilateral Change Order pursuant to Section 7.1(C).

The following attachments shall be made a part of this Contract:

Exhibit A – Work Scope

Exhibit B – List of Contractor’s Key Personnel

Exhibit C – Price

Exhibit D – Form of Escrow Agreement

Exhibit E – Form of Substantial Completion Certificate

Exhibit F – Form of Final Lien and Claim Waiver

1.3 Priority. The documents making up this Contract are intended to be complementary and mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (A) This Contract;
- (B) The Work Scope;
- (C) Contractor’s Technical Proposal (excluding any general terms and conditions or contract terms);
- (D) Contractor’s Pricing Proposal; and
- (E) Any other documents forming a part of this Contract.

The latest dated amendment or Change Order shall take precedence over that part of the foregoing documents that it supersedes. Either Party, upon becoming aware of any conflict or variance, shall promptly notify the other Party in writing. If the Parties are unable to resolve the conflict, the conflict shall be resolved pursuant to the dispute resolution provisions set forth in Section 18.8. If a document given a lower level of priority in this Section 1.3 contains additional or more detailed requirements than are contained in a higher-level document, the existence of such additional or detailed requirement does not, in itself, constitute a conflict.

ARTICLE 2 – RELATIONSHIP OF THE COMMISSION, CONTRACTOR, AND SUBCONTRACTORS

2.1 Status of Contractor. Nothing in this Contract shall constitute, be construed to be, or create a partnership, joint venture, or lease between Contractor and the Commission. Contractor and the Commission are independent contractors under this Contract. The Commission agrees that Contractor has the discretion to define the manner in which it performs the Services, including without limitation, each of the following: (A) determining the identity of its personnel who will perform the Services. In particular, the Commission recognizes that Contractor is under no obligation of any kind to interview or employ any Commission personnel to become Contractor employees; (B) setting the terms and conditions of employment for all Contractor personnel who perform the Services; (C) applying Contractor service policies or procedures with respect to the manner in which Contractor will provide the Services; and (D) exercising discretion with respect to the manner in which Contractor conducts its business operations in the Site. It is understood that neither Contractor nor its employees are construed as employees of the Commission for the purpose of the Public Employees Retirement System (“PERS”), Workers’ Compensation, or for any other purpose.

2.2 Subcontractors. Contractor may use Subcontractors to perform portions of the Services, which shall be performed pursuant to written Subcontracts between Contractor and such Subcontractors.

All Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades performing identical or substantially similar work and shall be approved by the Commission prior to performing the Work. All Subcontracts shall at all times be consistent with the terms or provisions of this Contract. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Contract. Contractor shall be fully responsible to the Commission for the acts and omissions of Subcontractors and of persons directly or indirectly employed by them, to the same extent as it is for the acts or omissions of persons directly employed by Contractor. The Services of any Subcontractor shall be subject to inspection by the Commission to the same extent as the Services of Contractor. All Subcontractors and personnel of Subcontractors are to be instructed in the terms and requirements of the Commission approved safety and environmental protection regulations and shall be expected to comply with such regulations. The Contractor's compliance with its SBE participation commitment is a material term of this Contract. The Contractor's SBE Utilization Certification and Utilization Plan are incorporated herein by reference as if fully rewritten. In the event that personnel are not adhering to such regulations, then they shall be removed by Contractor. Nothing contained herein shall (i) create any contractual relationship between any Subcontractor and the Commission, or (ii) obligate the Commission to pay or see to the payment of any Subcontractor.

2.3 Subcontracts.

(A) Terms of Subcontracts. In addition to the requirements in Section 2.2, each Subcontract will contain the following provisions:

(1) the Subcontract may be assigned to the Commission or its designee, at the request of the Commission and without the consent of the Subcontractor; and

(2) the Subcontractor shall comply with and perform for the benefit of the Commission all requirements and obligations of Contractor to the Commission under this Contract, as such requirements and obligations are applicable to the performance of the work under the Subcontract, including a warranty as described in Section 12.1(C), an indemnity for the benefit of the Commission in substance the same as that included in Article 15, the insurance requirements specified in Article 11, the provisions of Section 3.5, and compliance with this Contract, including exhibits, schedules, and attachments.

(B) Where applicable, Contractor shall flow down all guarantees, warranties, delivery schedules and performance requirements (including schedule guarantees and performance guarantees) with all Subcontractors on terms that are consistent with this Contract.

2.4 Non-Exclusivity. This Contract is not exclusive, and the Commission may at its sole discretion, contract with others to perform work under the Project or may perform such work with its own forces. The Commission reserves the right to hire additional contractors to provide goods and services related to the Project.

ARTICLE 3 – CONTRACTOR'S RESPONSIBILITIES

3.1 General Work Scope.

(A) Work Scope. Contractor shall perform the Services as described in the Work Scope attached as Exhibit A. The Commission, at its option, may proceed with any part of, all, or none of the Services.

(B) Ordered Equipment. The Commission under separate agreement(s) purchased the Ordered Equipment, and took delivery or Contractor will take delivery of such Ordered Equipment after the Effective Date. Contractor shall inspect the Ordered Equipment, and shall notify the Commission in writing of any patent defects in such equipment or the necessity or usefulness of purchasing any additional equipment or materials.

(C) Training. Contractor shall provide the training in accordance with the terms and timing set forth in the Work Scope.

(D) Disposal of Materials. Contractor shall dispose of all e-waste materials and replaced equipment from the Site in accordance with Applicable Laws including, without limitation, all applicable environmental laws.

(E) Confirmation of Site(s). The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Services, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Services, the Site and/or the performance of the Services, including but not limited to (i) conditions bearing upon transportation, handling, and storage of materials and equipment; (ii) the availability of labor, water, electric power and roads; (iii) uncertainties of weather or other observable physical conditions at the Site; and (iv) the character of equipment and facilities needed preliminary to and during the performance of the Services. Any failure by the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Services, or for proceeding to successfully perform the Services without additional expense to the Commission, and will not result in any adjustment in the Project Schedule.

3.2 Contractor's Personnel.

(A) Key Project Personnel. Exhibit Bis a list of Contractor's key personnel who will be responsible for supervising the performance of Contractor's Services, and who shall be assigned to the Work until Final Completion unless otherwise expressly stated in Exhibit 3.2(A). Contractor shall not remove or reassign any such personnel from the Services without providing the Commission's prior Notification.

(B) Employees. Contractor shall employ for the Work only persons known to it to be experienced, qualified, reliable and trustworthy. At the Commission's request, the credentials of any of Contractor's employees assigned to perform the Work shall be submitted to the Commission in advance of such assignment. Contractor shall require all persons performing Work at the Site(s) to be trained in and to comply with Contractor's policies, procedures and directives applicable to activities at the Site(s), including security, environmental protection, worker health and safety, sexual harassment, access, use of controlled substances, and similar activities, such policies, procedures and directives to be no less rigorous than those of the Commission. Contractor shall keep sufficient personnel employed so that the Services to be performed hereunder are completed in an efficient, prompt, economical, and professional manner.

(C) Supervision. Contractor and its Subcontractors shall be responsible for enforcing strict discipline and good order among their employees and shall assume full responsibility for their employees' acts and omissions in and around the Site(s). Contractor's Project Manager shall enforce all environmental protection and worker health and safety laws and regulations and similar requirements applicable to the Services. Contractor's Project Manager shall be thoroughly competent and experienced in the line of work to be performed. Contractor's Project Manager shall represent Contractor on the job and have the authority to bind Contractor.

(D) Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace, as well as the Commission's rules and regulations concerning the same. Contractor is responsible for ensuring all Contractor's employees and its subcontractors, while working on the Site(s), will not: (1) be under the influence of drugs or alcohol; or (2) purchase, transfer, use or possess illegal drugs or alcohol; or (3) abuse prescription drugs in any way.

3.3 Plant, Facilities, and Operations.

(A) Areas of Work and Non-Interference with Other Activities on Site(s).

Contractor shall use only the area designated by the Commission's Project Manager, and other parts of the Site shall not be used for any purpose without the prior approval of the Commission's Project Manager. If any part of the Work is to be performed on an easement or right-of-way held by the Commission, Contractor shall limit its activities to that area and not allow its employees or Subcontractors outside such area. Contractor shall direct its employees and employees of its Subcontractors to enter and leave the premises only through the Commission designated access ways, and to park only in parking areas designated by the Commission's Project Manager.

Contractor shall conduct its Work so as to avoid any necessity to interfere with or curtail the operations of the Site(s). Where the Services requires connection to or modification of existing facilities, the Commission's Project Manager will arrange for Contractor to perform such work at the Commission's convenience and Contractor shall at all times, except when required to install such facilities, keep its employees and cause its Subcontractors to keep their employees out of, off of, and out of contact with the Commission's Site(s) and facilities.

Contractor shall conduct its Services so as to minimize interference with other work in progress. In case of dispute between Contractor and other contractors engaged by the Commission, the decision of the Commission's Project Manager coordinating the Services shall be final.

(B) Access to Work; Surveillance. The Commission shall be afforded free access to Contractor's or any of its Subcontractors' work, facilities, and records, wherever located related to this Project, to perform surveillance and reviews of work and Services completion and quality, to review contract cost and quality records, and to perform work sampling observation and to record surveillance activities. Any such surveillance or review performed by the Commission or any failure by the Commission to so perform shall in no manner reduce the responsibility and liability of Contractor or its Subcontractors under this Contract or excuse them from performance. Access to a Subcontractor's facilities and records will be coordinated through Contractor's Project Manager.

(C) Security and Safety. Until the date of Substantial Completion, the portion of the areas designated as the work site shall be under the control of Contractor unless otherwise agreed by Contractor and the Commission's Project Manager. Contractor shall be responsible for developing, implementing, and administering job site safety requirements. Contractor's site-specific safety program shall, at a minimum, comply with the Commission's safety requirements. Contractor shall take the necessary precautions to render the Services secure in order to decrease the probability of accident from any cause and to avoid delay in completion of the Services.

Contractor shall provide temporary fire protection facilities to the extent required by the Commission during the construction period. Contractor may be working adjacent to or concurrent with the Commission's operations or other construction activities. Contractor shall maintain close cooperation and flexible working arrangements with the Commission in consideration of adjacent structures and work. Contractor shall maintain close cooperation with other contractors working at the Site.

Upon commencing work, Contractor shall establish and maintain sanitary facilities for its employees and those of its Subcontractors, in conformity with local and state regulations. Contractor will remove these facilities upon completion of the Contract and clean the Site(s) to the Commission's satisfaction.

(D) Arrival and Departure of Contractor's Tools, Equipment, and Materials.

(1) Mobilization:

Contractor shall provide for the necessary resources to receive all materials including, the Ordered Equipment shipped to the Site(s). Contractor shall be responsible for providing the Commission's Project Manager with the detailed packing lists of all tools, equipment, and materials Contractor is bringing onto the jobsite. The list(s) shall have been provided to the Commission's Project Manager prior to the time the shipment of such tools, equipment, and materials arrive at the Site.

(2) Demobilization

Contractor shall provide to the Commission proper verification of ownership of all tools, equipment, and materials being removed from the Site(s) at any time. Proper verification shall mean serial numbers of tools and equipment when applicable and other agreed to forms of ownership.

3.4 Certificates, Permits and Licenses. Except as otherwise expressly agreed in writing, Contractor shall obtain all Permits which are required to be obtained to perform the Services. Contractor shall provide the Commission with copies of such Permits as soon as they are obtained. Contractor shall provide information, assistance and documentation to the Commission as reasonably requested in connection with any Permits to be obtained by the Commission.

3.5 Books, Records and Audits.

(A) Contractor shall keep such full and detailed work records including books, construction logs, records, and daily reports, as may be required under this Contract and as required under Applicable Law. Contractor shall maintain all such books and records in accordance with applicable generally accepted accounting principles, and shall retain all such books and records for a period of three (3) years after Final Completion of the entire Project, or such greater period of time as may be required under Applicable Law.

(B) Upon reasonable Notice until Final Completion and for a period of three (3) years thereafter, the Commission or its designee shall have the right to audit or to have audited the books and records of Contractor which relate to any Service under this Contract. When requested by the Commission, Contractor shall provide the auditors with reasonable access to all personnel relevant to the audit, property, and records and Contractor's personnel shall cooperate with the auditors to effectuate the audit or audits hereunder; provided, however, that Contractor shall not be required to keep records of or provide access to hourly rates or fixed elements of compensation, or of costs which are expressed in terms of percentages of other costs. The auditors shall have the right to copy documentation relating to performance of the Services (work) under this Contract. Contractor shall pay for all reasonable internal costs incurred by it in assisting the Commission with audits performed pursuant to this Section 3.5. Contractor shall include audit provisions identical to this Section 3.5 in all Subcontracts.

(C) When requested by the Commission, Contractor shall provide the auditors with reasonable access to all personnel relevant to the audit, property, and records and Contractor's personnel shall cooperate with the auditors to effectuate the audit or audits hereunder.

3.6 [Reserved]

3.7 Quality Control, Testing and Inspection. Contractor shall establish a plan for quality control, testing, inspection processes and non-conformance reporting and control. Contractor shall be responsible for all quality assurance, quality control, testing inspection activities and non-conformance reporting and control related to the Work, whether such Work is performed by Contractor or Subcontractors. Contractor shall submit to the Commission for its review a Project specific quality assurance, quality control, testing protocol (including methodology and frequency), testing inspection plan and non-conformance reporting and control plan. The Commission may review and comment on, without

assuming liability for, such quality assurance, quality control, testing protocol (including methodology and frequency), testing inspection procedures and non-conformance reporting and corrective action procedures, and Contractor shall make mutually agreed upon revisions in accordance with the Commission's comments. Records of all testing and inspection work by Contractor shall be kept complete and available to the Commission during the performance of this Contract and for such longer period as may be specified by Contractor's standard recordkeeping practices. The Commission also reserves the right to conduct independent third-party testing.

3.8 Progress Reporting. Contractor shall provide the Commission with such reports at such time and detailing such information as set forth in the Work Scope.

3.9 Other Contractor Provided Information. Contractor shall provide the Commission with such other information as reasonably requested by the Commission and as set forth in the Work Scope.

3.10 Review Meetings. Contractor shall conduct review meetings with the Commission in person (or if approved by the Commission, by telephone) as set forth in the Work Scope.

3.11 Additional Reports. If any material problem, emergency, strike, injury, work stoppage or legal problem is anticipated, or any unanticipated event occurs, that might adversely affect Contractor's ability to perform its obligations hereunder in a timely manner, in addition to other reports, Notices and actions required hereunder, Contractor shall promptly prepare a written report detailing available information and steps being taken to correct such problem or event and shall deliver such report to the Commission as soon as reasonably practicable. The Commission may at any time request such report with respect to any event that the Commission reasonably regards as significant.

3.12 Third Party Review. The Commission may have third parties review Contractor's and any Subcontractor's work. Contractor expressly agrees to cooperate, if requested, in such third-party review.

3.13 The Commission's Review and Approvals. The Commission's review or approval of, or right to review, release and/or approve, any Work provided or performed by Contractor and its Subcontractors under this Contract shall not in any way be deemed to limit or in any way alter Contractor's responsibility to schedule, coordinate, perform and complete the Work in strict accordance with the requirements of this Contract, or Contractor's obligations under Article 12 (Warranty).

ARTICLE 4 – PRICE; PAYMENTS TO CONTRACTOR

4.1 Price. The Commission will compensate Contractor in the manner and at the times specified in Exhibit C – the Pricing Proposal (the “**Contract Price**”).

4.2 Payments.

(A) Application for Payment.

(1) Contractor shall submit to the Commission an application for payments due as provided in Exhibit C, accompanied by all proper documentation. Any such application shall constitute a representation by Contractor, that: (a) the phase of such is completed in accordance with Exhibit C and the Work Scope; (b) the quality of all work described in the application is in accordance with the terms of this Contract; (c) Contractor is entitled to payment of the amount invoiced; (d) the Work (or any applicable portion thereof) described in the statement accompanying the application is free and clear of all liens, security interests, encumbrances and restrictions of any kind whatsoever; and (e) all Subcontractors have been paid (or will be paid from the proceeds of the current application) the monies due and payable to them for work performed (except for such amounts as may be disputed in good faith and identified with specificity by Contractor).

(2) Applications shall be submitted to the Commission's Project Manager for approval and payment by the Commission. The elements of all amounts applied shall be shown separately, by applicable line items, and shall be classified or further broken

down as the Commission may reasonably require for accounting and payment purposes. Any disputed portion thereof need not be paid, but in such case, the Commission shall promptly notify Contractor of any rejected application or portion thereof with reasons for such rejection and any undisputed portion of such invoice shall be paid as set forth in (B) below.

(3) The State of Ohio and the Commission are exempt from federal excise Taxes and all state and local Taxes, unless otherwise provided. The Commission does not agree to pay any Taxes on commodities, goods, or services acquired from, or by, the Contractor. The Contractor must, however, comply with all statutes, rules and regulations governing federal, state and local income, sales and excise Taxes. The Commission will provide the Contractor with certificates of exemption for federal excise Taxes and state sales and use Tax.

(B) Payment. Each application for payment shall, after approval by the Commission, be processed for payment for the amount of each approved invoice less the amount of the Retainage and any monies withheld under Section 4.4 and Section 4.4 below. All payments shall be in United States Dollars to an account designated by Contractor. Payments by the Commission shall not be deemed evidence of acceptance by the Commission of the Services (Work) called for hereunder.

4.3 Final Payment. Upon Final Completion of the Project, Contractor shall, in addition to the other requirements in the Contract, submit a statement summarizing and reconciling all previous applications for payment, payments and Change Orders, and an affidavit that all payrolls, payroll Taxes, liens, charges, claims, demands, judgments, security interests, bills for materials, and any other indebtedness connected with the Work have been paid or will be paid from the proceeds of such final application for payment, accompanied by a fully executed Contractor's Final Lien and Claim Waiver in the form set forth in Exhibit F and fully executed Final Lien and Claim Waivers from each Subcontractor in the form set forth in Exhibit F. Notwithstanding the foregoing, upon Final Completion of the Project, the Contractor shall continue to provide one (1) year of ongoing maintenance and service to the Commission for the Work and Services.

4.4 Withholding. Should the Commission in good faith dispute any portion of an application of payment, the Commission shall be entitled to withhold payment of the disputed portion provided that the Commission gives Notice to Contractor of such disputed portion, together with reasons for such dispute, within the period specified for payment. The Commission shall also pay the undisputed portion of the application for payment within such period. In addition to disputed amounts and the Retainage, the Commission may withhold payment of any portion of any application for payment, in the amount reasonably necessary to protect the Commission in the event that: (A) the Work is deficient, defective, or incomplete, (B) a third party claim has been asserted for which Contractor has an indemnity obligation under Section 15.1; (C) Contractor has failed to make a payment as and when due to a Subcontractor or supplier for materials, labor or equipment; (D) Contractor has failed to supply any affidavit, release or waiver of lien which is required pursuant to this Contract; or (E) there exists any other material claim by the Commission against Contractor of any nature relating to and/or arising from this Contract. If any monies are so withheld, they shall be paid only when the cause of such withholding has been eliminated. In the event of any controversy, claim or dispute between the Parties relating to non-payment of any disputed amounts, including any Change Order, Contractor shall, unless otherwise agreed in writing by the Parties or terminated by the Commission pursuant to Article 14, continue with the Work, and the Commission shall continue to pay all undisputed amounts owed to Contractor under the Contract.

4.5 Retention:

(A) All amounts owed by the Commission in respect of this Contract shall be subject to ten percent (10%) retention (the "**Retention**") which shall be retained or applied by the Commission in accordance with the terms of this Contract (the aggregate amount subject to such

Retention, the “**Retention Amount**”). The Retention Amount shall be held in escrow with Huntington National Bank in accordance with the terms and conditions of an escrow agreement in the form of Exhibit D.

(B) The Retention shall be drawable in whole or in part to satisfy Contractor’s obligations under the Contract.

(C) Promptly after Final Completion, the Retention Amount shall be adjusted, if necessary, to an amount equal to the Punch List Amount.

(D) On the Final Completion Date any remaining Retention held by the Commission (net of amounts applied by the Commission pursuant to Section 4.6(C)) shall be paid to Contractor.

4.6 Taxes and Duties

(A) Contractor shall pay when due:

(1) Taxes and fees imposed by reason of the performance of the Services by Contractor including, but not limited to sales, excise, storage, consumption and use Taxes; licenses, permit and registration fees; and income, profit, franchise, and personal property Taxes, but excluding fees for licenses and permits obtained by the Commission pursuant to the Commission obtaining from Governmental Authorities the licenses and permits that it must possess to locate, construct, maintain and operate the Site.

(2) Employment taxes and contributions imposed by Applicable Law, or trade union agreements or regulations, with respect to or measured by compensation (wages, salaries or other) paid to employees of Contractor including, but not limited to Taxes and contributions for unemployment compensation insurance, old age benefits, welfare funds, pensions and annuities, and disability insurance, and

(3) Import/export licenses fees and import/export fees Taxes and duties on services, equipment and materials, and construction tools, equipment and supplies imported or exported by Contractor.

(B) Contractor shall defend, indemnify and hold the Commission harmless from liability resulting from Contractor’s or Subcontractor’s failure to (i) make a timely payment of or to pay any of the items in Section 4.6(A) above, or (ii) comply with the reporting, filing or other procedural requirements with respect to their payment. Interest, penalties or other liabilities arising from such failures shall not be allowed as costs and shall be borne solely by Contractor.

(C) Contractor shall develop procedures and minimize the sales and use tax or value added tax burden on purchases of materials and services under this Contract. Prior to Contractor’s initiation of procurement activities hereunder, it shall obtain the Commission’s approval of the aforesaid procedures.

(D) Where the Commission provides exemption certificates and if Contractor fails to obtain exemption from Taxes or duties from which Contractor or Subcontractors are exempt under Applicable Law, or fails to obtain a refund or credit, including interest, applicable for any such Taxes or duties paid, such Taxes and duties shall not be allowed as costs and shall be borne solely by Contractor.

(E) Contractor shall promptly notify the Commission of matters pertaining to nonpayment or payment under protest of, claim for immunity or exemption from, or claim for refund of or credit against any Taxes or duties that are applicable to the work.

(F) Without liability to Contractor, the Commission shall withhold income and other Taxes from payments due to Contractor under this Contract to the extent that such withholding is required by Applicable Law. Payment by the Commission to the appropriate

governmental office of the amount of money so withheld will be deemed to have been made on behalf of Contractor hereunder for the amount of such payment as if the payment had been made to Contractor and will relieve the Commission of any further obligation to Contractor with respect to the amount so withheld. The receipt for any such withholding tax will be given to the Contractor.

4.7 No Release. Final payment shall not in any way release Contractor or any surety of Contractor from any unperformed obligations of this Contract, including its warranties, obligations, any latent defects in the Services including the Work, any liabilities for which insurance is required or any other responsibility of Contractor. It is expressly understood and agreed to by the Parties that nothing in this Article 4 shall in any way modify or alter Contractor's obligations under this Contract.

4.8 Back Charges. The Commission reserves the right to accumulate and accrue the costs for back charges for rework or repair and schedule maintenance or recovery caused by Contractor's or Subcontractor's error(s) or oversights, omissions, shoddy construction, incorrect assembly or other errors by the Contractor or Subcontractors. A list of such back charges will be maintained by the Commission and reviewed with the Contractor as identified. The Commission will bill Contractor for such work or upon agreement with Contractor deduct such amounts from Contractor's invoice. Notwithstanding the foregoing, before the Commission may accumulate and accrue back charges, Contractor must first be afforded an opportunity to perform any remedial work allowed under this Contract.

4.9 SBE Reporting. Contractor shall provide, and shall require all Subcontractors to provide, any requested data to determine compliance with the representations made in the approved SBE Participation Certification, Utilization Plan, Demonstration of Good Faith Efforts and Statements of Intent to Contract and Perform for each application for payment through the Commission's online diversity compliance portal: <https://ohioturnpike.diversitycompliance.com/Default.asp>. Contractor and all Subcontractors shall timely submit all required data prior to any due dates, and to check the online diversity compliance portal on a regular basis to manage contact information and contract records. Contractor shall require all Subcontractors to have completed all requested items and maintain contact information on record that is accurate and up to date. Contractor shall include these disclosure and reporting requirements in all subcontracts under the Contract and further require that all Subcontractors place the same obligation in each of their lower tier contracts. The Commission may require additional information related to compliance at any time before, during, or after Contract award.

ARTICLE 5 – COMMENCEMENT OF WORK; SUBSTANTIAL AND FINAL COMPLETION; PROJECT SCHEDULE

5.1 Commencement of Work. Upon execution of a Notice to Proceed, Contractor shall commence with the performance of the Work specified in such Notice to Proceed.

5.2 Substantial Completion.

(A) Definition of Substantial Completion. "**Substantial Completion**" for the Project shall be deemed to have occurred with the achievement of the following conditions (a) Contractor shall have completed the Work to the extent required for the safe, reliable and continuous operation consistent with Good Practices and all Applicable Laws; (b) Contractor shall have completed testing and commissioning of the Work; (c) Contractor shall have delivered documentation, start-up procedures and any special tools necessary to support continued operation of the Site facilities; (d) the Site facilities shall be commercially operable; and (e) Contractor and Subcontractors shall have delivered duly executed lien waivers and Contractor shall have delivered a duly executed indemnity against Subcontractor liens relating to the Work, each in form and substance reasonably acceptable to the Commission.

(B) Notice of Substantial Completion. When Contractor believes it has achieved Substantial Completion for the Project, Contractor shall deliver to the Commission a written notice and certification thereof ("**Substantial Completion Certificate**") in the form of Exhibit E,

certifying to the Commission that all of the requirements for Substantial Completion have occurred. The Substantial Completion Certificate shall be accompanied by all other supporting documentation as may be required to establish that the requirements for Substantial Completion have been met.

(C) The Commission's Acceptance of Substantial Completion. The Commission shall notify Contractor whether it accepts or rejects the Substantial Completion Certificate within thirty (30) days following receipt of such Notice (provided, for purposes of clarity, that the date of delivery of a conforming and correct Substantial Completion Certificate, and not the date of approval thereof by the Commission, shall be deemed the date on which Substantial Completion has been achieved). If the Commission agrees that Substantial Completion has occurred for the Project, the Commission shall deliver to Contractor a written acceptance of Substantial Completion. If the Commission does not agree that Substantial Completion has occurred, then the Commission shall state the basis for its rejection in reasonable detail in the Notice provided to Contractor. In the event that Substantial Completion has not been achieved, Contractor shall promptly take such action or perform such additional work as will achieve Substantial Completion to the extent required by this Contract and shall issue to the Commission another Substantial Completion Certificate. Such procedure shall be repeated as necessary until Substantial Completion is achieved.

5.3 Punch List. When Contractor believes that the Project is ready for commissioning and startup, Contractor shall prepare and deliver to the Commission an initial list setting forth: (a) minor, non-safety items that do not impact the performance of the Project or compliance with Applicable Law, including Permits, and which remain to be performed to complete the Project, (b) the proposed time limits within which Contractor will complete such remaining Work, and (c) Contractor's plan to complete such Work on or before the target Final Completion Date set forth in the Project Schedule or approved Updated Project Schedule (the "**Punch List**"). The Commission shall review the list and notify Contractor of any proposed revisions. Contractor shall revise the Punch List to include any additional items listed by the Commission as a result of the Commission's review. Contractor shall immediately initiate measures to complete or correct, as appropriate, any item the Commission believes must be completed to ensure the proper operation of the Site, or protection of the Project, or personnel safety. Prior to Final Completion of the Project, Contractor shall revise and resubmit the Punch List to the Commission if any additional Punch List items are discovered by the Commission or Contractor. All work on the Punch List shall be completed no later than sixty (60) days following Substantial Completion, or the Commission will have the right, but not the obligation, to complete such Punch List Work, with the cost of such work paid by Contractor. The failure to include any items on the Punch List, and the review and comment by the Commission or its representatives of any matter relating to the Punch List shall not alter the responsibility of Contractor to complete all Work in accordance with the terms and provisions of this Contract.

5.4 Final Completion.

(A) Definition of Final Completion. "**Final Completion**" for the Project shall be deemed to have occurred only upon completion of the following requirements for the Project: (i) Substantial Completion has been achieved; (ii) Contractor has delivered to the Commission a Final Completion Certificate, which the Commission has approved; (iii) Contractor has obtained all Permits required in connection with the performance of the Services (Work) that Contractor is obligated to obtain pursuant to this Contract; (iv) Contractor has removed all Hazardous Substances for which it is responsible and provided to the Commission written certification thereof, as provided in Section Error! Reference source not found.; (v) Contractor has removed all supplies, non-hazardous waste, materials, rubbish, and temporary facilities from the Site (except to the extent the Parties mutually agree the same are necessary to performing additional work); (vi) the Services including the Work has been fully completed as required under the Contract (including completion of all Punch List items); (vii) Contractor has delivered to the Commission a fully executed Contractor's Final Lien and Claim Waiver in the form of

Exhibit F and fully executed Final Lien and Claim Waivers from all Subcontractors in the form of Exhibit F; (viii) Contractor has delivered to the Commission all documentation required to be delivered under the Contract; and (ix) Contractor has assigned or provided the Commission with all warranties to the extent Contractor is obligated to do so pursuant to this Contract.

(B) Notice of Final Completion. When Contractor believes it has achieved Final Completion for the Project, Contractor shall deliver to the Commission a written notice and certification thereof (“**Final Lien and Claim Waiver**”), which shall be in the form of Exhibit F, certifying to the Commission that all of the requirements for Final Completion have occurred. The Final Completion Certificate shall be accompanied by all other supporting documentation as may be required to establish that the requirements for Final Completion have been met.

(C) The Commission Acceptance of Final Completion. The Commission shall notify Contractor whether it accepts or rejects the Final Completion Certificate within thirty (30) days following receipt of such Notice. If the Commission agrees that Final Completion has occurred for the Project, the Commission shall deliver to Contractor a written acceptance of Final Completion. If the Commission does not agree that Final Completion has occurred, then the Commission shall state the basis for its rejection in reasonable detail in the Notice provided to Contractor. In the event that Final Completion has not been achieved, Contractor shall promptly take such action or perform such additional work as will achieve Final Completion to the extent required by this Contract and shall issue to the Commission another Final Completion Certificate. Such procedure shall be repeated as necessary until Final Completion is achieved. The date of delivery of a conforming and correct Final Completion Certificate, and not the date of approval thereof by the Commission, shall be deemed the date on which Final Completion has been achieved.

5.5 Project Schedule. Contractor shall prepare and submit to the Commission for its review a detailed Project Schedule for the Project, which shall be submitted in acceptable electronic and paper form. The approved Project Schedule shall become the Project Schedule. The Project Schedule shall govern Contractor’s performance of the Services. The Project Schedule shall represent Contractor’s judgment as to how it shall complete the Work prior to the Final Completion Date. The Project Schedule shall include a detailed representation of all significant aspects of the Project, showing Contractor’s plans for performance of the Project. The Project Schedule shall be the schedule which Contractor shall use in planning, organizing, directing, coordinating, performing and executing the Project (including all activities of Subcontractors) and shall be the basis for evaluating progress of the Project.

(A) Updated Project Schedule. Contractor shall update the Project Schedule monthly and at such other intervals as may be requested by the Commission by showing the actual progress of the Project; however, Contractor may not modify the Final Completion Date or any major project milestone in the Project Schedule, without obtaining the Commission’s prior written approval. Any modifications to the Final Completion Date or major project milestones shall be only by Change Order. The Updated Project Schedule shall reflect the actual progress of Work against the Project Schedule.

(B) Review of Schedule. The Commission may review the Updated Project Schedule for general conformance with this Contract. If the Commission determines at any time that the Updated Project Schedule does not conform to this Contract or to the Project Schedule in any respect, Contractor shall promptly revise and resubmit the Updated Project Schedule to the Commission. The Commission’s review of the Updated Project Schedule shall not relieve Contractor of any obligations for the performance of the Work, change any schedule milestone or any Final Completion Date, or be construed to establish the reasonableness of the Updated Project Schedule.

5.6 Maintenance Upon Final Completion. For a period of one (1) year following the date of Final Completion of the Project, Contractor shall continue to provide ongoing maintenance and service Services to the Commission in accordance with the Work Scope.

ARTICLE 6 – BONDS

6.1 Performance and Payment Bond. Contractor shall furnish a performance and payment bond in in a form satisfactory to the Commission at the Effective Date (the “**Performance and Payment Bond**”). The Performance and Payment Bond must be in an amount equal to at least 100% of this Contract’s implementation cost plus any Change Orders. The Performance and Payment Bond shall provide for payment to the Commission in the event the Contractor fails to perform any of the terms and conditions of the Contract, at any time during the term.

6.2 Bond Requirements. In addition to the requirements set forth in Section 6.1 the Performance and Payment Bond shall be furnished by a surety authorized to conduct business in the State of Ohio, and shall remain in effect throughout the term of this Contract. Provided the term of the Contract has not expired, the Performance and Payment Bond shall be released and returned to the Contractor one (1) year after Final Completion Date.

6.3 Required Qualifications for Surety. The surety and insurance companies must be acceptable to the Commission. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570) are acceptable to the Commission. All bonds at the time of issuance must be issued by a company authorized by the Insurance the Commissioner to transact the business of suretyship in the State of Ohio, and shall have a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger.

ARTICLE 7 CHANGE ORDERS

7.1 Change Orders Requested by the Commission. The Commission shall be entitled to request change(s) to the Work by way of a Change Order request in accordance with this Section 7.1.

(A) The Commission shall submit to Contractor a written proposed Change Order for each requested change. Contractor must respond to the Commission within ten (10) Business Days with a written statement setting forth the effect, if any, which such proposed Change Order would have on the Contract Price, the current approved Updated Project Schedule, the Final Completion Date, the Warranties, or any other obligation or potential liability or impact costs of either Party hereunder (collectively, the “**Changed Criteria**”).The written statement shall include all information required by Section 7.5.

(B) If the Parties agree on such effect of the proposed Change Order (or modify such Change Order so that the Parties agree on such effect of all provisions as modified), the Parties shall execute such Change Order, and such Change Order shall become binding on the Parties.

(C) If the Parties cannot agree on such effect of the proposed Change Order within fifteen (15) Business Days of Contractor’s receipt of the Commission’s proposed Change Order, or if the Commission desires that the changed work set forth in the proposed Change Order commence immediately without the requirement of a written statement by Contractor, the Commission may, by issuance of a unilateral Change Order, require Contractor to commence and perform such changed work (which Contractor shall be compensated for in accordance with Section 4.1), with the effect of such unilateral Change Order on the Changed Criteria to be determined as soon as possible. Pending resolution of any dispute, Contractor shall perform the work as specified in such unilateral Change Order and the Commission shall continue to pay Contractor in accordance with the terms of this Contract and any previous agreed Change Orders. When the Commission and Contractor agree on the effect of such unilateral Change Order on all of the Changed Criteria, the Parties shall record such agreement by execution of a

Change Order, which shall supersede the unilateral Change Order previously issued and relating to such changed work. Contractor shall commence the performance of the changed work or other obligations required in the unilateral Change Order within three (3) Business Days of receipt of such unilateral Change Order.

7.2 Change Orders Requested by Contractor. Contractor shall have the right to a Change Order in the event of any of the following occurrences:

- (A) change in the Work Scope, including under Section 2.4 and Section 3.1;
- (B) [Reserved]
- (C) a Force Majeure Event, to the extent allowed under Section 0; or
- (D) suspension of work as contemplated under Section 14.4.

Should Contractor desire to request a Change Order under Section 7.2, Contractor shall, pursuant to Section 7.5, notify the Commission in writing and issue to the Commission a request for a proposed Change Order, providing a reasonably detailed explanation of the proposed change and Contractor's reasons for proposing the change, all documentation necessary to verify the effects of the change on the Changed Criteria, and all other information required by Section 7.5.

If the Commission agrees that a Change Order is necessary and agrees with Contractor's statement of such effect of the proposed Change Order on the Changed Criteria, then the Commission shall issue such Change Order, and such Change Order shall become binding on the Parties upon execution by the Parties of such Change Order.

If the Parties agree that Contractor is entitled to a Change Order but cannot agree on such effect of the proposed Change Order on the Changed Criteria within ten (10) Business Days of the Commission's receipt of Contractor's written notice and proposed Change Order and all other required information, or if the Commission desires that the changed work set forth in the proposed Change Order commence immediately, the Commission may, by issuance of an unilateral Change Order require Contractor to commence and perform such changed work (which Contractor shall be compensated for in accordance with Section 4.1), with the effect of such unilateral Change Order on the Changed Criteria to be determined as soon as possible. If the Parties agree on the effect of such unilateral Change Order for some but not all of the Changed Criteria, the impact of each of the components of the Changed Criteria will be determined as soon as possible. Pending resolution of the dispute, Contractor shall perform the work as specified in such unilateral Change Order and the Commission shall continue to pay Contractor in accordance with the terms of this Contract and any previous agreed Change Orders. When the Commission and Contractor agree on the effect of such unilateral Change Order on all of the Changed Criteria, such agreement shall be recorded by execution by the Parties of a Change Order, which shall supersede the unilateral Change Order previously issued and relating to such changed work.

If the Parties cannot agree upon whether Contractor is entitled to a Change Order, then pending resolution of the dispute, Contractor shall continue to perform the Work required under the Contract, and the Commission shall continue to pay Contractor in accordance with the terms of this Contract and any previous agreed Change Orders.

In the event that Contractor desires a change that it believes would be advantageous to the Work for reasons other than those set forth in Section 7.2, it shall notify the Commission of the desired change and shall furnish to the Commission, along with such Notice, a request for a Change Order including a reasonably detailed explanation of the proposed change and Contractor's reasons for proposing the change, supported by all documentation necessary to verify the effects of the change on the Changed Criteria, including the information required under Section 7.5. Within ten (10) Business Days of receipt of Contractor's Notice and Change Order request with the required supporting documentation, the Commission shall have the right in its sole and absolute discretion to reject Contractor's Change Order request and shall notify Contractor of its decision. If the Commission does not reply within such ten (10)

Business Day period, the Commission shall be deemed to have rejected the proposed change, and Contractor shall not be entitled to the corresponding Change Order.

7.3 No Change Orders Due to Contractor Error or Deviation. Notwithstanding anything in this Article 6 to the contrary, no adjustment for the Contract Price, the Project Schedule, any Final Completion Date, any Work Scope, any of the Warranties, or any other obligation of Contractor hereunder shall be made in connection with any commitment or correction of errors, omissions or deficiencies in, or incomplete, improper or defective, work on the part of Contractor or any Subcontractor, or any deviation by Contractor from the Work Scope which is not the subject of a prior Change Order.

7.4 Change Orders Act as Accord and Satisfaction. Unilateral Change Orders subsequently converted to a superseding and mutually agreed upon Change Order or mutually agreed necessary Change Orders under Section 7.1 and Section 7.2 shall constitute a full and final settlement and accord and satisfaction of all effects of the change as described in the Change Order upon the Changed Criteria and shall be deemed to compensate Contractor fully for such change.

7.5 Timing Requirements for Notifications and Change Order Requests by Contractor. Should Contractor desire to seek an adjustment to the Contract Price, the Project Schedule, any Final Completion Date, the Work Scope, the Warranties or any other modification to any other obligation of Contractor under the Contract for any circumstance that Contractor has reason to believe may give rise to a right to request the issuance of a Change Order, Contractor shall, with respect to each such circumstance,

(A) notify the Commission Project Manager in writing of the existence of such circumstance within fourteen (14) days (or such other period expressly provided under the Contract) of the date that Contractor knew or reasonably should have known of the first occurrence or beginning of such circumstance, provided that Contractor shall give such Notice prior to the expiration of such fourteen (14) day period should any action or inaction by the Commission or Contractor be required or necessary in relation to such circumstance to prevent or mitigate any damages to either Party and in either case, prior to commencement of work for which a Change Order may be requested (except in the event that such work is required to be immediately undertaken to avoid imminent loss or damage to property or Persons). In such Notice, Contractor shall state in detail all known and presumed facts upon which its claim is based, including the character, duration and extent of the claimed circumstance, the date Contractor first knew of the circumstance, any activities impacted by the circumstance, the cost and time consequences of the circumstance and any other details or information that are expressly required under this Contract. Contractor shall only be required to comply with the notice requirements of this Section 7.5 once for continuing circumstances, provided the Notice expressly states that the circumstance is continuing and includes Contractor's best estimate of the time and cost consequences of the claimed circumstance; and

(B) submit to the Commission's Project Manager a request for a proposed Change Order as soon as reasonably practicable after giving the Commission Notice but in no event later than ten (10) Business Days after the completion of each such circumstance, together with a written statement (a) detailing why Contractor believes that a Change Order should be issued, plus all documentation reasonably requested by or necessary for the Commission to determine the factors necessitating the possibility of a Change Order and all other information and details expressly required under this Contract (including the information required by schedules, detailed estimates and cost records, daily time sheets); and (b) setting forth the effect, if any, which such proposed Change Order would have for the work on any of the Changed Criteria.

7.6 Adjustment Only Through Change Order. No change in the requirements of the Contract, whether an addition to, deletion from, suspension of or modification to the Contract shall be the basis for an adjustment for any change in the Contract Price, the Project Schedule, any Final Completion Date, the Work Scope, any Warranties or any other obligations of Contractor under this Contract unless and until such addition, deletion, suspension or modification has been authorized by a Change Order executed and

issued in accordance with and in strict compliance with the requirements of this Article 6. No course of conduct or dealings between the Parties, nor express or implied acceptance of additions, deletions, suspensions or modifications to the Contract, including any work, and no claim that the Commission has been unjustly enriched by any such addition, deletion, suspension or modification to the Contract, whether or not there is in fact any such unjust enrichment, shall constitute a defense to Contractor's failure to comply with the requirements of this Article 7.

ARTICLE 8 – FORCE MAJEURE

8.1 Force Majeure.

(A) Duties of the Affected Party. Within five (5) Business Days after becoming aware of the occurrence of a Force Majeure Event, the affected Party shall (i) provide Notice to the other Party containing full particulars of such Force Majeure Event (including the anticipated length of time that the delay may persist, the cause or causes of the delay, all measures taken or to be taken by the affected Party to prevent or minimize the delay, the schedule by which the affected Party proposes to implement those measures, and the affected Party's rationale for attributing a delay to a Force Majeure Event), together with the obligations affected thereby, and (ii) use reasonable commercial efforts to mitigate the effect of such delay or failure and to remedy impact on the Services and Project Schedule of the Force Majeure Event. The affected Party shall resume performance of its obligations affected by the Force Majeure Event as soon as practicable after the conclusion of the Force Majeure Event, and shall give prompt Notice to the other Party of all significant facts and events concerning the affected Party's efforts to perform and of the conclusion of the Force Majeure Event. Force Majeure Events shall not excuse any failure or delay in making payments when due.

(B) Effect of Force Majeure Event. Except as otherwise provided in Section 0, the affected Party's obligations under this Contract shall be temporarily suspended for so long as performance of such obligations is rendered impossible or commercially impractical by a Force Majeure Event. Any delay or failure by the affected Party in the performance of any of its obligations under this Contract on account of a Force Majeure Event shall not constitute a default under this Contract during the period the Force Majeure Event is in effect to the extent such delay or failure is caused by the Force Majeure Event; provided that the affected Party shall have complied with its obligations under Section Article 8(A) as an express condition precedent; provided that the affected Party's deviation from the Project Schedule did not expose the Work and/or the Project Schedule to the Force Majeure Event; and provided that delay of Contractor in achieving Substantial Completion and Final Completion shall only be excused, and the Final Completion Date shall be extended, by one day for each day of delay during which (i) such Force Majeure Event made it impossible for Contractor to carry out all activities which are necessary to the achievement of the Final Completion Date or caused a delay to the critical path of the Project Schedule; (ii) Contractor could not practicably overcome the impact of the Force Majeure Event by the use of due diligence and all reasonable commercial efforts, including the commercially reasonable expenditure of moneys, overtime work, and work over weekends and holidays; and (iii) such Force Majeure Event was the direct and proximate cause of Contractor's failure to meet such Final Completion Date. A Force Majeure Event shall apply only to the portion of the Work affected by the particular failure, delay, or interruption, and shall not apply to any unaffected part thereof. If Contractor seeks an extension of time to the Final Completion Date, it shall comply with Sections 0 and 7.5(B).

ARTICLE 9 – COMPLIANCE WITH LAWS, REGULATIONS, AND PERMITS

9.1 Compliance with Laws. During the performance of this Contract, Contractor shall strictly comply with all Applicable Laws and executive orders applicable to the Services and Work, and all Applicable Codes and Standards.

9.2 Further Compliance. Without limiting the foregoing, and where applicable, in connection with the Services, Contractor agrees as follows:

(A) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include 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. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the U.S. Department of Labor setting forth the provisions of this nondiscrimination clause.

(B) Contractor shall state, in all solicitations or advertisements for employees placed by or on its behalf, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(C) Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement, contract or understanding, a notice to be provided by the U.S. Department of Labor, advising the labor union or workers' representative of Contractor's commitments under the following provisions, as amended and supplemented from time to time:

- (1) Section 202 of Executive Order 11246 (Equal Opportunity);
- (2) Executive Order 11701 (Employment of Veterans);
- (3) Executive Order 11758 (Employment of the Handicapped);
- (4) Executive Order 11141 (Employment Discrimination Because of Age);

and

- (5) Executive Order 11625 and Public Law 95-507 (Utilization of Disadvantaged Business Enterprises),

and shall post copies thereof in conspicuous places available to employees and applicants for employment.

9.3 Worker Safety Laws. Contractor shall comply with the Occupational Safety and Health Act of 1970 and all rules, regulations, standards, requirements and revisions thereof or adopted pursuant thereto. If applicable, Contractor agrees to comply with all Hazard Communication Standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1200, et seq., as amended, to ensure that chemical hazards produced, imported, or used with the workplace are evaluated, and that hazard information is transmitted to affected employees of Contractor, of any Subcontractor or of the Commission.

9.4 Wages and Hours. If applicable, Contractor and any Subcontractors shall pay the prevailing wage rates of the locality, as determined by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour Bureau, to laborers and mechanics performing Work under the Contract. The prevailing rates of wages are published by the Division of Labor & Worker Safety, Wage and Hour Bureau and Hour at <https://wagehour.com.ohio.gov/w3/webwh.nsf/wrlogin/?openform>, which are incorporated herein by as if fully rewritten. Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Chapter 4115, ORC. The Commission shall, within seven (7) Business Days after receipt of a notice of change in prevailing wage rates, notify Contractor of the change. Contractor shall make the necessary adjustment in the prevailing wage rates and pay any wage increase during the term of the Contract.

(A) Within ten (10) days of the date of the Notice to Proceed, Contractor shall provide to the Commission (Attention: Office of Equity and Inclusion Manager) a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.

(B) On the occasion of the first pay date for work performed on the Project, the Contractor and Subcontractors shall furnish each employee, not covered by a collective bargaining agreement or understanding between employers and bona fide organizations of labor, with individual written notification of the job classification to which the employee is assigned, the prevailing wage determined to be applicable to that classification, separated into the hourly rate of pay and the fringe payments, and the identity of the Commission's prevailing wage coordinator. Contractor and Subcontractors shall furnish the same notification to each affected employee every time the job classification of the employee is changed.

(C) Contractor shall submit payroll reports with each application for payment, which reports shall be certified by Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. Contractor shall be responsible for submitting all payroll reports of Contractor's subcontractors.

(D) The payroll report shall indicate the period covered and shall list the name, address and social security number of each employee of Contractor and the Subcontractors paid for the Work.

(E) 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.

(F) For each fringe benefit listed in the payroll report, the report shall also indicate if it is paid as cash to the employee or to a named plan.

(G) For each employee, the payroll report shall list the employee's gender and ethnicity, classified as Black, Hispanic, Asian Pacific Islanders, American Indians/Alaskan Native or non- minority.

(H) Contractor and the Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.

9.5 Permits. Unless this Contract otherwise provides, Contractor shall, at its own expense, obtain from appropriate Governmental Authorities all Permits, inspections and licenses which are required to be obtained by Contractor for it to perform its work under the Contract and shall comply with all rules and regulations of insurance companies which have insured any of the work.

ARTICLE 10 – INTELLECTUAL PROPERTY RIGHTS

10.1 Ownership of Work and Data. Subject to the Commission's compliance with its obligation to compensate Contractor for the Services performed as set forth herein, all deliverables provided by Contractor to the Commission associated with the Services (including drawings, specifications, Data, manuals, reports, purchasing documents, Permits, calculations, and training materials), whether or not patentable, registrable as a copyrightable work, or registrable as a trademark or service mark, shall become the property of the Commission and the Commission shall own all intellectual property rights therein. Contractor hereby agrees that any such deliverables provided by Contractor to the Commission during the term of this Contract that pertain in any material respect to the Services shall be done as "work made for hire" as defined and used in the Copyright Act of 1976, 17 USC §1 et seq., and that the Commission, as the entity for which the work is prepared, shall own all right, title and interest in and to such materials, including the entire copyright therein. To the extent that any such deliverables are not deemed to be a "work made for hire," Contractor hereby assigns to the Commission ownership of all right, title, and interest in and to such materials, including ownership of the entire copyright therein.

Notwithstanding the foregoing, nothing herein shall be deemed to convey or grant any ownership of intellectual property rights: (i) owned by Contractor prior to the Effective Date; or (ii) developed by Contractor outside of the Work Scope; provided that with respect to any such Contractor-owned intellectual property incorporated into the deliverables or utilized by Contractor in the performance of the Work, the Commission shall receive with respect to any such rights a nonexclusive, irrevocable, fully-paid-up and royalty-free, transferable, sublicensable, license to use, copy, communicate, and prepare modifications to such rights for the purpose of completing, operating, maintaining, repairing, modifying, adding to, improving and demolishing the Services and related systems.

If any design and development work is to be performed by Subcontractors, Contractor shall consult with the Commission prior to and during the negotiation and award of such contracts with regard to the treatment of intellectual property rights to any inventions and works of authorship developed under such contracts, and shall use all reasonable efforts to obtain from each such Subcontractor rights similar to those described in the preceding paragraph. Without limiting the foregoing, such rights shall include the right for the Commission to receive or obtain design and manufacturing information reasonably necessary for the Commission to obtain, directly or indirectly (e.g., by third party manufacture), parts for any equipment provided by such Subcontractors.

10.2 Proprietary Calculations. Upon request by the Commission, Contractor will (and will use best efforts to cause all applicable Subcontractors to) provide any confidential or proprietary design calculations or other formulas not otherwise provided to the Commission hereunder which are necessary to the Commission in the operation, maintenance, repair, modification, improvement, and alteration of the Services, or any unit or component thereof. Contractor and its applicable Subcontractors shall retain ownership of all intellectual property rights in such materials, and the Commission shall receive with respect to any such rights a nonexclusive, irrevocable, fully-paid-up and royalty-free, transferable, sublicensable, license to use such materials only as necessary for the operation, maintenance, repair, modification, improvement, and alteration of the Work, or any unit or component thereof.

10.3 Infringement. Contractor warrants that the goods or Services provided by Contractor or its Subcontractors hereunder are and will be original, do not and will not infringe on or misappropriate any United States or foreign patent, copyright, trademark, or other intellectual property rights of any third party, and to the extent such intellectual property is to be owned by the Commission in accordance with and subject to Section 10.1, have not been and will not be previously assigned or exclusively licensed. If the goods or Services provided by Contractor or its Subcontractors hereunder or any portion thereof is held to constitute an infringement or misappropriation of the intellectual property rights of a third party, then Section 15.2 shall apply.

10.4 Data Furnished by the Commission. All Data furnished by the Commission in connection with the Work shall remain the Commission's exclusive property. Contractor shall not use the Commission furnished Data for any purpose other than for the Services. Contractor shall return such Commission-furnished Data and all copies thereof to the Commission upon completing the Services, or upon the Commission's request.

10.5 Third-Party Review. Nothing in the Contract shall preclude the Commission from having third parties review Contractor's and any Subcontractor's Services, and Contractor expressly agrees to cooperate, if requested, in such third-party review.

ARTICLE 11 – INSURANCE; RISK OF LOSS

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

- 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.

11.2 A Commercial General Liability policy and Commercial Automobile Liability policy to provide insurance and limits as indicated below. An Umbrella or Excess Liability policy may be used to attain such limits. Commercial General Liability Insurance shall be on an occurrence coverage basis including without limitation, bodily injury, personal injury and advertising injury, property damage, and broad-form contractual liability arising from or relating to the Contract, coverage as respects independent contractors, operating mobile equipment, products and completed operations, demolition, blasting, excavating tunneling (whether bored, cut and cover, shallow, immersed tube tunnel, or otherwise) explosion, collapse and underground hazards] of not less than the following amounts:

Policy Limits – Commercial General Liability

\$5,000,000	General Aggregate
\$5,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$500,000	Damage to Premises Rented to You
\$5,000	Medical Payments

Policy Limits – Commercial Automobile Liability

\$5,000,000	Combined Single Limit, bodily injury and property damage, including owned, non- owned and hired automobile liability.
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Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of Contractor. The coverage must be endorsed with ISO Form CA 99 48, or a substitute form providing equivalent coverage, to include without limitation, coverage respecting liability arising out of the transporting, loading or unloading of Hazardous Materials/Regulated Substances.

Such Commercial General Liability and follow-form Umbrella or Excess Liability policies shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's projects.

11.3 Contractor shall not subcontract any part of this Contract without assuming responsibility for, and requiring, each Subcontractor (and each subcontractor at every tier) to purchase and maintain the same types of insurance with substantially the same terms, conditions, and limits of liability as required in the chart below. Failure of Contractor or any Subcontractor, to maintain insurance under this agreement, including maintaining additional insured status as required in Section 11.5 below, may be deemed a material breach of this Contract. Contractor agrees that it will contractually obligate its Subcontractors to advise Contractor promptly of any changes or lapses of the requisite insurance coverages and Contractor agrees to promptly advise the Commission of any such notices Contractor receives from its Subcontractors. Contractor assumes all responsibility for monitoring Subcontractor's contracts and insurance documentation for compliance with the insurance and other provisions of this Contract.

SUBCONTRACTOR INSURANCE LIMITS BY LINE OF COVERAGE	SUB-CONTRACT AMOUNT \$0 - \$1,000,000	SUB-CONTRACT AMOUNT \$1,000,000- \$5,000,000	SUB- CONTRACT AMOUNT >\$5,000,000
Commercial General Liability			
General Aggregate	\$2,000,000	\$5,000,000	\$10,000,000
Products/Completed Operations Aggregate	\$2,000,000	\$5,000,000	\$10,000,000
Occurrence Limit	\$1,000,000	\$5,000,000	\$5,000,000
Personal and Advertising Injury Limit	\$1,000,000	\$5,000,000	\$5,000,000
Damage of Premises Rented to You	\$500,000	\$500,000	\$500,000
Medical Payments	\$5,000	\$5,000	\$5,000
Commercial Automobile Liability			
Combined Single Limit, bodily injury and property damage, including owned, non-owned and hired automobile liability	\$1,000,000	\$5,000,000	\$5,000,000
Worker's Compensation			
Worker's Compensation	Statutory	Statutory	Statutory
Employers Liability			
Bodily injury by accident, each accident	\$2,000,000	\$5,000,000	\$10,000,000
Bodily injury by disease, each employee	\$2,000,000	\$5,000,000	\$10,000,000
Bodily injury by disease, annual policy aggregate	\$2,000,000	\$5,000,000	\$10,000,000
Property Insurance	Same limits as Contractor	Same limits as Contractor	Same limits as Contractor

11.4 Property Insurance

(A) Contractor shall, at its own expense, purchase and maintain Property insurance covering equipment, machinery, mobile equipment, special equipment, falsework, scaffolding, trailers and tools used or owned by Contractor. Contractor shall require similar property coverage for equipment, machinery, mobile equipment, special equipment, falsework, scaffolding, trailers and tools used or owned by subcontractor. The Commission shall in no way be responsible or liable for the loss or damage, or loss of use, to any property listed in the immediately preceding sentence above used or owned by Contractor or any Subcontractor in the performance of the Services. Should the scope of Services include the ownership of the equipment remaining with Contractor, then Contractor shall purchase and maintain property insurance covering the equipment.

(B) The Commission shall purchase and maintain, or cause to be purchased and maintained, property insurance with respect to materials, buildings, and buildings in the course of construction, that become part of the permanent structure, and written on a Builder's Risk "all-risk" or equivalent policy form in the amount determined by the Commission in its sole discretion.

(C) With respect to the property deductible maintained in the property coverage purchased and maintained by the Commission for this Project, the Commission reserves its rights to hold responsible any third party for any loss to, or damage or destruction to property of the Commission, caused in whole or in part by such third party, or any person or entity for which such third party is legally liable, and covered under the property insurance carried and maintained by the Commission, and such third party shall, upon demand of the Commission, promptly pay that proportion of the Commission's property insurance policy deductible or retention equal to that percentage share of the loss caused by such party as determined Commission's sole, reasonable discretion; the foregoing shall apply whether a loss exceeds \$100,000, or not. No party shall be entitled to any set-off or other adjustment in fees charged the Commission by any party under this Contract by reason of such deductible or retention payment. Such property insurance carried and maintained by the Commission shall have a per occurrence deductible, excluding flood or earthquake, of not more than One Hundred Thousand Dollars (\$100,000).

11.5 Insurance Policy Requirements.

(A) Immediately upon the execution of the Contract, Contractor shall forward to the Commission certificates of insurance which show that Contractor is insured by an insurance company or companies approved by the Commission. Said insurance shall be with a company or companies authorized to do business in the State of Ohio and which are rated A- or better by A.M. Best, and shall be maintained in full force and effect until the Contract has been fully and completely performed. Commercial General Liability, Commercial Automobile Liability and Umbrella or Excess Liability policies of insurance required to be purchased and maintained by Contractor shall endorse the Commission as an additional insured; provided, however, such designation shall not cause any claim between Contractor and the Commission to be waived, except as set forth in Section 11.7. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 26 11/85 for Commercial General Liability (or a substitute form providing equivalent coverage, including the combination of CG 20 10 10/01 and CG 20 37 10/01) and ISO Form CA 20 48 02/99 for Auto Liability. The additional insured coverage afforded under Contractor's Commercial General Liability and Umbrella or Excess policies shall include both ongoing operations (work in progress) and completed operations (completed work). Contractor shall provide each policy and respective Certificate of Insurance shall expressly provide that no less than thirty (30) days' prior written notice shall be given to the Commission in the event of cancellation of the coverage contained in such policy or evidenced by such Certificate of Insurance. Contractor shall provide thirty (30) days' prior written notice to the Commission of any non-renewal, conditional renewal, or material change in coverage of the policies required herein. All of Contractor's liability insurance with respect to which a person or entity is required to be an additional

insured pursuant to this Contract shall exhaust prior to the exhaustion, erosion, or application of any insurance or self-insurance maintained by the Commission pursuant to this agreement, and Contractor shall take all measures, whether by endorsement or rider to the policy(ies) or otherwise, to ensure its policy(ies) will operate accordingly, including, if needed to satisfy this requirement, an amendment to the Umbrella or Excess policy's(ies') *Other Insurance* provision.

(B) Contractor shall furnish the Commission, when requested, a copy of any insurance or additional insured or loss payee endorsement required to be purchased or maintained by this Contract. In no event shall any failure of the Commission to demand a copy of any required insurance or endorsement be construed as a waiver of the obligation of Contractor to obtain insurance required to be purchased or maintained by the Contract.

(C) Contractor shall maintain all insurance in the required amounts, without interruption, from the Effective Date until the date of approval of the Certificate of Final Completion. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract. If Contractor fails to purchase and maintain, or fails to continue in force throughout the term of this Contract, insurance in the types and with limits of liability required, the Commission may purchase such insurance and the cost thereof shall be borne by Contractor, and shall be deducted from any amounts due and owing by the Commission to Contractor. If such amounts are insufficient, Contractor agrees to promptly pay the Commission the amount incurred by the Commission to purchase such insurance.

(D) Insurance policies required to be purchased and maintained by Contractor may include a reasonable loss deductible, which shall be the responsibility of Contractor to pay in the event of loss.

(E) The prompt repair or reconstruction of the Work as a result of an insured loss or damage shall be Contractor's responsibility and shall be accomplished at no additional cost to the Commission.

(F) The insurance policy or policies shall be primary and non-contributory. The above described certificates of insurance shall be delivered to and remain in the custody of the Commission and each shall be in form and language satisfactory to the Commission.

(G) Contractor shall also procure and maintain, and require all Subcontractors to procure and maintain, until the Contract has been fully and completely performed, Ohio Worker's Compensation Insurance covering all employees who engage in any Work in connection with the performance of the Contract except employees hired in a state other than Ohio who will not engage in any work in the State of Ohio.

(H) Contractor and all Subcontractors with whom the Contractor is in contract for the Project shall enroll and remain in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Ohio Revised Code prior to a Subcontractor providing labor at the site of the Project. Contractor shall require each Subcontractor to require all lower-tier Subcontractors with whom the Subcontractor is in contract for the Project to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Ohio Revised Code prior to a lower-tier Subcontractor providing labor at the Project site. Failure of a Contractor to require a Subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in section 153.03 of the Ohio Revised Code prior to the time that the Subcontractor provides labor at the project site will result in the Contractor being found in breach of the contract and that breach may be used in the responsibility analysis of that contractor or the subcontractor who was not enrolled in a program for future contracts with the Commission for five years after the date of the breach. Failure of a Subcontractor to require a lower-tier Subcontractor to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved

by the Bureau that meets the requirements specified in section 153.03 of the Ohio Revised Code prior to the time that the lower-tier Subcontractor provides labor at the Project site will result in the Contractor being found in breach of the contract and that breach shall be used in the responsibility analysis of the Contractor and the Subcontractor or the lower-tier Subcontractor who was not enrolled in a program for future contracts with the Commission for five years after the date of the breach.

(I) Upon Contractor's knowledge of any occurrence, event, or claim that may reasonably exceed one hundred thousand dollars (\$100,000), or which may reduce or materially affect the aggregate amount of insurance coverage available to the Commission pursuant to this Contract, Contractor shall (i) immediately provide the Commission with written notice of such occurrence, event or third-party claim(s) with reasonable detail, and (ii) to the extent reasonably commercially available, promptly obtain replacement insurance for the eroded aggregate limit and provide the Commission with evidence thereof.

(J) The Commission may, at any time, require Contractor to take out any additional or other insurance. In each such case, the Commission shall reimburse Contractor for the net premium cost thereof, which reimbursement shall be made at the time of pre-final payment.

11.6 Waivers of Subrogation. The Commission and Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Commission as fiduciary. The waivers expressed in this Article shall not apply with respect to any deductible or retention existing in the Builder's Risk or Property insurance purchased and maintained by the Commission pursuant to this Contract.

11.7 Third Party Over. In any and all claims against the Commission, the indemnification obligations of Contractor in this Contract shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Contractor under Workers' Compensation Acts, disability benefits or other employee benefit acts. As between the Commission and Contractor, Contractor waives its immunities under Ohio Revised Code Chapter 4123, Article 3 of the Ohio Constitution or any similar Workers' Compensation statutory immunity for purposes of conforming the indemnity obligations of this Contract. Contractor shall require of its respective Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein.

11.8 Title; Risk of Loss; Care, Custody, and Control of Materials. Contractor shall receive and check in inventory (including, Ordered Equipment), unload, store, and handle all materials and equipment to be used, furnished or erected by Contractor or its Subcontractors. The materials, equipment and property being used, furnished and/or erected, installed or constructed under this Contract shall be considered to be in the care, custody and control of the Commission, and legal title, equitable title, and risk of loss with respect to such materials, equipment and property shall pass to the Commission on the delivery of the same to the Site. Contractor shall protect from damage or loss, all materials, equipment or property to be used, furnished or erected by Contractor or its Subcontractors.

ARTICLE 12 – WARRANTY AND CORRECTION OF WORK

12.1 Warranty. The warranties set forth in this Article 12 and in the Work Scope are referred to collectively as the "**Warranty**". The period ending twelve (12) months after Final Completion of the Project is referred to as the "**Warranty Period**" for the Work, and Contractor's obligations and liabilities under this Article 12 shall cease upon the termination of the Warranty Period; provided, that if Contractor performs any Corrective Work pursuant to Section 12.2 in satisfaction of its Warranty obligations, the Warranty Period with respect to such Corrective Work shall be the longer of the original Warranty Period

with respect to such work as set forth above or a period of one (1) year following the completion of such Corrective Work.

(A) Materials Warranty. Contractor hereby warrants that all materials supplied by Contractor (including, hardware and software) and each component thereof shall be:

- (1) new, complete, and of suitable grade for the Project;
- (2) in accordance with Good Practices;
- (3) in accordance with this Contract, including the design, drawings and specifications, Applicable Laws, and Applicable Codes and Standards;
- (4) handled, stored, and installed in accordance with the applicable manufacturer's instructions, and in a manner that does not void or discount in any way manufacturer or vendor warranties;
- (5) free of encumbrances to title; and
- (6) free from defects (latent and patent) in design, material and workmanship.

(B) Services Warranty. Contractor hereby warrants that the Services shall be:

- (1) in accordance with this Contract.
- (2) in accordance with Good Practices;
- (3) in accordance with all Applicable Laws and Applicable Codes and Standards;
- (4) in accordance with Contractor's installation requirements when they exceed the above requirements

(C) Subcontractor Warranties. Contractor shall obtain warranties from Subcontractors consistent with Sections 12.1 and 12.2, which shall be deemed to run to the benefit of the Commission, its assignee(s), and Contractor, except as otherwise agreed by the Commission in writing. All warranties provided by any Subcontractor shall be in such form as to permit direct enforcement by Contractor or the Commission (or its assignees) against any Subcontractor whose warranty is called for. This Section 12.1(C) shall not in any way be construed to limit Contractor's obligations under Sections 12.1(A) and 12.1(B).

12.2 Correction of Work During the Warranty Period.

(A) If, during the Warranty Period, the Commission discovers any failure of the Work or any component thereof that does not comply with the Warranties set forth in Section 12.1 ("**Warranty Non-Conformance**"), the Commission shall provide Contractor with Notice detailing such Warranty Non-Conformance as soon as practicable following such discovery, but in no event later than the end of the Warranty Period.

(B) Contractor and/or its Subcontractors shall provide and perform (or reperform) any work (including any required assembly or disassembly of any affected work or other structure, installation, equipment, fixtures, or portion of the Site), whether by repair, replacement or otherwise, as required to correct any Warranty Non-Conformance ("**Corrective Work**"). All costs associated with the Corrective Work, including repair, disassembly, removal, transportation, reassembly, or reperformance of any affected portion of the work, expediting charges, engineering, home office, field supervision, documentation related charges and the cost of correcting, reconstructing, or repairing any portion of the work or other property of the Commission that is destroyed or damaged by the Corrective Work, or is dismantled, removed, or demolished to provide access necessary to perform any Corrective Work, shall be at Contractor's sole expense. In the event Contractor utilizes spare parts owned by the

Commission in the course of performing the Corrective Work, Contractor shall supply the Commission free of charge with new spare parts equivalent in quality and quantity to all such spare parts used by Contractor as soon as possible following the utilization of such spare parts. If any portion or component of the work has a Warranty Non-Conformance and cannot be repaired, in addition to providing a replacement of equal function, quality, and quantity, Contractor shall dispose of same at no cost to the Commission. If Contractor fails to dispose of such work or component on a timely basis, then the Commission may dispose of such work or component in a reasonable manner and shall be entitled to obtain reimbursement for all reasonable expenses incurred by the Commission in the disposition thereof.

(C) Response Period. During the Warranty Period, Contractor shall initiate Corrective Work within fifteen (15) calendar days after receiving written notification from the Commission of the existence of any Warranty Non-Conformance, or within such other period as the Parties may agree, and shall diligently and continuously use all reasonable efforts to complete same within thirty (30) calendar days or such other period which such completion may reasonably require. The time periods specified in this Section 12.2(C) for initiation and completion of Corrective Work are referred to herein as the **“Response Period.”**

(D) Right to Correct or Complete Work. If Contractor fails or refuses to initiate Corrective Work or to diligently and continuously utilize all reasonable efforts to complete same within the Response Period, then the Commission, after further Notice to Contractor, may perform such Corrective Work with its own forces or those of another vendor, and (i) if there are outstanding amounts due to Contractor from the Commission, charge Contractor a back charge against such outstanding amounts, or (ii) in the event no such outstanding amounts exist, charge Contractor for all reasonable costs and expenses associated with the performance or reperformance of such Corrective Work.

(E) Assignment of Warranties. At the request of the Commission, Contractor shall assign to the Commission the warranty rights provided by one or more of Contractor’s material or equipment suppliers with respect to the portion of the Work Scope performed or provided by each such Subcontractor or supplier.

ARTICLE 13 WAIVER OF LIEN RIGHTS

13.1 Payment of Expenses. Contractor shall promptly pay all claims for labor, material, services, and other expenses incurred by it and its Subcontractors in connection with the Services (Work).

13.2 Waiver of Lien Rights. To the extent permitted by Applicable Law, Contractor, for itself and anyone else acting or claiming through or under it, does hereby expressly waive and relinquish all right to file a mechanics' or materialmen's lien, or notice of intention to file any lien, and agrees that no mechanics', materialmen's, or other lien shall be filed or maintained against any property where the Services (Work) is to be performed, or any interest of the Commission in such property, by or in the name of Contractor or any Subcontractor, materialman or laborer acting or claiming through or under Contractor for work performed or materials furnished in connection with this Contract. Contractor further agrees that it will defend, indemnify and hold the Commission harmless from and against any and all loss, cost, expense (including reasonable attorneys' fees and costs of defense), liability, claim or demand arising from any mechanics', materialmen's or other lien of Contractor or any Subcontractor, sub-subcontractor, materialman, supplier, vendor, or laborer acting or claiming through or under Contractor for work performed or materials furnished in connection with this Contract. The foregoing indemnity shall survive the termination or expiration of this Contract.

13.3 Right to Withhold. The Commission may require evidence satisfactory to it from Contractor that all work in progress, work done or delivered, or service performed, for which the Commission has made a payment, are free and clear of mechanic's, materialmen's, and other liens, attachments, claims, demands, charges or other encumbrances. If such evidence is not promptly

submitted to the Commission, the Commission may withhold payments due Contractor in amount sufficient to cover any such potential claim. Contractor shall, within thirty (30) calendar days, cause to be discharged and terminate any mechanics' or materialmen's lien filed by Contractor or any of its Subcontractors, sub-subcontractors, materialman, laborers or suppliers, or shall bond against the same at its own cost and expense with a bond satisfactory to the Commission.

13.4 Subcontracts. Every Subcontract for any portion of the Work shall contain an undertaking by the Subcontractor similar in effect to this Article 13. It is intended by the Parties that Contractor's agreement to waive and relinquish lien rights as above provided shall be effective only in those jurisdictions which permit such agreement to be made. The fact that some jurisdictions in which work will be performed do not permit such waiver shall not affect the enforceability of this waiver in those jurisdictions that do permit such waivers. The above obligations of Contractor and/or Subcontractors are supplementary to and not a substitute for the rights of the Commission and its Affiliates, under the provisions of the mechanics lien laws of the jurisdiction in which the work is being performed.

ARTICLE 14 – DEFAULT, TERMINATION AND SUSPENSION

14.1 Default by Contractor.

(A) Termination by the Commission for Default. If Contractor shall at any time (i) refuse or fail to provide sufficient properly skilled workers, adequate supervision or materials and equipment of the proper quality; (ii) fail in any respect to prosecute the Work according to the Project Schedule, as updated; (iii) fail to comply, in any material respect, with any provision of this Contract; (iv) make a general assignment for the benefit of its creditors; or (v) become insolvent, have a receiver appointed, or make a general assignment for the benefit of its creditors, in which such case the cure provisions found below shall not apply, and provided such failure or default is not excused pursuant to the express terms of this Contract, then, after the Commission serving Notice to Contractor specifying the nature and origin of the alleged default, unless Contractor shall have taken adequate steps to cure such condition within fifteen (15) calendar days of such Notice, or if the default is impossible to correct within such fifteen (15) calendar day period, then within a reasonable period of time not to exceed ninety (90) calendar days from the date of such Notice (or a longer period, if agreed by the Commission, in its sole discretion); provided, that Contractor has commenced corrective action within seven (7) calendar days after receiving Notice of such condition from the Commission and has proceeded diligently to cure such condition thereafter, then the Commission, at its option, without voiding the other provisions of this Contract and without further Notice to any Party, may (a) take such steps as are necessary to overcome the condition, in which case Contractor shall be liable to the Commission for the cost thereof, (b) terminate for default Contractor's performance of all or any part of the Project by Notice to Contractor, or (c) seek specific performance or interlocutory mandatory injunctive relief requiring performance of Contractor's obligations, provided, only to the extent that such relief is available at law and necessary to avoid irreparable harm to the Commission.

(B) Additional Rights of the Commission Upon Termination. In the event that the Commission terminates this Contract in whole or in part as provided in this Article 14, then the Commission may, at its sole option, (i) enter onto the Site and take possession of, for the purpose of completing the Work, all of the equipment, materials, tools, supplies, documents, and information of Contractor, (ii) take assignment of any or all of the Subcontracts, at the Commission's option, (iii) complete the Work either by itself or through others, and/or (iv) recover from Contractor any damages suffered by the Commission as a result of such default. The Commission's rights under this Section 14.1(B) are cumulative and in addition to any other rights provided for at law, equity or under this Contract.

14.2 Termination for Convenience by the Commission. The Commission shall have the right, in its sole discretion, to terminate for convenience this Contract, or any part of the Services to be performed by Contractor hereunder, at any time by providing Contractor with a Notice of termination.

14.3 Termination Obligations. Upon receipt of Notice of termination under Sections 14.1 or 14.2, Contractor shall (i) immediately discontinue the Work (or portion thereof) on the date and to the extent specified in such Notice, (ii) except as agreed by the Commission, place no further orders for the Project, materials, or Services except as may be necessary for completion of such portion of the Project (or portion thereof) as is not discontinued, (iii) promptly make every reasonable effort to procure cancellation or assignment upon terms satisfactory to the Commission of all Subcontracts and rental agreements to the extent they relate to the performance of the Project (or portion thereof) that is discontinued, (iv) cooperate with the Commission for the efficient transition of the Work, and (v) thereafter execute only that portion of the Work as may be necessary to preserve and protect work already in progress and to protect materials and equipment at the Site or in transit thereto, and to comply with all Applicable Laws and Governmental Authorities. The Commission may, at its sole option, take assignment of any or all of the Subcontracts.

14.4 Suspension of Work. The Commission may, for any reason, at any time and from time to time, by Notice to Contractor, suspend the carrying out of the Project or any part thereof, whereupon Contractor shall suspend its and its Subcontractors from the carrying out of the Work or any part thereof for such time or times and in such manner as the Commission may require. During any such suspension, Contractor shall properly protect and secure the Work in such manner as reasonably required by Good Practices. Unless otherwise instructed by the Commission, Contractor shall during any such suspension maintain its staff and labor on or near the Site and otherwise be ready to proceed with the Work upon receipt of the Commission's further instructions. The Commission and Contractor shall negotiate a Change Order as provided in Section 7.2, and Contractor shall be paid during such suspension period for the reasonable costs (including actual overhead (but not unabsorbed overhead) and reasonable profit) of such suspension, including demobilization and remobilization costs, if required, after providing appropriate supporting documentation to evidence such costs, and the Changed Criteria shall be equitably adjusted to reflect such suspension. Any Change Order relating to such suspension shall be initiated within thirty (30) calendar days after termination of the suspension.

14.5 Right to Stop Work for Cause. Without limiting its other rights hereunder, the Commission, by a Notice, may order Contractor to stop performance of that portion of the Work that reasonably appears to the Commission to cause or threaten to cause an immediate danger to life or material damage to property. If it is reasonably determined by the Commission that such activities of Contractor or its Subcontractors caused or threatened to cause immediate danger to life or material damage to property, Contractor shall not be entitled to a Change Order for the associated impact. Once the cause of the stop work order has been resolved by Contractor, the Commission shall promptly direct Contractor to resume performance of the work that had been stopped.

ARTICLE 15 – INDEMNITIES

15.1 Indemnity. Contractor shall indemnify, defend, and hold harmless the Commission and its Affiliates and each of their respective agents, trustees, directors, officers, employees, successors assigns, and indemnitees (the “**Commission Indemnified Parties**”) from and against any and all losses, costs, damages, actions, suits, claims, liabilities, awards, settlements, judgments, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys’ and other professional fees and expenses, any mediation, arbitration, and court costs, and costs incurred in connection with the investigation, defense, and settlement of any claim asserted against any Commission Indemnified Party or the enforcement of Contractor’s obligations under this Article (collectively, the “**Losses**”) which any of the Commission Indemnified Parties may suffer or incur to the extent arising out of: (A) injuries or third-party property damage to the extent resulting from the acts or omissions or willful misconduct of Contractor, its Subcontractors, and/or the respective employees and Affiliates of each; or (B) Contractor’s failure to

comply with Applicable Laws governing Contractor; or (C) any breach by Contractor of any representation, warranty or covenant in this Contract including, the Work Scope.

15.2 Intellectual Property Indemnity. Contractor shall indemnify, defend, and hold harmless the Commission Indemnified Parties from and against any and all Losses which any of the Commission Indemnified Parties may suffer or incur arising out of or related to any claim, suit, or proceeding alleging that the Work, the intended use thereof, or any Materials and information designed, specified, or used by Contractor or any Subcontractor in performing the Services violates, infringes, or misappropriates any patent rights, copyrights, trade secrets, or other intellectual property, proprietary or confidentiality rights of any Person. In the event that any temporary restraining order or preliminary injunction is granted in connection with any such suit or claim, Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraining order. If in any such claim, suit or proceeding, the use of any Work is enjoined or restrained, and Contractor fails to remove such injunction or restraining order within a reasonable time, Contractor shall promptly and at Contractor's expense either: (i) secure for the Commission the right to continue the use of such Work by procuring for the Commission a royalty-free license or other such permission to use the same lawfully in a manner that fulfills Contractor's obligation to timely supply the Work under this Contract, or (ii) replace or modify the Work so that there is no infringement or misappropriation, but only if the replacement or modification does not adversely affect the performance of the Work, the Project Schedule, the Commission's operating or maintenance costs, construction or operating schedules, operation or maintenance procedures, any license or Permit affecting the Commission's property or any other similar matter relating to the Commission's property or operations.

15.3 Lien Indemnification of Contractor. Contractor shall indemnify, defend, and hold harmless each Commission Indemnified Party from and against any and all liens and similar encumbrances (including claims of Subcontractors) filed in connection with the Work brought by or in the name of Contractor or any Subcontractor, materialman, supplier, vendor, or laborer acting or claiming through or under Contractor or any Subcontractor for work performed or Materials furnished in connection with this Contract, including all expenses and reasonable attorneys' fees incurred in discharging any of same. If Contractor should default in promptly discharging any lien or similar encumbrances upon the Work, the Site or any portion thereof, or any Materials encompassed therein, Contractor shall, within thirty (30) calendar days of the Commission's Notice to Contractor demanding the discharge of such lien or encumbrance, satisfy or discharge the same (provided that Contractor shall have the right to submit a bond reasonably satisfactory to the Commission, in the amount required by Applicable Law, if Contractor, despite its reasonable efforts, has been unable to obtain discharge thereof) at its own cost and expense. If Contractor either does not satisfy or discharge such lien or similar encumbrance within the required thirty (30) calendar days (or, where permitted, fails to provide the Commission with a bond in lieu thereof), then the Commission may, in its sole discretion, remove and discharge same. If the Commission elects to exercise its right to remove and discharge, then Contractor shall be liable to the Commission for all Losses incurred by the Commission in discharging or removing the same.

15.4 Notice and Legal Defense. Promptly after receipt by an indemnified Party of any claim or Notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Sections 15.1, 15.2, or 15.3 applies, such Party shall notify the indemnifying Party in writing of such fact. The indemnifying Party shall, at its own cost and expense, assume on behalf of the indemnified Party and conduct with due diligence and in good faith the defense thereof with counsel selected by the indemnifying Party and reasonably satisfactory to the indemnified Party; provided that the indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided that if the defendants in any such action include both the indemnifying Party and the indemnified Party and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select up to one separate counsel to participate in the defense of such action on its own behalf at the indemnified Party's expense. The indemnified Party shall provide reasonable support and assistance to

the indemnifying Party in connection with the defense of any claim to which an indemnity provided for herein shall apply.

15.5 Waiver of Immunities. Contractor, for itself, its successors, assigns, Subcontractors, and vendors hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby the indemnifying Party could preclude its joinder by an indemnified Party as an additional defendant, or avoid liability for damages, contribution, or indemnity in any action at law, or otherwise where the indemnifying Party's or its Subcontractor's employee or employees heirs, assigns, or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against any indemnified Party. An indemnifying Party's obligation to an indemnified Party herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for the indemnifying Party under any worker's compensation acts, disability benefit acts, or other employee benefit acts on account of claims against the indemnified Party by an employee of the indemnifying Party or anyone employed directly or indirectly by the indemnifying Party or anyone for whose acts the indemnifying Party may be liable.

15.6 Comparative Negligence; Enforceability. Each Party's indemnity obligations shall apply regardless of whether the indemnified Party was concurrently negligent (whether actively or passively), it being agreed by the Parties that their respective liability or responsibility for Losses under this Article 15 shall be determined in accordance with principles of comparative negligence. In the event that any indemnity provisions in this Contract are contrary to the law governing this Contract, then the indemnity obligations applicable hereunder shall be applied to the maximum extent allowed by Applicable Law.

ARTICLE 16 – PUBLIC RECORDS

16.1 Public Records. The Commission constitutes a "public office" and materials submitted in response to this Contract including, but not limited to, Confidential Information, will be considered "public records" subject to disclosure under the Ohio Public Records Act found at Section 149.43 of the Ohio Revised Code, except as required by Applicable Law. In entering into this Contract, Contractor expressly acknowledges, represents, and agrees that any information submitted is subject to disclosure under Ohio Public Records Act. Contractor affirmatively represents that only the information which has been segregated and stamped as "trade secret asserted" is the subject of such a claim by Contractor; and that all other information is not subject to such a claim; and that Contractor affirmatively waives any claim to the contrary.

ARTICLE 17 – REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of Contractor. Contractor hereby represents and warrants to the Commission as follows:

(A) Organization. Contractor is duly organized, validly existing and in good standing under the laws of the state of [_____] has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted, and is duly qualified to do business in any jurisdiction in which its ownership of property or the transaction of its business makes such qualification necessary.

(B) Authorization; Binding Obligation. Contractor has full power and authority to execute and deliver this Contract and to perform its obligations hereunder. The execution, delivery and performance of this Contract by Contractor have been duly authorized by all necessary action on the part of Contractor. This Contract has been duly and validly executed and delivered by Contractor and constitutes the valid and binding obligation of Contractor enforceable against Contractor in accordance with its terms, except as such enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws relating

to or affecting the enforcement of creditors' rights generally, or (ii) general equitable principles (whether considered in any action at law or in equity).

(C) Non-Contravention. The execution, delivery and performance of this Contract by Contractor and the consummation of the transactions contemplated hereby do not and shall not contravene the governing documents of Contractor and do not and shall not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Contractor is a party or by which it or any of its properties is bound or affected.

(D) Regulatory Approvals. All governmental or other authorizations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract by Contractor have been obtained or shall be obtained in due course.

(E) Maintenance of Existence. Contractor will maintain its existence and remain in good standing in the State of Ohio throughout the term of this Contract and thereafter as long as any obligations remain outstanding under this Contract.

(F) Permits. Contractor has and will maintain in full force and effect during the term of this Contract all required authority, licenses, certifications and Permits, professional ability, skills and capacity necessary to perform the Services.

(G) Solvent. Contractor is not now insolvent and will not be rendered insolvent by any of the transactions contemplated by this Contract. As used in this section, "insolvent" means that the sum of the debts and other probable liabilities of Contractor exceeds the present fair saleable value of Contractor's assets. Contractor is (a) able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Contractor. In connection with the transactions contemplated hereby, Contractor has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

(H) No Actions. There is no action, suit, proceeding, investigation or litigation pending or threatened which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract, or which challenges or prohibits Contractor from entering into or performing under this Contract; and Contractor has disclosed to the Commission any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.

(I) Adverse to Performance. Contractor is not in breach of any Applicable Law that would have an adverse effect on the performance of this Project or Contractor's ability to perform its obligations under this Contract.

(J) Full Disclosure. Contractor has disclosed to the Commission all material information related to its ability to perform the Services and complete this Contract. Further Contractor has not omitted to disclose a material fact necessary to its ability to perform this Contract or that makes any of the representations and warranties in this Section 17.1 untrue or misleading.

(K) Documentation. All documentation of every and any form, name, format and content is complete and accurate in all material respects.

ARTICLE 18 – MISCELLANEOUS PROVISIONS

18.1 Non-Revenue Access. Contractor will be provided access and use of Turnpike roadways while performing the Services under this Agreement as follows:

(A) Toll-free access for Contractor's equipment and vehicles may be granted. A limited number of transponders (one (1) per vehicle provided for service) will be issued for the Contractor's motor vehicles. A detailed request outlining the quantity and need for toll-free transponders must be submitted to and approved by the Commission's Project Manager.

(B) It shall be Contractor's responsibility to manage the issuance and use of all transponders for performing the Services under this Contract. Contractor shall be liable for any misuse of said transponders whether it is by Contractor's forces or those of a Subcontractor. **Use of these transponders for personal travel or other travel not associated with this Contract is strictly forbidden.** Contractor shall be advised that any personal or company transponders issued for use other than on this Contract, must be removed from service vehicles or properly stored in protective mylar bags provided. It is the responsibility of the Contractor to advise all Subcontractors of the same requirements. The Commission will not be responsible for providing credit to accounts that are billed due to improper storage of personal or company transponders. Upon the completion of this Contract, all transponders shall be returned to the Commission. Should the Contractor return less than the number issued to them, the Commission shall withhold the sum of one hundred (\$100.00) dollars per transponder not returned from any monies due the Contractor.

18.2 Compliance with Laws. The Contractor shall perform its obligations hereunder, and shall ensure that all of its subcontractors perform their obligations, in accordance with all applicable federal, state, and local government laws, rules, regulations, orders and approvals, including but not limited to procedures and requirements relating to labor standards, compliance with Americans with Disabilities Act, and auditing and reporting provisions, now or hereafter in effect, and any rules required by any federal grant funding payment by the Commission. Any changes to applicable laws, rules, or regulations that are enacted after contract award may be the subject of a Change Order only if a change to Applicable Laws, rules, or regulations results in an actual and direct increase in cost to Contractor to comply with such changes.

18.3 Conflicts of Interest. Contractor represents and warrants that it, its principals, its employees, and all others in close association with it, have no conflict of interest or of time, directly or indirectly, that would prevent timely performance of the Services or the performance of the Services in a manner that is free of appearance or fact of impropriety. Contractor promises not to allow such conflict to arise and promises to disclose such a conflict in the event that one develops.

18.4 Non-Collusion. Contractor shall execute and deliver to the Commission the Non-Collusion Affidavit (attached hereto as Exhibit CH) simultaneously with the execution and delivery of this Contract. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that no person having any such interest shall be employed in the performance of this Contract.

18.5 Waiver. None of the terms or provisions of this Contract shall be deemed waived except by a writing signed by the Party which is entitled to the benefits thereof. The failure of any Party to require performance of any provision hereof shall in no manner affect such Party's right at a later time to enforce the same. The waiver by a Party of any provision hereof shall not be deemed to be a continuing waiver of any such provision or a waiver of any other provision hereof.

18.6 Parties in Interest. Nothing in this Contract is intended to confer any rights or remedies under or by reason of this Contract on any Persons other than the Parties hereto, nor is anything in this Contract intended to relieve or discharge the obligations or liabilities of any third Person or give any third

Person any right of subrogation or action over or against any Party hereto. This Contract is binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

18.7 Assignment.

(A) Except as expressly permitted herein, Contractor may not assign any rights or claims, or delegate any duties under this Contract, in whole or in part, without the prior written consent of the Commission, which may be withheld at the Commission's sole discretion. In the event of any assignment or delegation permitted hereunder, Contractor shall continue to be liable for the performance of its obligations hereunder.

(B) The Commission shall have the right to assign its rights and obligations under this Contract at any time to: (a) any Affiliate of the Commission, (b) any Person succeeding to all or substantially all of the assets or business of the Commission, or (c) any Person acquiring any property interest in or rights to develop and operate the Site or the Work, by purchase, lease, or contractual arrangement, in any such case without the necessity of obtaining Contractor's consent, provided the Commission and/or such assignee has demonstrated the existence of reasonable financial resources or other assurances to fulfill such assignee's obligations hereunder. No assignment permitted hereunder shall release the Commission from any obligations or liabilities of the Commission arising or relating to events occurring prior to the date of such assignment.

18.8 Governing Law; Venue.

(A) Any claims or disputes arising out of or related to this Contract shall be governed by and interpreted in accordance with the laws of the state of Ohio, without regard to principles of conflicts of law. The Parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply.

(B) Any action arising out of or related to this Contract in any way shall be brought exclusively in the Federal or State courts sitting in Cuyahoga County, Ohio, and each Party hereby consents to the jurisdiction and venue of such Court and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Contract. In the event that a Party does not provide an acknowledgment of service as agreed, each Party consents to service of process at that Party's address set forth in Section 18.8 of this Contract.

18.9 Notices. Any notice, demand, request, or other communication or document to be provided under this Contract to a Party to this Contract ("**Notice**") shall be in writing, and shall be given to the Party at its address or telecopy number set forth below, or to such other address or telecopy number as the Party may later specify for that purpose by notice to the other Party. Each Notice shall be deemed given and received: (i) if given by telecopy, when the telecopy is transmitted and confirmation of complete receipt is received by that transmitting Party during normal business hours or on the next business day if not confirmed during normal business hours; (ii) if hand delivered or given by overnight delivery service, the day on which the Notice is actually delivered to the address listed herein (whether or not delivered to the Party); or (iii) if given by normal or certified U.S. mail, two (2) Business Days after it is posted with the U.S. Postal Service.

If to the Commission:

Ohio Turnpike and Infrastructure Commission
Chief Information Officer
Attn: Chriss Pogorelc

682 Prospect Street
Berea, Ohio 44017
CHRISS.POGORELC@ohioturnpike.org

With a Copy to:

Ohio Turnpike and Infrastructure Commission
General Counsel
Attn: Jennifer L. Stueber, Esq.
682 Prospect Street
Berea, Ohio 44017
jennifer.stueber@ohioturnpike.org

If to the Contractor:

Attn: _____

18.10 Interpretation of Contract. For purposes of this Contract:

(A) The section and other headings in this Contract are inserted solely as a matter of convenience and for reference, and shall be given no effect in the construction or interpretation of this Contract;

(B) Unless the context of this Contract otherwise clearly requires, references in the plural form include the singular and vice versa;

(C) This Contract has been freely negotiated by all Parties and in the event there is any controversy, dispute, or claim involving the meaning, interpretation, validity, or enforceability of this Contract or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn against a Party by virtue of such Party having drafted this Contract or any portion hereof;

(D) The words “hereof,” “herein,” “hereunder,” and words of similar import shall refer to this Contract as a whole and not to any particular provision thereof;

(E) When used herein, the words “include” and “including” shall be construed as “include, without limitation” and “including, without limitation”;

(F) When used herein, the word “day” means a calendar day, “month” means a calendar month, and “year” means 365 days;

(G) Provisions including the word “agree,” “agreed,” or “agreement” require the agreement to be recorded in writing; and

(H) “Written” or “in writing” means hand-written, type-written, printed, or electronically made or transmitted, and resulting in a permanent record.

18.11 Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in

any other jurisdiction and the provision that is prohibited or unenforceable shall be reformed or modified to reflect the Parties' intent to the maximum extent permitted by applicable legal requirements.

18.12 Survival. The terms, covenants, conditions and obligations provided in the following Sections and Articles shall survive the termination of this Contract: Sections 3.5, **Error! Reference source not found.**, 3.7, 3.12, and 3.13, and Articles 6, 10, 11, 12, 13, 14, 15, 16, 17, and 18, and any claims, demands, losses, liens, or causes of action arising out of the Work prior to the date of termination.

18.13 Further Assurances. Contractor and the Commission agree to provide such information, execute and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Contract and that do not involve the assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

18.14 Execution and Counterparts. This Contract may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

18.15 Electronic Signatures. The Parties agree that for purposes of facilitating the signing of this Contract, an electronic signature or an electronic or facsimile transmission of a signature shall be an original signature for all purposes.

IN WITNESS WHEREOF, the authorized representatives of the Parties have fully signed and entered into this Contract on the day and year last written below.

OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

Ferzan M. Ahmed, P.E., Executive Director

Date: _____

APPROVED:

Jennifer Stueber, Esq., General Counsel

CONTRACTOR

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT A

Work Scope

[Exhibit A will be completed at the time of contract execution and is comprised of Appendix A to the RFP, including Attachments A-1, A-2, A-3 and A-4]

EXHIBIT B

Key Personnel

[Exhibit B will be completed at the time of contract execution]

EXHIBIT C

Contractor's Pricing Proposal

[Exhibit C will be completed at the time of contract execution]

EXHIBIT D - Form Escrow Agreement



ESCROW AGREEMENT

This **ESCROW AGREEMENT** (the "Agreement") is executed by and among _____ ("Contractor") performing the obligations of the civil construction contractor on _____ ("Project"), Ohio Turnpike and Infrastructure Commission ("Public Entity"), both collectively referred to as "the Contractor and Public Entity", and The Huntington National Bank, a national banking association, acting as escrow agent ("Escrow Agent").

WHEREAS, the Contractor and Public Entity seek to appoint Escrow Agent to receive and hold certain funds pursuant to that certain agreement between the Contractor and Public Entity; and

WHEREAS, Escrow Agent has agreed to accept, hold and disburse, as applicable, the funds deposited with it and the earnings thereon, if any, in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the promises and of the mutual covenants contained herein, the Contractor, Public Entity, and Escrow Agent hereby agree as follows:

- 1. APPOINTMENT OF ESCROW AGENT.** Contractor and Public Entity do hereby appoint Escrow Agent as escrow agent for the purposes described herein, and Escrow Agent does hereby accept the appointment as escrow agent and agrees to act in accordance with the terms and conditions described herein. Escrow Agent shall have all of the rights, powers, duties and obligations provided herein and as provided by law.
- 2. ESCROW FUND.** Contractor and/or Public Entity shall deliver and deposit with Escrow Agent, funds (the "Escrow Funds") to be held in escrow by Escrow Agent and distributed in accordance with the terms and conditions of this Agreement and/or as provided by law. Escrow Agent shall promptly deposit, invest and reinvest, as applicable, the Escrow Funds and the proceeds thereof into an account (the "Escrow Account") in the manner in which the Public Entity may invest under Chapter 135 of the Ohio Revised Code. Escrow Agent shall release and disburse Escrow Funds, with accumulated interest, at the direction of Public Entity or court of competent jurisdiction. Contractor and Public Entity agree not to request disbursement of funds unless Contractor and Public Entity agree to the disbursement, including timing and amount. Escrow Agent may rely and act upon a disbursement request from Public Entity, and Contractor and Public Entity release Escrow Agent from liability for complying with that request. Notwithstanding anything in this Agreement to the contrary, Escrow Agent will only release and disburse Escrow Funds which are Collected Funds, which are all funds received by Escrow Agent which have cleared normal banking channels and are considered to be good funds. Escrow Agent shall deliver disbursed funds to the Public Entity.
- 3. LIABILITY OF ESCROW AGENT.** Escrow Agent shall not be liable for any action taken or omitted by it in good faith under this Agreement, including, but not limited to any loss to the Escrow Funds resulting from the investment(s) or any loss resulting from the liquidation of any investment(s). Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance, specifically the agreement between the Contractor and Public Entity. To the extent permitted by law, Escrow Agent will not be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits) arising from this Agreement, even if Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds or any account in which Escrow Funds are deposited.

Escrow Agent will comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by Escrow Agent of such court's jurisdiction in the matter.

- 4. RIGHTS AND DUTIES OF ESCROW AGENT.** Escrow Agent's sole responsibility under this Agreement shall be for the safekeeping and disbursement of the Escrow Funds in accordance with the terms of this Agreement. Escrow Agent may rely upon any written instructions believed in good faith to be genuine when signed and presented by Contractor or the Public Entity and shall not have a duty to inquire or investigate the validity, truth and/or accuracy of any such written instruction. Upon release and disbursement of the Escrow Funds pursuant to this Agreement, Escrow Agent shall be fully released from any and all further obligations with respect to this Agreement. The Escrow Agent is not responsible for ensuring compliance with the terms of any agreement between Contractor and the Public Entity. The Escrow Agent shall not have any liability if Public Entity or Contractor fails to comply with its obligations as required by law or any agreement between those two parties.

- 5. TERM OF ESCROW AGREEMENT.** The Contractor, Public Entity, or Escrow Agent may terminate this agreement at any time by providing the other parties notice. If any party terminates this agreement, the remaining parties must agree as to the appropriate set of actions to complete termination within 30 days, including disbursement of any Escrow Funds.



ESCROW AGREEMENT

6. **ELECTRONIC COMMUNICATION.** The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent through the Communication Method and using the Security Procedures that the Escrow Agent and Public Entity have adopted to communicate under their agreement for Depository Banking Services, and if the Escrow Agent, in its discretion, elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reasonable and good faith reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction received after acting upon such preceding instructions. The Public Entity assumes the risk for all transactions made, authorized or blocked when the Escrow Agent receives the required information or instructions to process a transaction through the Communication Method using the Security Procedures even if the person giving the required information or instructions for the transaction (i) has exceeded their authority; (ii) does not have the authority; (iii) has had their authority changed or revoked; (iv) is not the same person issued the online login identification, passwords or personal identification symbols under the Security Procedures.
7. **FEES.** The fees are set forth in the Banking Services Contract executed in June 2014, and subsequently renewed to extend through June 30, 2018 or its successive agreement, by and between the Public Entity and the Escrow Agent.
8. **INDEMNIFICATION OF ESCROW AGENT.** The indemnity obligations between the Public Authority and Escrow Agent shall be governed under the agreement referenced in Section 7 and those between the Public Authority and Contractor shall be governed under the contract for the Project. From and at all times after the date of this Agreement, Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") from and against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Public Entity or Contractor, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance of this Escrow Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; *provided, however*, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. The obligations of Contractor under this Section shall survive any termination of this Agreement.
9. **REPRESENTATIONS and WARRANTIES.** Contractor and Public Entity make the following representations and warranties to Escrow Agent: (a) This Agreement has been approved by the appropriate resolution or ordinance; and (b) If any dispute arises between Contractor and Public Entity, the appropriate dispute process outlined in any agreement or permitted by law has been followed. No financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Escrow Funds or any part thereof.
10. **NOTICES.** All communications, notices and instructions required herein shall be in writing and shall be deemed to have been duly given if delivered by (a) hand or first class, registered or certified mail, return receipt requested, postage prepaid, (b) facsimile or electronic transmission if followed by letter and affirmative confirmation of receipt is received (such facsimile or electronically transmitted notice to be effective on the date such affirmative confirmation of receipt is received), or (c) overnight courier (such notice to be effective the following business day if instructions to deliver such notice on the next business day are given).
11. **ASSIGNMENT.** This Agreement shall not be assignable absent written consent of the Parties, unless pursuant to a merger or acquisition.
12. **MODIFICATION OF AGREEMENT.** This Agreement shall constitute the complete and entire understanding of the Parties, and shall supersede any and all prior agreements between or among them. Public Entity or Contractor may be required to agree to the terms and conditions of any deposit account opened with the Huntington National Bank to facilitate this Agreement. The provisions of this Agreement shall not be waived, modified, amended, altered or supplemented, in whole or in part, except by a



ESCROW AGREEMENT

writing signed by all the Parties, which makes specific reference to this Agreement.

13. **CHOICE OF LAW; WAIVER OF JURY TRIAL; JURISDICTION.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICT OF LAWS. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. IT IS THE INTENTION OF THE PARTIES THAT THE SITUS OF THE ESCROW ACCOUNT SHALL BE ADMINISTERED IN OHIO.

14. **FORCE MAJEURE.** No party to this Agreement shall be liable to any other party for losses arising out of, or the inability to perform its obligations under the terms of this Agreement, due to acts of God, which shall include, but shall not be limited to, fire, floods, strikes, mechanical failure, war, riot, nuclear accident, earthquake, terrorist attack, computer piracy, cyber-terrorism, fire, epidemics, delays of common carriers or other acts beyond the control of the Parties; it being understood that Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

15. **USE OF THE HUNTINGTON NATIONAL BANK NAME.** No party to this Agreement shall, without the prior written consent of Escrow Agent, publish or print or cause to be published or printed any printed or other material in any language, including prospectuses, notices, reports, internet web sites and promotional material, which mentions "The Huntington National Bank" by name or logo or the rights, powers, or duties of Escrow Agent under this Agreement.

16. **EXECUTION.** This Agreement may be executed in several counterparts, including by electronic delivery, each of which shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

17. **SEVERABILITY.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability (i) of the offending term or provision in any other situation or in any other jurisdiction or (ii) of any other term or provision of this Agreement.

18. **DEALINGS.** Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell, and deal in any of the securities of Contractor or Public Entity and become peculiarly interested in any transaction in which Contractor or Public Entity may be interested, and contract and lend money to Contractor or Public Entity and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude Escrow Agent from acting in any other capacity for Depositor or Secured Party or for any other entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CONTRACTOR

Escrow Agent

**OHIO TURNPIKE AND
INFRASTRUCTURE COMMISSION**

By: _____
Signature

By: _____
Signature

By: _____

Its: _____
Title

Its: _____
Title

Its: CFO/Comptroller

Date: _____

Date: _____

Date: _____

Approved as to form:

By: _____

Its: General Counsel

EXHIBIT E

Form of Substantial Completion Certificate

[Exhibit E will be completed at the time of contract execution]

EXHIBIT F - Form of Final Lien and Claim Waiver

CONTRACTOR’S FINAL WAIVER OF LIENS AND CLAIMS

For and in consideration of the sum of \$_____ (the “Final Payment”), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, being paid by Ohio Turnpike and Infrastructure Commission (“Owner”) to _____ (“Contractor”), which sum represents the total amount due and payable to Contractor for all work performed and materials and services furnished in furtherance of the construction improvement project known generally as _____ (the “Project”), Contractor unconditionally waives and releases any and all mechanic’s lien claims and/or attested account claims, rights of mechanic’s lien and/or attested account claims, payment bond claims, and all other demands, damages, causes of action, and other claims of whatever nature or description against the Owner, the Project or any person or entity relating in any manner whatsoever to the Project.

Contractor acknowledges and represents that the Final Payment represents payment for all work, labor, materials, equipment, tools and services supplied to or in furtherance of the Project (including without limitation extra work, retainage, accrued interest, fringe benefits, union dues, and impact claims), and that no additional sum is or will hereafter be claimed due by Contractor for such work, services or materials against or from any person or entity, including without limitation Contractor, Owner or the Project.

Contractor agrees to defend, indemnify and hold Owner harmless from and against any and all liens, claims, rights, debts, demands, actions, or causes of action of every kind or nature that may be asserted by any laborers, suppliers or subcontractors of Contractor to recover sums due for labor, materials or equipment furnished in furtherance of the Project. Contractor understands that the representations and warranties in this instrument are a material inducement to Owner’s release of Final Payment to Contractor.

DATE: _____, 202__.

[Contractor]

By: _____

Its: _____

State of Ohio)

) SS:

County of _____)

Before me, a notary public in and for said county and state, personally appeared the signatory hereof who signed the same in my presence, and who acknowledged that he/she is authorized to and did sign the foregoing, and that the same was his/her free act and deed on behalf of _____, this ____ day of _____, 202__.

Notary Public

**SUBCONTRACTOR’S OR SUPPLIER’S
FINAL WAIVER OF LIENS AND CLAIMS**

For and in consideration of the sum of \$ _____ (the “Final Payment”), and other good and valuable consideration, the sufficiency of which is hereby acknowledged, being paid by _____ (“Contractor”) to _____ (“Subcontractor or Supplier”), which sum represents the total amount due and payable to Subcontractor or Supplier for all work performed and materials and services furnished in furtherance of the construction improvement project known generally as the _____ Project, and the related work and improvements in _____, _____ County, Ohio (the “Project”) for the Ohio Turnpike and Infrastructure Commission (“Owner”), Subcontractor or Supplier unconditionally waives and releases any and all mechanic’s lien claims and/or attested account claims, rights of mechanic’s lien and/or attested account claims, payment bond claims, and all other demands, damages, causes of action, and other claims of whatever nature or description against Owner, Contractor, the Project, the project lessees, Contractor’s payment bond surety, or any person or entity relating in any manner whatsoever to the Project. Subcontractor or Supplier acknowledges and represents that the Final Payment represents full and final payment for all work, labor, materials, equipment, tools and services supplied to or in furtherance of the Project (including without limitation extra work, retainage, accrued interest, fringe benefits, union dues, and impact claims), and that no additional sum is or will hereafter be claimed due by Subcontractor or Supplier for such work, services or materials against or from any person or entity, including without limitation the Owner, the Contractor, the Project, Contractor’s payment bond surety, or any Project lessee(s).

Subcontractor or Supplier further represents and warrants that it has paid all of its laborers, subcontractors, vendors, unions, and suppliers in full, or that the proceeds of the Final Payment will be applied solely and exclusively to the payment of the persons or entities that have supplied labor, materials, equipment, services or tools to Subcontractor or Supplier for the Project to fully and completely resolve all of Subcontractor or Supplier’s Project-related debts.

Subcontractor or Supplier agrees to defend, indemnify and hold the Owner and Contractor harmless from and against any and all liens, claims, rights, debts, demands, actions, or causes of action of every kind or nature that may be asserted by any laborers, suppliers or subcontractors of Subcontractor or Supplier to recover sums due for labor, materials or equipment furnished in furtherance of the Project.

Subcontractor or Supplier hereby represents and warrants that the following identifies the names of all of its subcontractors and suppliers that have contributed labor, materials, equipment or services to the Project:

Supplier/Subcontractor	Providing*	Contract Value	Paid to Date	Thru this Payment	Balance Due

*Identify labor, materials, equipment and/or services.

