



**OHIO TURNPIKE AND  
INFRASTRUCTURE COMMISSION**

**ADDENDUM NO. 1**  
**ISSUED: AUGUST 31, 2022**

**to  
LOI NO. 11-2022**

**REQUEST FOR LETTERS OF INTEREST (LOIs)  
FOR PROFESSIONAL ENGINEERING SERVICES FOR PROJECT NO. 71-22-08**

**ISSUED: AUGUST 24, 2022**

**LETTERS OF INTEREST DUE DATE: 5:00 P.M. (Eastern) SEPTEMBER 14, 2022**

**ATTENTION OF RESPONDENTS IS DIRECTED TO:**

**ANSWERS TO QUESTIONS RECEIVED THROUGH 10:00 AM ON AUGUST 31, 2022:**

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

August 31, 2022  
Date

**ANSWERS TO QUESTIONS RECEIVED THROUGH 10:00 A.M. ON AUGUST 31, 2022:**

**Q#1 Could you also forward existing plans for 71-22-08, 71-22-09, 71-22-10, 71-22-11, 71-22-12?**

*A#1 Any interested respondent wanting copies of existing plans must submit a request in writing to [purchasing@ohioturnpike.org](mailto:purchasing@ohioturnpike.org). Due to their size, the plans will be provided through the Commission's file transfer portal which will provide a link to download the plans.*

**Q#2 We are interested in getting copies of plans for the original construction and any rehabilitation projects related to the following requests for letters of interest**  
**LOI No. 11-2022 for Project 71-22-08**  
**LOI No. 12-2022 for Project 71-22-09**  
**LOI No. 13-2022 for Project 71-22-10**  
**LOI No. 14-2022 for Project 71-22-11**  
**LOI No. 15-2022 for Project 71-22-12**

*A#2 See A#1.*

**Q#3 We would also like current Sample Specifications, Standard Drawings, and Standard Conditions for Public Improvement Contracts.**

*A#3 We don't have anything that is defined as Sample Specifications. Ohio Turnpike and Infrastructure Commission projects utilize Ohio Department of Transportation Construction and Material Specifications for most items. OTIC Standard Drawings are available on the Ohio Turnpike website - <https://www.ohioturnpike.org/business/doing-business-with-us/ohio-turnpike-standard-construction-drawings>. The Standard Conditions are set forth in our form construction contract, a draft copy of which is attached to this Addendum.*

**END OF ADDENDUM NO. 1**

**PART 1 CONTRACT**  
**CONTRACT TO BE COMPLETED AFTER AWARD**

This Contract is made by and between [**Contractor**], a [corporation/limited liability company/partnership] organized under the laws of the State of [Ohio] (the “Contractor”) and the **Ohio Turnpike and Infrastructure Commission**, a body corporate and politic constituting an instrumentality of the State of Ohio (the “Commission”), located at 682 Prospect Street, Berea, Ohio 44017, through its Executive Director under the authority of [Resolution No. \_\_\_\_\_ adopted \_\_\_\_\_, 2022].

**RECITALS**

WHEREAS, on \_\_\_\_\_, the Commission issued an Invitation to Bid (“Invitation to Bid”) for Project No. \_\_\_\_\_ (“Project”) relating to a \_\_\_\_\_ to be located at about Milepost \_\_\_\_\_ on the Ohio Turnpike in \_\_\_\_\_ County, Ohio; and

WHEREAS, on or about \_\_\_\_\_, 2022, the Commission published notice of the Invitation to Bid for Project No. \_\_\_\_\_ in accordance with law; and

WHEREAS, the Commission’s staff publicly opened the bids submitted in response to the Invitation to Bid for Project No. \_\_\_\_\_ at 2:00 P.M. on [\_\_\_\_\_, 2022; and

WHEREAS, the Commission determined that the Contractor submitted the lowest responsive and responsible bid to perform the necessary services for the Project subject to the terms and conditions of this Contract, and the Commission adopted Resolution No. \_\_\_\_-2022 on \_\_\_\_\_, 2022 to authorize the Executive Director to enter into this Contract.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Commission and Contractor agree as follows:

**SECTION A - DEFINITIONS**

1. Addenda or Addendum - A written or graphic instruction issued prior to the opening of Bids which clarifies, amends or interprets the Contract Documents.
2. Alternate - A proposed change in the Work described in the Contract Documents providing the Commission with an option to select between alternative materials, products or systems, or to add or delete portions of the Work.
3. Alternative Dispute Resolution - A method of resolving disputes other than arbitration or litigation.
4. Approved Equal – Article, device, material, equipment, form of construction or other item proposed by the Bidder and approved by the Chief Engineer for incorporation or use in the Work as being “equal” or equivalent to essential attributes of a Standard specified in the Contract Documents.

5. Architect/Engineer - The Person identified on the Title Sheet of the Plans or Drawings as having prepared the Plans or Drawings. **For Projects that are designed in-house by the Commission, the Architect/Engineer shall be the Chief Engineer or his designee.**
6. As-Built Drawings - Drawings or computer files revised by the Contractor to show changes made during the construction process.
7. Base Bid - The amount of money stated in a Bid as the sum for which the Bidder offers to perform the Work described in the Contract Documents, exclusive of adjustments for Alternates.
8. Bid Form - The schedule of items furnished to the bidders that is to be completed and submitted containing the Bidder's Bid setting forth the units of Work and prices therefor, which serves as an offer to perform the Work and accept the prices specified in the Bid Form as full compensation therefor in accordance with the Contract Documents, incorporated by reference as if fully rewritten in its entirety therein, and subject to any applicable deduction set forth in the Bid Form or Contract Documents.
9. Bidder - A Person who submits a Bid for a Contract with the Commission.
10. Bid Guaranty - Bid bond or other instrument of security furnished by the Bidder to provide assurance that the Bidder will execute the Contract.
11. Bid Express - The website portal (<https://www.bidexpress.com>) that the Commission uses as an official repository for obtaining Contract Documents and for submitting Bids electronically.
12. Bulletin - A document issued by the Architect/Engineer after the execution of the Contract requesting a Proposal from the Contractor which, if approved as provided in the Contract Documents, will cause the execution of a Change Order to modify, amend or alter the Contract Documents. The Bulletin becomes a part of the Contract Documents when a Change Order related to the Bulletin is executed by all applicable Persons.
13. Change Order - A document recommended by the Architect/Engineer and authorized by the Commission, issued after execution of the Contract, which authorizes a change in the Work or an adjustment in the Contract Price or the time for Final Completion.
14. Chief Engineer - The Commission's Chief Engineer or the duly authorized designee thereof.
15. Claim Affidavit - A sworn document containing a claim on the funds that are due to a Contractor, created by statute in favor of a Person supplying labor, materials or services for the value of labor, materials or services supplied.
16. Commission - The Ohio Turnpike and Infrastructure Commission operating in accordance with ORC Chapter 5537.
17. Commission Certified Small Business Enterprise ("SBE") – An entity that the Commission has found to be economically disadvantaged, which includes: (1) those businesses certified as a Disadvantaged Business Enterprise with the Ohio Uniform Certification Program under Chapter 49, Part 26 of the Code of Federal Regulations; (2) those businesses certified as an EDGE Business Enterprise with the Ohio Department of Administrative Services under Chapter 123, Section 2-16 of the Ohio Administrative Code; (3) those businesses

certified through the Ohio Department of Transportation as a Small Business Enterprise; (4) any other entities that the Commission certifies as a Small Business Enterprise through its Office of Equity and Inclusion.

18. Construction Budget - The total amount budgeted by the Commission for the construction Contracts required for the Project.
19. Construction Schedule - The schedule for the construction of the Project showing the time for completing the Work, the planned sequence for performing the Work, the Contractor's resource loading curve and the interrelationship between the activities of the Contractors the Architect/Engineer and the Commission.
20. Contract – The agreement between the Commission and the Contractor as set forth in the Contract Documents.
21. Contract Bond - Performance and payment bond or other instrument of security, furnished by the Contractor to provide assurance that the Contractor will perform the Work and make required payments.
22. Contract Completion – The Commission's recognition that the Contractor has completed all obligations and duties owed under the Contract to the Commission through the execution of the Certificate of Contract Completion and issuing final payment and the release of retainage.
23. Contract Cost Breakdown - A document furnished by the Contractor in the form prescribed by the Commission reflecting the full, accurate and detailed estimate for the various kinds of labor to be performed and material to be finished for each portion of the Work, which shall serve as the basis for reviewing the Contractor's Payment Requests, determining retainage amounts and the cost or credit to the Commission resulting from any change in the Work.
24. Contract Documents - Collectively, shall include this Contract and any and all exhibits attached thereto, and the Drawings, Specifications, Addenda, Standard Conditions, SBE Participation Commitment and Utilization Plan, Demonstration of Good Faith Efforts, Statement of Intent to Contract and Perform, Change Order Procedure and Pricing Guidelines, Special Provisions, and Change Orders and approved Shop Drawings, if any.
25. Contract – The document evidencing the agreement between the Commission and the Contractor to complete the Work, which includes and incorporates all exhibits thereto.
26. Contractor – [Contractor], a corporation/limited liability company/partnership organized under the laws of the State of [Ohio].
27. Contractor Payment Request - The form furnished by the Commission that is to be used by the Contractor in requesting progress payments and which when signed by the Contractor shall serve as an affidavit that payments requested are in proportion to the Work completed as shown by the Contract Cost Breakdown and/or Schedule of Values and that payments previously paid by the Commission have been applied by the Contractor to discharge in full all of Contractor's obligations incurred in connection with the Work covered by all prior Contractor Payment Requests.
28. Day - Calendar day, unless otherwise expressly specified.

29. Defective Work - Refers to Work that does not conform to the Contract Documents, or does not meet the requirements of any applicable statute, rule or regulation, policy, inspection, reference standard, test or approval, or has been damaged prior to Final Acceptance, unless responsibility for the protection thereof has been expressly assumed by the Commission, or that is not free from defects in workmanship, materials or equipment during the period of any Guarantee.
30. Director of Contracts Administration – The Commission’s Director of Contracts Administration or the duly authorized designee thereof.
31. Drawings - The graphic and pictorial portions of the Contract Documents, showing the design, type of construction, location, dimension and character of the Work to be provided by the Contractor, generally including Plans, elevations, sections, details, schedules, diagrams, notes, Specifications and Special Provisions, in whole or in part.
32. Final Acceptance - The Commission’s acceptance of the physical repairs and improvements made under the Contract from the Contractor upon certification by the Architect/Engineer of Final Completion and approval by the Chief Engineer.
33. Final Completion - The date upon which all deficiencies noted in the Punch List have been corrected, the Work is one hundred percent (100%) complete, and the Contractor has complied with all conditions precedent to pre-final payment under Article 9 of the General Conditions.
34. Final Inspection - Final review of the Contractor’s Work by the Architect/Engineer to determine whether certification of Final Completion is appropriate.
35. General Counsel - The Commission’s General Counsel or the duly authorized designee thereof.
36. Good Faith Efforts – The performance of necessary and reasonable actions that, by their scope, intensity, and appropriateness, would reasonably be expected to attain commitment for SBE participation on the Project that meets or exceeds the SBE Goal appearing on the Notice to Bidders. The determination that the Bidder utilized Good Faith Efforts is based on consideration of the quality, quantity, and intensity of the different kinds of actions that the Bidder has taken. The actions undertaken by the Bidder to perform Good Faith Efforts must be those that one could reasonably expect a Bidder to deploy if the Bidder were seriously, actively and aggressively attempting to obtain SBE participation in relative proportion to those that are available to capably perform the Work.
37. Guarantee - Legally enforceable assurance, for a period after Final Completion, of quality or performance of the Contractor’s workmanship, material and equipment.
38. Inspector - Any Persons assigned by the Chief Engineer to make a detailed inspection of the Work or any portion thereof. For Projects that are designed in-house by the Commission, the Chief Engineer may designate a Commission employee to perform any or all inspections, except for materials testing.
39. Laboratory - Any Person providing testing services to the Commission.
40. Liquidated Damages - The sum established in the Contract Documents as the predetermined measure of damages to be paid to the Commission due to the Contractor’s failure to complete the Work, or a portion thereof, within a stipulated time.

41. Maintenance Bond - A bond furnished by the Contractor and the Contractor's Surety to provide assurance that the Contractor will perform the Guarantee.
42. Material Supplier - A Person who furnishes materials, equipment and supplies for Work on the Project.
43. Notice of Commencement - The notice prepared by the Director of Contracts Administration identifying the Project, the Contractors, the Surety for each Contractor and the name of the Director of Contracts Administration upon whom a Claim Affidavit may be served.
44. Notice of Intent to Award - The correspondence provided to the apparently successful Bidder stating that upon satisfactory compliance with all conditions precedent for execution of a Contract, within the time specified, the Commission intends to execute a Contract with the Bidder.
45. Notice to Proceed - A notice provided by the Chief Engineer to the Contractor authorizing the Contractor to proceed with the Work.
46. Or Equal - See Approved Equal.
47. ODOT - The Ohio Department of Transportation.
48. ORC - The Ohio Revised Code.
49. OSHA - The Occupational Safety and Health Administration.
50. Partial Use - The stage in the progress of the Work when the Project, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so the Commission can occupy or utilize the Project, or designated portion thereof, for its intended use.
51. Person - An individual, corporation, business trust, estate, limited liability company, partnership, association or other entity, public or private.
52. Plans - See Drawings.
53. Procurement Manager - The Commission's Procurement Manager or the duly authorized designee thereof.
54. Project - The public improvement to be constructed by the Contractor pursuant to the terms of the Contract, and owned and identified by the Commission as Project No. XXXX.
55. Proposal - The offer of a Contractor to complete the Work as set forth in its bid proposal dated [\_\_\_\_\_, 2022].
56. Proposed Equal - Article, device, material, equipment, method, form of construction or other item proposed by the Bidder for incorporation or use in the Work as being equivalent to essential attributes of a Standard specified in the Contract Documents.
57. Punch List - A list of items of Work to be completed or corrected by the Contractor as a condition precedent to Final Completion.
58. Record Drawings - Drawings or computer files revised by the Architect/Engineer to show the changes made during the construction process, based on the As-Built Drawings furnished by the Contractor to the Architect/Engineer.

59. Request for Information – Written request from the Contractor to the Architect/Engineer seeking an interpretation or clarification of the Contract Documents.
60. Responsive Bid – A Bid that responds to the Contract Documents in all material respects and contains no irregularities or deviations from the Contract Documents which would affect the amount of the Bid or otherwise give the Bidder a competitive advantage. A failure to meet the SBE requirements or to satisfactorily demonstrate Good Faith Efforts used to attain SBE participation for the Project shall be considered a material deviation or irregularity.
61. Samples - Physical examples furnished by the Contractor to illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
62. Schedule of Values - A statement furnished by the Contractor to the Commission reflecting a structure for progress payments on Work performed for each respective lump sum pay item, which shall serve as the basis for reviewing the Contractor's Payment Requests and determining the cost or credit to the Commission resulting from any change in the Work.
63. Small Business Enterprise ("SBE") - an entity certified by the Commission at the time of bid opening as a SBE, DBE or MBE or as SBE or DBE with Ohio Department of Transportation or EDGE with the Ohio Department of Administrative Services.
64. Shop Drawings - Drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data and other data specially prepared or provided by the Contractor, a Subcontractor or Material Supplier to illustrate some portion of the Work.
65. Special Provisions - Amendments to the Contract Documents, which describe conditions unique to a particular Project.
66. Specifications - Those portions of the Contract Documents consisting of the written requirements and the qualities and quantities of materials, equipment, construction systems and workmanship as applied to the Work and certain administrative details applicable thereto.
67. Standard - The items named in the Specifications or Addendum to denote kind, quality or performance requirement for each significant portion of the Work. All Bids and Proposals shall be based on the Standards named in the Specifications or Addenda.
68. Standard Conditions - The Commission's Standard Conditions of the Contract for Construction and the General Conditions.
69. State - The State of Ohio.
70. Subcontractor - A Person who undertakes to perform any part of the Work on the Project under a Contract with any Person other than the Commission in any tier.
71. Substantial Completion – The date upon which the Commission recognizes that the progress of the Work has satisfied the requirements set forth in SP103, or - if not set forth in SP103 - the date the Commission puts the entire Project into use and the only remaining incomplete Work constitutes Punch List items.
72. Superintendent - The Person serving as the Contractor's Superintendent in accordance with paragraph GC 2.2.



- 73. Surety - A Person providing a Bid Guaranty or a Bond to a Bidder or a Contractor, as applicable, to indemnify the Commission against all direct and consequential damages suffered by failure of the Bidder to execute the Contract or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, Material Suppliers and laborers, as applicable.
- 74. Unit Price - An amount stated in the Bid as the price per unit of measurement for materials or services described in the Contract Documents, the cost of which shall include overhead, profit and any other expense for the Work.
- 75. Warranty - Legally enforceable assurance, for the specified duration from Final Acceptance by the Commission of quality or performance of materials and equipment.
- 76. Work - The construction services required by the Contract Documents, to include all labor, materials, equipment and services performed or provided by the Contractor for the Project.

### **SECTION B – PROJECT**

- 1.1 The Contractor shall perform the entire Work described in the Contract Documents and reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, for: Project No. XXXX titled XXXX.
- 1.2 In addition to those capitalized terms used herein, the parties agree that capitalized terms used in this Contract shall have the meanings given to such terms in Section A above, and such terms defined in the singular to have the same meaning when used in the plural and vice versa.
- 1.3 The parties agree that Change Order Procedure and Pricing Guidelines as set forth in Part 8 of this Construction Bid (see page 114) are attached hereto as part of Exhibit A and incorporated herein by reference as if fully rewritten herein.
- 1.4 The parties agree that Special Provisions and Technical Specifications and Project Plans / Drawings as posted on Bid Express are attached hereto as part of Exhibit A and incorporated herein by reference as if fully rewritten herein.
- 1.5 The parties agree that [Contractor's bid in response to the Invitation to Bid] as attached hereto as Exhibit B is incorporated herein by reference as if fully rewritten herein.
- 1.6 The parties agree as follows: (a) that any reference to the Invitation to Bid in any exhibit or attached to this Contract shall be construed as a term of this Contract; (b) if any conflict exists as between this Contract and the Invitation to Bid, then this Contract shall control; and (c) if any conflict exists as between the Invitation to Bid and the Contractor's Bid, then the Invitation to Bid shall control.
- 1.7 The parties agree that any addenda issued by the Commission during the bidding process are incorporated herein by reference as if fully rewritten herein.

### **SECTION C – CONTRACT PRICE**

- 1.1. The Commission shall pay the Contractor for the performance of the Work, subject to additions and deductions as provided in the Contract Documents, the amount of [\_\_\_\_\_] (the "Contract Price"), based upon the Bid Form, dated [\_\_\_\_\_] submitted by the Contractor, a copy of which is attached hereto as Exhibit B.

- 1.2. The Contract Price shall be paid in current funds by the Commission upon Contractor Payment Requests submitted by the Contractor and approved by the Commission as provided in the Contract Documents.

#### **SECTION D – LIQUIDATED DAMAGES**

- 1.1. The Contractor shall diligently prosecute the Work and shall achieve each completion milestones prior to the deadlines specified in the Special Provisions for Construction Phasing and Time of Completion at SP 103, unless an extension of time is approved through the process established under Article 6 of the General Conditions.
- 1.2. Time is of the essence and the Work to be performed under the Contract shall be completed within the times provided above, unless the Contractor timely requests and the Commission grants an extension of time in accordance with the Contract Documents.
- 1.3. Failure to have the Work completed within the times provided, shall entitle the Commission to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the applicable amount set forth in the following table for each and every day thereafter until Substantial Completion, Final Completion or any additional milestone, as applicable, is achieved:

#### **LIQUIDATED DAMAGES**

Completion Milestone	Liquidated Damages
Submitting an acceptable Baseline Construction Schedule prior to beginning the Work except that described in Article 4.2.4.2 of the General Conditions	\$500.00 for each day after beginning the Work other than that described in Article 4.2.4.2 is performed without submitting an acceptable Baseline Construction Schedule.
2021 Mainline Pedestrian Bridge Completion Interim Milestone	\$750.00 for each day that the failure to achieve the 2021 Mainline Pedestrian Bridge Completion Interim Milestone continues beyond the time described in SP 103.
2021 Concrete Flat Work Completion Interim Milestone	\$500.00 for each day that the failure to achieve the 2021 Concrete Flat Work Completion Interim Milestone continues beyond the time described in SP 103.
Substantial Completion	\$2,000.00 for each day that the failure to achieve the Substantial Completion continues beyond the time described in SP 103.
Final Completion	\$1,000.00 for each day that the failure to achieve the Final Completion continues beyond the time described in SP 103.

- 1.4. The amount of Liquidated Damages is agreed upon by and between the Contractor and the Commission because of the impracticality and extreme difficulty of ascertaining the actual amount of damage that the Commission, its tollpayers, and traveling public would sustain.

#### **SECTION E - MISCELLANEOUS**

- 1.1. The Contract Documents embody the entire understanding of the Commission and the Contractor and form the basis of the Contract between the Commission and the Contractor. The Contract Documents shall be considered to be incorporated by reference into this Contract as if fully rewritten herein.
- 1.2. The Contract and any modifications, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio.
- 1.3. If any term or provision of the Contract, or the application thereof to any Person or circumstance, is finally determined, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the Contract or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of the Contract shall be valid and enforced to the fullest extent permitted by law.
- 1.4. The Contract shall be binding on the Contractor and Commission, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents. The Contract may not be assigned by the Contractor without the prior written consent of the Commission.
- 1.5. The Contract shall become binding and effective upon execution by the Commission.
- 1.6. This Contract has been executed in several counterparts, each of which shall constitute a complete original Contract that may be introduced in evidence or used for any other purpose without production of any other counterparts.
- 1.7. 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

#### **SECTION F – WAGE RATES**

##### **1.1 PAYMENT OF PREVAILING WAGE RATES**

- 1.1.1 The Contractor shall pay, and require all Subcontractors to pay, the prevailing wage rates of the Project locality, as issued by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour Bureau to laborers and mechanics performing Work on the Project.
- 1.1.2 The Contractor shall comply, and require all Subcontractors to comply, with the provisions, duties, obligations, and is subject to the remedies and penalties of Chapter 4115, ORC.
- 1.1.3 The Contractor shall submit all payroll reports in compliance with the requirements of Article GC 18 for all of the employees of the Contractor and of the Contractor's Subcontractors.

- 1.1.4 The prevailing rates of wages as ascertained by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour Bureau for the Project as provided in Section 4115.03 through 4115.14, ORC are published on the Internet and accessible through its online portal at <https://wagehour.com.ohio.gov/w3/webwh.nsf/wrlogin/?openform>, which are hereby incorporated by reference as if fully reproduced and attached to the Contract Documents.

## 1.2 PREVAILING WAGE RATE REVISIONS

- 1.2.1 The Commission shall, within seven (7) business days after receipt of a notice of a change in the prevailing wage rates, notify the Contractor of the change.
- 1.2.2 The Contractor shall pay any revised wage rates issued during the term of the Contract.

## **SECTION G – GENERAL CONDITIONS**

### **ARTICLE 1. GENERAL CONDITIONS**

All cross referencing herein which begin with “GC” followed by a section number shall refer to this Section G, “General Conditions” of this Contract.

#### **1.1. APPLICATION AND GOVERNING LAW**

- 1.1.1. The Contractor, the Architect/Engineer and the Chief Engineer shall be familiar with all provisions of the Contract Documents. Neither the Contractor nor the Contractor’s employees are employees of the Commission for any purpose.
- 1.1.2. There shall be no change to the Standard Conditions or any Specifications unless so provided in Special Provisions prepared by or approved in writing by the Chief Engineer.
- 1.1.3. The Contractor shall comply with all applicable federal, State and local codes, statutes, ordinances and regulations in the performance of the Work on the Project, including without limitation any environmental regulations or policies adopted by ODOT. References to ODOT items shall be as set forth in the ODOT Construction and Material Specifications as provided in the Special Provisions. Such Construction and Material Specifications are hereby incorporated by the reference into the Contract Documents to the extent not inconsistent with the Standard Conditions.
- 1.1.4. The courts of the State shall have exclusive jurisdiction over any action or proceeding concerning any Contract, agreement or performance under the Contract Documents or in connection with the Project. Any such action or proceeding shall be brought and litigated to completion only in the court of common pleas of Cuyahoga County, Ohio or of the county of the State in which the Project is located and the Contractor irrevocably consents to such jurisdiction, waiving any right of removal. The Contract shall be construed in accordance with the laws of the State of Ohio.

1.1.5. Other rights and responsibilities of the Contractor, the Architect/Engineer and the Commission are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience. Captions throughout the Contract Documents are for convenience and reference only and the words contained in the captions shall in no way be held to express, modify, amplify or aid in the interpretation, construction or meaning of the provisions of the Contract Documents.

1.1.6. The Commission may maintain an action in the name of the Commission for violations of any law relating to the Project or for any injury to Persons or property pertaining to the Work, or for any other cause which is necessary in the performance of the Commission's duties.

## **1.2. CONDITIONS OF CONTRACT**

### **1.2.1. Nondiscrimination**

1.2.1.1. During the performance of the Contract, the Contractor agrees that in the hiring of employees for the performance of Work, including without limitation Work to be performed by a Subcontractor, no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, by reason of race, religion, national origin, age, sex, disability, military status as defined in section 4112.01 of the Revised Code, or color, discriminate against any citizen in the employment of labor or workers who are qualified and available to perform the Work to which the employment relates.

1.2.1.2. The Contractor further agrees that no Contractor or Subcontractor, and no Person acting on behalf of the Contractor or Subcontractor, shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, religion, national origin, age, sex, disability, military status as defined in section 4112.01 of the Revised Code, or color.

1.2.1.3. The Contractor agrees that the Contractor will fully cooperate with any official or agency of the Commission or federal government which seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

1.2.1.4. In the event of the Contractor's noncompliance with the nondiscrimination clauses, the Contract may be terminated or suspended in whole or in part, and the Contractor may be declared not responsive or responsible for further Commission Contracts or such other sanctions as provided by law.

### **1.2.2. Hiring Under Commission Public Improvement Contracts**

1.2.2.1. In the event a hiring hall contract or agreement is applicable, any provision of a hiring hall contract or agreement which obligates a Contractor to hire, if available, only such employees as are referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless, at the date of execution of such hiring hall contract or agreement, or within thirty (30) days thereafter, such labor organization has in effect procedures for referring qualified employees for hire without regard to race, religion, national origin, age, sex, disability, Vietnam era Veteran status, color, or ancestry and

unless such labor organization includes in its apprentice and journeymen membership, or otherwise has available for job referral without discrimination, qualified employees.

#### 1.2.3. Wages and Hours

1.2.3.1. The Contractor shall pay the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Division of Labor & Worker Safety, Wage and Hour Bureau, to laborers and mechanics performing Work on the Project.

1.2.3.2. The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Chapter 4115, ORC.

1.2.3.3. The Commission shall, within seven (7) business days after receipt of a notice of change in prevailing wage rates, notify the Contractor of the change. The Contractor shall make the necessary adjustment in the prevailing wage rates and pay any wage increase during the term of the Contract.

#### 1.2.4. Notice of Commencement

1.2.4.1. The Director of Contracts Administration shall prepare a Notice of Commencement in affidavit form identifying the name and address of the Commission, the Project number, the name, address and trade of all Contractors, the date of execution of the Contracts, and the name and address of the Surety for each Contractor, in addition to the name and address of the Director of Contracts Administration upon whom a Claim Affidavit may be served.

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

### 1.3. **GIVING NOTICE**

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

1.3.1.1. All notices provided to the Contractor by the Architect/Engineer shall be copied to the Chief Engineer and the Director of Contracts Administration.

1.3.1.2. All notices provided to the Architect/Engineer by the Contractor shall be copied to the Chief Engineer and the Director of Contracts Administration.

1.3.1.3. All notices provided to the Commission or any employee of the Commission by the Contractor shall be copied to the Chief Engineer, the Architect/Engineer and the Director of Contracts Administration.

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

#### **1.4. USE OF ELECTRONIC MAIL**

1.4.1. Any notice required to be given by the Contract Documents may be given by electronic mail.

#### **1.5. CONTRACT DOCUMENTS**

##### **1.5.1. Intent**

1.5.1.1. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Anything required by one (1) Contract Document shall be as binding as if required by all. The Contractor shall be held to provide all labor and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably implied therefrom to produce the intended results.

1.5.1.2. The Standard Conditions may not be superseded or amended by Drawings and Specifications unless so provided in Special Provisions prepared or approved in writing by the Chief Engineer.

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

1.5.1.4. The organization of the Specifications in divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.5.1.5. In the event of inconsistencies within or between the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work, and shall comply with the more strict requirement, as determined by the Chief Engineer.

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

##### **1.5.2. Interpretation**

1.5.2.1. If the Contractor finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents including without limitation the Drawings and Specifications, or between any of the Contract Documents and any applicable provisions of law, the Contractor, before proceeding with the Work, shall submit a Request for Information to the Architect/Engineer for an interpretation or clarification. The Contractor shall be responsible for the prompt delivery of such Request for Information. However, notwithstanding the required request for information, the following hierarchy of the Contract Documents shall apply: In case of discrepancy, figured dimensions shall govern over scaled dimensions; Plans shall govern over State of Ohio Department of Transportation Construction and Materials Specifications ("ODOT CMS") as identified in SP102 of the Special Provisions; Special Provisions and all technical specifications therein shall govern over Plans and the ODOT CMS; and contents of Addenda shall supersede the language modified in the Contract Documents by such Addenda.

1.5.2.2. The Architect/Engineer shall consult with the Chief Engineer and respond in writing, to any and all Requests for Information within three (3) days of receipt from the Contractor.

1.5.2.3. Any interpretation or clarification of the Contract Documents made by any Person other than the Chief Engineer, or in any manner other than writing, shall not be binding and the Contractor shall not rely upon any such interpretation or clarification.

1.5.2.4. If any change to the Work is made to accommodate unforeseen circumstances, the Architect/Engineer shall notify the Chief Engineer in order to initiate appropriate action.

1.5.3. No waiver of any Contract provision by the Commission at any time shall be deemed or taken as a waiver at any time thereafter of the same or any other term or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of the Commission to take or to exercise any right, power, remedy, privilege or option or subsequent acceptance thereafter accrued shall impair or be construed as relinquishment thereof, to waive any default or impair any such right, power, remedy, privilege or option, or constitute acquiescence therein and no notice by the Commission shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the Commission in one or more instances. No waiver shall be valid against the Commission unless reduced to writing and signed by the Chief Engineer or Executive Director duly empowered to execute the same.

## **1.6. DRAWINGS AND SPECIFICATIONS**

### **1.6.1. Ownership**

1.6.1.1. All Drawings and Specifications are the property of the Commission.

1.6.1.2. In making copies of the Drawings and Specifications available, the Commission does not confer a license or grant permission for any use other than Work on the Project.

1.6.1.3. Unless otherwise specified in the Contract Documents, the Commission shall furnish to the Contractor, free of charge, five (5) sets of Drawing and Specifications.

1.6.1.4. The Contractor may purchase additional copies of the Drawings and Specifications from the Commission, upon request, at the cost of the reproduction plus shipping, if any.

### **1.6.2. Access**

1.6.2.1. The Architect/Engineer shall maintain a set of Drawings and Specifications, approved by the Department of Commerce, Division of Industrial Compliance, and the records required by subparagraph 3.2.12 at a secure location at the Project.

1.6.2.2. The Contractor shall maintain in good order at the Project site one (1) copy of all Drawings, Specifications, Bulletins, Addenda, approved Shop Drawings, catalog data, manufacturer operating and maintenance instructions, certificates, Warranties, Change Orders, and other modifications, including As-Built Drawings.



1.6.2.3. The Architect/Engineer and the Contractor shall at all times permit access to the documents described in subparagraphs GC 1.6.2.1 or GC 1.6.2.2, as applicable, and any other Contract Documents to the Chief Engineer, the Contractor and the Architect/Engineer.

### 1.6.3. As-Built Drawings

1.6.3.1. The Contractor shall keep an accurate and up-to-date record of all approved changes, no matter how minor, and clarifications made to the Drawings to show actual installation where installation varies from Work as originally shown, on the Drawings. All approved changes and clarifications or other changes to the Drawings shall be depicted with a red pen or pencil. The As-Built Drawings shall be a full size set of Drawings separate from the Contractor's Working Drawings, and shall be kept in the Contractor's on-site Project Field Office in a manner that is open to inspection by the Chief Engineer at any time during the progress of the Work. Failure to so record such changes when approved will cause payment to be withheld or delayed.

1.6.3.2. The Contractor shall give particular attention to include information in the As-Built Drawings on concealed elements that would be difficult to identify or measure and record later. Types of elements requiring marking include, but are not limited to, the following:

- a. Changes to Drawings made by Request for Information, Field Directive, Change Order, or Bulletin.
- b. Changes to or missing dimensions on Drawings.
- c. Revisions to details shown on Drawings.
- d. Exact locations and depths of underground and above ground utilities.
- e. Existing conditions, utilities and details not shown on the Drawings.
- f. Field records of variable and concealed conditions.
- g. Record information about the Work that is shown only schematically on the Drawings.
- h. Revisions to routing of piping and conduits.
- i. Actual equipment locations.
- j. Depths of foundations.
- k. Locations of concealed internal utilities.
- l. Revisions to electrical circuitry.
- m. Duct size and routing.

The Contractor shall provide a cross reference label for each change to indicate the appropriate Request for Information number, Change Order number, Bulletin number or Letter number adjacent to the change.

1.6.3.3. Where Shop Drawings or Coordination Drawings are used, the Contractor shall cross-reference the corresponding sheet numbers on the Drawings, sections of the Specifications and the sections of any applicable Special Provisions. The Contractor shall note related Request for Information numbers and Change Order numbers where applicable.

1.6.3.4. The Contractor shall keep a record of any change made to the Specifications or Special Provisions, noting particularly any variation from manufacturer's installation instructions and recommendations. These changes shall be turned over to the Commission with the As-Built Drawings.

1.6.3.5. The Contractor shall submit the completed As-Built Drawings to the Commission Representative one (1) month after the scheduled Substantial Completion Date.

## **ARTICLE 2. THE CONTRACTOR**

### **2.1. CONSTRUCTION PROCEDURES**

2.1.1. The Contractor shall be responsible for and have control over all construction means, methods, manners, techniques, sequences and procedures for all portions of the Contractor's Work and shall be responsible for any injury or damage which may result from the Contractor's Work or from improper construction, installation, maintenance or operation to the fullest extent permitted by law.

2.1.2. Unless otherwise specified in the Contract Documents, the Contractor shall be responsible for properly and accurately laying out all lines, levels, elevations and measurements for all the Work as required by the Contract Documents and for the removal of all snow and ice as may be required for access to the Project and the Work.

2.1.3. The Contractor shall do all cutting, fitting or patching required for the Contractor's Work and shall not endanger the Project by cutting, excavating or otherwise altering the Project, or any part of it.

2.1.3.1. The Contractor requiring sleeves shall furnish and coordinate the installation of the sleeves. The Contractor shall be responsible for the exact location and size of all holes and openings required to be formed or built for the Work, and to permit coordination with any Work performed by others on the Project.

2.1.3.2. The Contractor shall allow sufficient time for installation of any Work performed by others before covering or closing the applicable portion of the Project.

2.1.3.3. Patching shall match and blend with the existing or adjacent surface. Any patching required because of Defective Work or ill-timed Work shall be done by and at the expense of the Contractor.

2.1.4. The Contractor shall not take any action that may affect the structural integrity of the Project, without the written approval of the Architect/Engineer.

2.1.4.1. Unless otherwise specified in the Contract Documents, the Contractor, prior to starting underground excavation or trenching, shall give notice at least two (2) business days in advance to the owners of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS") at [www.oups.org](http://www.oups.org) or by phone at (800) 362-2764, and the owners of underground utilities shown on the Drawings and Specifications who are not registered members of OUPS. The owner of an underground utility is required within forty-eight (48) hours of notice, excluding Saturdays, Sundays and legal holidays, to stake, mark or otherwise designate the location of its utilities in the construction area together with its approximate depth. If

any underground utility owner fails to timely perform, the Contractor shall immediately notify the Chief Engineer and the owner of the underground utility.

2.1.4.2. In performing any excavation or trenching the Contractors shall exercise caution and implement appropriate safety precautions to avoid property damage and personal injury.

2.1.4.3. The Contractor shall backfill any excavation with the material specified and approved by the Architect/Engineer.

2.1.5. The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity limits for installation of the various materials.

2.1.6. The Contractor shall comply with all requirements and conditions of the National Pollutant Discharge Elimination System ("NPDES") general permit, including, but not limited to, implementing and maintaining the control measures specified in the storm water pollution prevention plan, maintaining records of construction activities, removing materials no longer required and taking proper action if there is a reportable quantity spill.

## **2.2. CONSTRUCTION SUPERVISION**

2.2.1. The Contractor shall provide adequate and continuous supervision at the Project by a competent Superintendent (the "Superintendent") when any Work is being performed, unless waived by the Chief Engineer.

2.2.2. The Superintendent shall have responsibility and authority to act on behalf of the Contractor. All communications to the Superintendent shall be as binding as if given directly to the Contractor.

2.2.3. The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed Superintendent, including references, to the Architect/Engineer within ten (10) days of the Notice to Proceed.

2.2.3.1. The Commission reserves the right to reject the Contractor's proposed Superintendent. Any such rejection shall be determined by the Chief Engineer. Failure of the Chief Engineer to notify the Contractor of such rejection within thirty (30) days of receipt of the required information shall constitute notice that the Commission has no objection.

2.2.3.2. If the Commission rejects the Contractor's proposed Superintendent, the Contractor shall replace the Superintendent at no additional cost.

2.2.3.3. When using multiple shifts to perform the Work, the Contractor shall submit qualifications, as described in GC 2.2.3, for a sufficient number of additional Superintendents to provide continuous supervision during the performance of the Work.

2.2.3.4. Superintendents must have a minimum of ten (10) years of experience on public improvements in the State of Ohio that are substantially similar to that involved in the Work, and to have a minimum of five (5) years of experience in a supervisory role with responsibilities similar to that described for the Superintendent on such improvement projects.

2.2.4. The Contractor shall not terminate or change the Superintendent without written approval of the Chief Engineer.

2.2.4.1. If the Contractor proposes to terminate or change the Superintendent, the Contractor shall submit to the Chief Engineer a written justification for the termination or change, along with the name and qualifications of the individual whom the Contractor proposes to be the new Superintendent, ten (10) days prior to any termination or change.

2.2.4.2. The procedure provided in paragraph GC 2.2.3 shall be conducted to evaluate the Contractor's proposed new Superintendent.

## **2.3. PROTECTION OF THE PROJECT, OTHER PROPERTY AND UTILITIES**

2.3.1. The Contractor shall protect the Contractor's Work from weather, and shall maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Final Acceptance, including during any period of suspension of the Work due to any cause.

2.3.1.1. Work likely to be damaged shall be covered or protected at all times to prevent damage.

2.3.1.2. Any Work damaged by failure of the Contractor to provide coverage or protection shall be removed and replaced with new Work at the Contractor's expense.

2.3.1.3. Any adjacent property, including without limitation roads, walks, shrubbery, plants, trees or turf, damaged during the Contractor's Work shall be properly repaired or replaced at the Contractor's expense.

2.3.1.4. From any date of Partial Use, the Commission is responsible for protecting and maintaining all materials, apparatus and fixtures for the occupied portion of the Project free from damage.

2.3.2. Unless otherwise specified in the Contract Documents, the Contractor shall protect the Project and existing or adjacent property and utilities from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take precautions to prevent injury or damage to individuals or property. (See SP 614).

2.3.3. When signs and supports are within the Project site, the Contractor shall remove and erect them in a temporary location during construction in accordance with the Contract Documents and in a manner satisfactory to the Chief Engineer. After completion of the Work, the Contractor shall erect the signs and supports in a permanent location in accordance with the Drawings unless otherwise directed by Change Order.

2.3.4. When cornerstones, monuments and property corner pins are encountered in the performance of the Work, and monument covers are not listed in the Bid, the Commission will supply them and supervise their precise location and installation, and the Contractor will furnish all the labor, tools and other materials required for such installations. Any labor, tools and materials so furnished shall be paid by Change Order based on an agreed upon price for performing the Work.

2.3.5. The Contractor shall not load, nor permit any part of the Project to be loaded, in any manner that will endanger the Project, or any portion thereof, nor shall the Contractor subject any part of the Project or existing or adjacent property to stress or pressure that will endanger the Project or property.

2.3.6. The Contractor shall provide all necessary drainage, preserve existing drainage and provide all temporary bracing, shoring and other structural support required for safety of the Project and adjacent property and proper execution of the Work, including without limitation all necessary support and protection of any utility.

2.3.7. Unless otherwise specified in the Contract Documents, the Contractor shall remove all snow and ice as may be required for access to and performance of the Work.

## **2.4. MATERIAL AND EQUIPMENT**

2.4.1. The Contractor shall provide only material and equipment of the quality specified in the Contract Documents. The source of supply of the materials to be incorporated into the Work shall be approved by the Chief Engineer before the delivery is started. If requested by the Chief Engineer, representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor or produced for examination and tested in accordance with the methods prescribed Article GC 14. All materials proposed to be used may be inspected or tested at any time during their preparation and use. If, after trial, it is found that sources of supply which have been approved do not furnish a uniform product, or if the product from any source does not meet the requirements of the Contract Documents, at any time, the Contractor shall furnish approved material from another source. No materials which, after approval, have in any way become unfit for use, shall be used in the Work. Similar materials shall not be obtained from more than one (1) source unless written approval is obtained from the Chief Engineer for each source for each type of material. New materials shall be used throughout, unless the use thereof is waived by written notice from the Chief Engineer. The Contractor shall provide a list of equipment that is intended for use in performing the Work. The equipment list shall provide sufficient details on each piece of equipment that are equivalent to the those provided in the "Rental Rate Blue Book for Construction Equipment," published by Equipment Watch, a unit of Penton Media, Inc.

2.4.2. In those instances in which reference is made in the Contract Documents to the specifications, regulations, requirements, standards or recommendations, or portions thereof, of various societies, associations, manufacturers, governmental agencies and institutes, the specifications, regulations, requirements, standards, or recommendations, or portions thereof, so referred to shall be incorporated into the Contract Documents to the extent indicated or reasonably implied in the language containing such referenced, as if they were fully re-written in the Contract Documents.

2.4.3. All manufactured items shall be applied, installed, connected, created, used, cleaned and conditioned as described in the manufacturer's latest printed instructions. No manufactured item shall be used for any purposed not recommended by the manufacturer. Any discrepancy between specified use and manufacturer's recommendations shall be immediately brought to the attention of the Architect/Engineer by the Contractor.

2.4.4. Only the materials and equipment which are to be used directly in the Work shall be brought to or stored at the Project by the Contractor and the Contractor's Subcontractors and Material Suppliers.

2.4.4.1. The Contractor shall be responsible for the proper storage of all material and equipment that the Contractor brings or has delivered to the Project.

2.4.4.2. After any material or equipment is no longer required for the Work, the Contractor shall promptly remove such material or equipment from the Project.

2.4.5. The Contractor's materials and equipment shall not be stored in the right-of-way unless the location of such storage is approved by the Architect/Engineer.

2.4.6. Private property shall not be used for storage of materials and equipment without the prior written permission of the owner or lessee of the private property, and if requested by the Chief Engineer. The Contractor shall provide a copy of the written permission to the Chief Engineer.

2.4.7. The Contractor's material and equipment shall not cause damage to the Project or adjacent property and shall not endanger any individual at, or in the vicinity of, the Project. Non-rubber tired vehicles shall not move on pavement outside the Work area or on finished pavement within the Work area.

2.4.8. Any injury to any individual or damage to property resulting from the Contractor's material or equipment shall be the responsibility of the Contractor. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Sections 4113.62 and 2305.31, ORC, to the fullest extent permitted.

## **2.5. LABOR**

2.5.1. The Contractor shall maintain a sufficient workforce and enforce good discipline and order among the Contractor's employees the employees of the Contractor's Subcontractors and Material Suppliers. The Contractor shall not permit employment of unfit individuals or individuals not skilled in tasks assigned to them.

2.5.2. The Contractor shall dismiss from the Project any individual employed by the Contractor or the Contractor's Subcontractors and Material Suppliers who is found by the Chief Engineer, pursuant to a recommendation from the Architect/Engineer, to be incompetent, guilty of misconduct, or detrimental to the Project.

2.5.3. The Contractor shall employ all legal efforts to minimize the likelihood or effect of any strike, work stoppage or other labor disturbance. Informational pickets shall not justify any work stoppage.

2.5.4. The Contractor shall immediately notify the Commission of any imminent or threatened strike, work stoppage, picket or other labor dispute that has the potential to interfere with the performance of its obligations under this Contract.

2.5.5. The Contractor shall use its best efforts to develop and implement a work stoppage or strike contingency plan that minimizes any interference with the performance of its obligations under this Contract, and shall make such plan available to the Chief Engineer upon request.

## **2.6. TRAFFIC AND UTILITIES**

### **2.6.1. 2.6.1 Maintenance of Utilities.**

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

### **2.6.2. Cooperation with Utilities**

2.6.2.1. During the course of construction, the Contractor shall be solely responsible to notify any utility or other service when such utility or service is encountered.

2.6.2.2. The Contractor shall be solely and completely responsible for the protection and replacement of all above ground utilities, structures and appurtenances.

2.6.2.3. The Contractor shall be solely and completely responsible for the protection and replacement of all below ground utilities, structures and appurtenances that may be accurately located by removing manhole covers, valve box covers, and other access point coverings with reasonable effort using hand tools for such removal.

### **2.6.3. Maintenance of Traffic and Notice of Closures**

2.6.3.1. The Contractor shall follow the Special Provisions with regard to Maintenance of Traffic and Notice of Closures. (See SP 614). When detours are planned by the Commission, the Contractor must provide the requisite notice as set forth in the Special Provisions or Plans.

### **2.6.4. Traffic Control Devices**

2.6.4.1. All traffic control devices shall be furnished, erected, maintained and removed by the Contractor in accordance with the Special Provisions and Standard Drawings, which, in all cases, will meet or exceed the requirements of the Ohio Manual of Uniform Traffic Control Devices.

## **2.7. SAFETY PRECAUTIONS**

2.7.1. The Contractor shall take reasonable, diligent precautions to ensure, and shall be responsible for, the safety of individuals on or adjacent to the Project and shall comply with all applicable provisions of federal, state and local safety laws and buildings codes to prevent injury to individuals on or adjacent to the Project. This provision is intended as consistent with, and not in conflict with, Sections 4113.62 and 2305.31, ORC, to the fullest extent permitted.

2.7.2. The Contractor shall comply with the rules and regulations of OSHA. The Contractor shall be responsible for any fine or cost incurred as a result of any violation or alleged violation.

2.7.3. The Contractor shall take reasonable, diligent precautions to ensure and shall be responsible for the safety of the Work including all materials and equipment incorporated and to be incorporated into the Work. Prior to the start of any Work, the Architect/Engineer shall meet with the Contractor to ascertain the Contractor's methods and equipment for protecting the Project, other property and individuals from damage, in accordance with applicable regulations. (See SP-110).

2.7.4. Methods and equipment for protecting the Project, other property and individuals shall be subject to inspection and approval of the appropriate authority having jurisdiction over the Project site.

2.7.5. Within twenty-four (24) hours after the occurrence of any accident or other event which results in, or might result in, personal injury or property damage, including vehicular damage, which results from or involves any action or failure to act of the Contractor, any of the Contractor's Subcontractors or any employee, representative or agent thereof related to the Project, the Contractor shall send a written report of such accident or other event to the Chief Engineer and the General Counsel, setting forth a full and precise statement of fact pertaining thereto. The Contractor shall also immediately send to the General Counsel a copy of any summons, subpoena, notice, or other document serviced upon or received by the Contractor or any Subcontractor, or any employee, representative or agent thereof related to such accident or other event.

#### 2.7.6. Work Stoppage Due to Hazardous Materials

2.7.6.1. In the event the Contractor, except a licensed abatement Contractor, encounters materials reasonably believed to contain asbestos, polychlorinated biphenyl ("PCB") or other hazardous waste or material, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Chief Engineer and the Architect/Engineer in writing. A licensed abatement Contractor shall report the condition to the Chief Engineer and the Architect/Engineer in writing and shall remove the material or render it harmless as appropriate.

2.7.6.2. The Work in the affected area shall be resumed upon written notice from the Contractor that the material has been removed or rendered harmless.

2.7.6.3. The term "rendered harmless" shall mean that the level of exposure is less than any applicable exposure standards set forth in OSHA or other applicable regulations.

2.7.7. Hazardous Materials to be used at the Project Site shall be identified by a Safety Data Sheet ("SDS"). The applicable SDS shall be prepared by the Contractor and submitted to the Architect/Engineer prior to a Hazardous Material being brought to the Project Site. The Contractor shall maintain all SDS notebooks at the Project site for the duration of the Project, and provide a duplicate copy for the Architect/Engineer, along with any updates or revisions.

### 2.8. TEMPORARY FACILITIES AND UTILITIES

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

2.8.2. Unless otherwise specified in the Contract Documents, the Contractor shall provide all water necessary for its Work.

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



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

## **2.9. PERMITS AND ENVIRONMENTAL PROTECTION**

2.9.1. The Contractor shall comply with all federal, State and local laws and regulations relating to pollution of the environment.

### **2.9.2. Local and Regional Permits**

2.9.2.1. Unless otherwise specified in the Contract Documents, the Contractor shall secure and pay the fees for any permit, license or tap in required by local or regional authorities having jurisdiction over the Project. The Contractor shall give the Architect/Engineer and the Chief Engineer reasonable notice of the date arranged for all inspections.

### **2.9.3. National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit**

2.9.3.1. The Architect/Engineer shall secure any necessary NPDES general permit.

2.9.3.2. The Architect/Engineer shall prepare and certify a storm water pollution prevention plan.

2.9.3.3. Architect/Engineer shall prepare and process the required Notice of Termination ("NOT") prior to Contract Completion.

### **2.9.4. Other Permits**

2.9.4.1. The Architect/Engineer shall prepare necessary documentation and obtain any other applicable permits, including without limitation permits to install.

## **2.10. TESTS**

2.10.1. Unless otherwise specified in the Contract Documents, the Commission shall apply for, secure and pay for any inspection, testing or approval required by the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project.

2.10.1.1. The Contractor shall provide an original report to the Chief Engineer for any material for which pre-certification is required by the Contract Documents.

2.10.2. If after the commencement of the Work, the Architect/Engineer determines that any portion of the Work requires special inspection, testing or approval in order to insure proper conformance to the Contract Documents, the Architect/Engineer may instruct the Contractor in writing to order such special inspection, testing or approval, or the Architect/Engineer may make the arrangements for same.

2.10.2.1. If such special inspection, testing or approval reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall pay all costs associated with such special inspection, testing or approval.

2.10.2.2. If such special inspection, testing or approval reveals that the Work is in compliance with the Contract Documents, the Contractor will be paid, by appropriate Change Order, for all costs associated with such special inspection, testing or approval.

2.10.3. Neither the observations of the Architect/Engineer in the performance of their services nor inspections, tests or approvals by Persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.

## **2.11. CLEANING UP**

2.11.1. During the progress of the Work, the Contractor shall be responsible for the removal of all waste materials, rubbish and excess materials unwanted by the Commission attributable to the Work to an appropriate disposal site. Temporary on-site storage of waste materials and rubbish may be permitted as approved by the Chief Engineer.

2.11.1.1. The Contractor shall, on a regular basis (at a minimum, weekly), or upon notice from the Architect/Engineer or the Chief Engineer, remove all waste materials and rubbish from or adjacent to the Project.

2.11.1.2. The Contractor shall, as required for the Project or upon notice from the Architect/Engineer or the Chief Engineer, take all necessary actions to minimize and clean dust and mud from the Project.

2.11.2. If the Contractor fails to clean up during the progress of the Work, the provisions of paragraph GC 5.2 may be invoked.

2.11.3. If the Contractor fails to maintain the areas adjacent to the Project clean and free of dust, mud, waste and excess materials and rubbish, upon written notice by the Architect/Engineer, the Chief Engineer shall request the local jurisdiction having responsibility for the area to clean the area or employ another Person to clean the area.

2.11.3.1. The cost of cleaning the area adjacent to the Project shall be deducted from the Contractor as the Architect/Engineer recommends and the Chief Engineer determines to be appropriate.

2.11.3.2. The decision of the Chief Engineer shall be final, subject to proceedings in accordance with Article GC 8.

## **2.12. 2.12 SUBSTITUTIONS FOR STANDARDS OR APPROVED EQUALS**

2.12.1. Requests for substitutions for Standards or Approved Equals will be considered after the Bid Opening if the Contractor can conclusively demonstrate to the Architect/Engineer one (1) of the following conditions:

2.12.1.1. The specified Standards and Approved Equals through no fault of the Contractor or the Contractor's Subcontractors and Material Suppliers are not available;

2.12.1.2. The specified Standards and Approved Equals are no longer produced; or

2.12.1.3. The specified Standards and Approved Equals will not perform as designed or intended.

### **2.13. EXPLOSIVES AND BLASTING**

2.13.1. Blasting will not be permitted and explosives may not be brought onto or kept on the site of the Project, except with prior written approval of the Chief Engineer and any local authorities having jurisdiction.

2.13.2. All blasting and all purchasing, storing and handling of explosives shall be done as prescribed in any applicable federal, State or local statutes, ordinances and regulations.

2.13.3. The Contractor shall provide evidence of coverage under appropriate liability insurance to the Architect/Engineer and shall be responsible for any injuries to individuals or damages to property resulting from any blasting operation.

2.13.4. The Contractor shall take all necessary precautions to protect the Project, existing or adjacent property, water lines, and other underground structures from blasting. A demolition plan for any aspect of the Work required shall be submitted by the Contractor for approval in accordance with the Special Provisions.

2.13.5. The Contractor shall notify all owners of properties and/or utilities that may be affected of any intention to use explosives before blasting is commenced in accordance with the requirements of any Special Provisions. Any inspection of use of explosives by the Architect/Engineer, does not in any way reduce the responsibility of the Contractor or its Surety for damages that may be caused by such use.

### **2.14. EMERGENCY**

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

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

2.14.3. If the Architect/Engineer recommends that a change in the Contract Documents be made because of any emergency or action taken in response to an emergency, and the Chief Engineer approves, a Change Order will be processed, subject to final approval of the Commission.

### **2.15. UNCOVERING THE WORK**

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

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

2.15.2.1. If such Work is found not to be in conformity with the Contract Documents, the Contractor shall pay all costs of uncovering, replacing and recovering the Work.

2.15.2.2. If such Work is found to be in conformity with the Contract Documents, the cost of uncovering and replacing and recovering the Work shall, by appropriate Change Order, be paid to the Contractor.

## **2.16. INSPECTION OF THE WORK**

The Contractor shall furnish the Chief Engineer, the Inspector and the Architect/Engineer with every reasonable facility for ascertaining whether or not the Work performed and materials used are in accordance with the requirements of the Contract Documents. All Work, all materials, whether or not incorporated in the Work, all processes of manufacture, and all methods of construction, shall be subject to such inspection at all times and places. The Chief Engineer shall be the final judge of the quality and suitability of the Work, materials, processes of manufacture and methods of construction for the purposes for which they are used. If, in the opinion of the Chief Engineer, it is undesirable to replace or correct any Defective Work, a deduct Change Order shall be processed.

## **2.17. CORRECTION OF THE WORK**

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

2.17.2. The Contractor shall bear all costs of correcting such Defective Work, including the cost of any consequential damages.

2.17.3. If the Contractor fails to correct any Defective Work within the time fixed in the written notice, the Commission may correct such Work and obtain recovery of all costs, including any consequential damages, from the Contractor or the Contractor's Surety.

## **2.18. INTERRUPTION OF EXISTING SERVICES**

2.18.1. Whenever it becomes necessary to interrupt existing services in use by the Commission, such as sewer, water, gas and steam lines, electric or telephone and cable service, the Contractor shall continue the applicable Work on a non-stop twenty-four (24) hour basis until the Work is completed and the service restored, or at such alternate time required by the Chief Engineer.

2.18.2. Before beginning such Work, the Contractor shall apply in writing to and receive approval in writing from the Chief Engineer, the owner of the applicable service and any Person with appropriate jurisdiction over the Project, to establish a time when interruption of the service will cause a minimum of interference with the activities of the Commission, if any.

## **ARTICLE 3. THE ARCHITECT/ENGINEER**

### **3.1. PROJECT OVERSIGHT**

3.1.1. As provided by the agreement between the Commission and the Architect/Engineer, the Architect/Engineer shall notify, advise and consult with the Chief Engineer throughout the Project and the period of any Guarantee to protect the Commission against Defective Work.

3.1.1.1. The Architect/Engineer shall designate a representative, subject to approval by the Chief Engineer, to attend the Project, as required by the agreement between the Commission and the Architect/Engineer to observe and check the progress and quality of the Work and to take such action as is necessary or appropriate to achieve conformity with the Contract Documents.

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

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

### **3.2. CONTRACT ADMINISTRATION**

3.2.1. The Architect/Engineer shall provide administration of the Contracts for the Project as provided in the agreement between the Commission and the Architect/Engineer and including without limitation the performance of the functions hereinafter described.

3.2.1.1. The Architect/Engineer shall secure the NPDES general permit by submitting a Notice of Intent application form ("NOI") to the Ohio Environmental Protection Agency at least forty-five (45) days prior to the start of construction. The Architect/Engineer shall prepare and certify a Storm Water Pollution Prevention Plan and process the required Notice of Termination ("NOT") prior to completion of the Project.

3.2.1.2. The Architect/Engineer shall attend Project Meetings as requested by the Chief Engineer. The Architect/Engineer shall prepare written minutes of each Project Meeting the Architect/Engineer attends and transmit the minutes to the Chief Engineer within three (3) business days after the Meeting. The Architect/Engineer shall not delegate the duty to prepare the written minutes of any and all Project Meetings the Architect/Engineer attends.

3.2.1.3. The Architect/Engineer may authorize minor changes or alterations in the Work not involving additional costs or time and not inconsistent with the overall intent of the Contract Documents, but has no authority to authorize the Contractor to perform

additional or extra Work for which the Contractor will seek compensation or time extension.

3.2.1.4. The Architect/Engineer shall review and approve, or recommend approval, of all forms required under the Contract Documents.

3.2.1.5. The Architect/Engineer shall render decisions in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Chief Engineer for enforcement of the Contract as necessary.

3.2.2. The Architect/Engineer will be the initial interpreter of all requirements of the Contract Documents. All decisions of the Architect/Engineer shall be subject to final determination by the Chief Engineer.

3.2.3. The Architect/Engineer shall authorize special inspection, testing or approval of the Work, as provided in paragraph GC 2.9, whenever in the Architect/Engineer's reasonable opinion such action is necessary or appropriate to insure conformity to the Contract Documents.

3.2.4. Based upon the Architect/Engineer's on-site observation and evaluation of the Contractor's Payment Requests, the Architect/Engineer shall review and certify the amounts due the Contractor. The Architect/Engineer may recommend to the [Commission's Executive Director](#) that payment be withheld from, or Liquidated Damages be assessed against, a Contractor's Payment Request, stating the reasons for such recommendation. The Architect/Engineer's certification for payment shall constitute a representation that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, the Work is in conformity with the Contract Documents and the Contractor is entitled to payment in the amount certified.

3.2.5. The Architect/Engineer shall review and approve or take other appropriate action upon the Contractor's submittals, within the required time, for the purpose of checking for conformity with the Contract Documents.

3.2.6. The Architect/Engineer shall prepare all Bulletins and Change Orders, including a cost estimate and supportive documentation and data, and shall verify with the Commission that sufficient moneys are available for any change to the Work [in accordance with the Change Order Procedure and Pricing Guidelines](#).

3.2.7. The Architect/Engineer shall conduct inspections to determine the date of Final Completion and shall receive, review and forward to the Chief Engineer all Project record submittals required by the Contract Documents.

3.2.8. The Architect/Engineer shall render written analyses, recommendations or decisions, within the time specified, on all claims, disputes or other matters in question between the Contractor and the Commission and shall provide information or services to the Commission until final disposition of all claims.

3.2.9. The Architect/Engineer shall consult with the Chief Engineer to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Architect/Engineer shall establish the regular working hours with the Contractor, subject to the approval of the Chief Engineer.

3.2.10. The Architect/Engineer shall monitor the progress of the Work for conformance with the Construction Schedule and inform the Chief Engineer of the need to initiate revisions of the Construction Schedule as required by the Contract Documents.

3.2.11. In the event of default by any Contractor, the Architect/Engineer shall cooperate with Commission and the defaulting Contractor's Surety to timely achieve Final and Contract Completion within the dates specified in the Contract Documents.

3.2.12. The Architect Engineer shall keep a daily log containing a record of weather, number of workers on site, identification of equipment, Work accomplished, problems encountered and other similar relevant data.

### **3.3. LIMITS**

3.3.1. The Architect/Engineer shall not be responsible for construction means, methods, manners, techniques, sequences, procedures, safety precautions and programs in connection with the Work or for the Contractor's failure to carry out the Work in conformity with the Contract Documents. The services provided by the Commission and the Architect/Engineer and the existence of schedules prepared, reviewed or approved by the Construction Manager shall in no way relieve the Contractor of responsibility for complying with all the requirements of the Contract Documents. The Architect/Engineer is not required to make continuous on-site inspections of the Work. Failure of the Architect/Engineer to detect Defective Work does not relieve the Contractor from responsibility to carry out the Work in conformity with the Contract Documents.

## **ARTICLE 4. CONSTRUCTION PHASE COORDINATION**

### **4.1. RESPONSIBILITY OF CONTRACTORS**

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

4.1.2. If any part of the Contractor's Work is preceded by the Work of another Person, the Contractor shall inspect such preceding Work before commencing any Work, and report in writing to the Architect/Engineer any defects which render the preceding Work unsuitable as related to the Contractor's Work. Failure of the Contractor to make such inspection and report in writing, shall constitute an acceptance of the preceding Work as fit and proper for the reception of the Contractor's Work, except as to latent defects which such inspection would fail to disclose.

4.1.3. The Contractor shall give reasonable notice to the Architect/Engineer when the Architect/Engineer's presence is required for special consultations, inspections, testing, approval, recommendations, or decisions.

4.1.4. If the Contractor fails to perform the Contract according to the requirements of the Contract Documents, such failure to perform may be just cause for the Commission to find the Contractor is not responsible for consideration of future contract awards.

4.1.5. The Contractor shall consult with the Chief Engineer to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Contractor shall establish the regular working hours, in accordance with any local or municipal ordinances governing work hours and/or noise, and subject to approval by the Chief Engineer. Night working hours and working hours on Sundays and holidays are not permitted without the written

consent of the Chief Engineer. The Chief Engineer may refuse to grant such consent unless the Contractor requests the consent not less than twenty-four (24) hours in advance.

4.1.6. The Contractor shall cooperate with the Architect/Engineer so as not to interfere with, disturb, hinder or delay the Project or the responsibilities of the Architect/Engineer.

4.1.7. The Superintendent shall plan all construction activities a minimum of twenty-four (24) hours prior to commencing such activities. The Superintendent shall submit a Daily Look Ahead to the Chief Engineer or designee describing the Work related activities planned for the following day in a format contained in a form provided at the Preconstruction Meeting. The Contractor's Daily Look Ahead Schedule shall contain, at a minimum, the following information: the Project Number, date of activities, weather forecast, planned shift hours, activities, crews, locations, subcontractors, and any necessary testing and lane closures. Any requests for Lane Closure, Oversize Load Access or any other operational need for the upcoming day, as applicable, shall accompany the Contractor's Daily Look Ahead submission.

#### **4.2. CONSTRUCTION SCHEDULE SUBMITTAL**

4.2.1. The Contractor shall prepare the Construction Schedule for the Project and a schedule of submittals which is coordinated with the Construction Schedule within ten (10) days of the date of the Notice to Proceed or such longer period as mutually agreed between the Chief Engineer and the Contractor in writing upon timely written request by the Contractor.

4.2.2. In preparing the Construction Schedule, Contractor shall utilize its best efforts to conform its format to the requirements of the Contract Documents, and Contractor's signature on the Construction Schedule submittal shall constitute certification that to the best of the Contractor's knowledge the Construction Schedule conforms to the requirements of the Contract Documents.

4.2.3. The Architect/Engineer shall provide comments to the Contractor on the Contractor's Construction Schedule within seven (7) days of receipt. The Contractor shall revise the Contractor's Construction Schedule to incorporate those comments and shall submit the revised Construction Schedule to the Architect/Engineer and the Chief Engineer within seven (7) days of receipt of the comments.

4.2.4. After the Contractor has signed and submitted the revised Construction Schedule, the Architect/Engineer and the Contractor shall continue the review, comment and resubmit process for the revised Construction Schedule in accordance with the deadlines provided in GC 4.2.3 until the Architect/Engineer submits a recommendation for approval, along with a copy of the Construction Schedule and the coordinated schedule of submittals, to the Chief Engineer. Provided the Chief Engineer accepts the recommendation to approve the Construction Schedule as conforming to the contract requirements, , the Construction Schedule shall become the Baseline Construction Schedule.

4.2.4.1. In the absence of a Baseline Construction Schedule reviewed and recommended by the Architect/Engineer and accepted by the Chief Engineer, the Commission may withhold payment from the Contractor in accordance with paragraph GC 9.6. Alternatively, the Commission, in its sole discretion, may backcharge the



Contractor in accordance with paragraph GC 5.2, reassign scheduling responsibility or suspend or terminate the Contract in accordance with Article GC 13.

4.2.4.2. In addition to the remedies afforded under the preceding section and any other remedies available at law or equity, the Contractor performing Work, other than procuring materials, preliminary investigations, survey layouts, preparation of Shop Drawings and submittals, without having submitted an accepted Baseline Construction Schedule shall entitle the Commission to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the amount specified in the Contract for each and every day such Work continues until the Contractor submits a Construction Schedule that is accepted. For each calendar day that such Work is performed without having submitted an accepted Construction Schedule, the applicable amount, per day, shall be deducted from the funds due the Contractor. The amount of Liquidated Damages specified in the Contract is agreed upon because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the Commission, its tollpayers, and traveling public would sustain without having an accepted Baseline Construction Schedule.

#### **4.3. CONSTRUCTION SCHEDULE FORMAT AND CONTENTS**

4.3.1. The Construction Schedule shall not exceed the time limits specified in the Contract Documents, shall provide for reasonable, efficient and economical execution of the Work and shall be related to the entire Project to the extent required by the Contract Documents.

4.3.2. The Construction Schedule shall be used to plan, organize and execute the Work, record and report actual performance and progress and show how all remaining Work shall be coordinated to Final Completion. Free float and total float are resources of the Project and the use of float associated with an activity is not permitted without the concurrence of the Architect/Engineer and the Chief Engineer.

4.3.3. In preparing the Construction Schedule, the Contractor shall use critical path scheduling methods and shall provide, without limitation, the following information:

4.3.3.1. A graphic presentation of the sequence of the Work for the Project which includes, without limitation, the Contractor's resource loading curve in media and format required by the Architect/Engineer;

4.3.3.2. Identification of the Contractor's proposed work hours and calendars;

4.3.3.3. Identification of each phase of the Work and any milestone completion dates;

4.3.3.4. Identification of activities and durations for all Shop Drawing and other submittal review and approval, fabrication review and review of mark-up Work, product review and procurement, fabrication, shop inspection and delivery including without limitation lead time, coordination drawing delivery, Punch List, Punch List correction, Project close-out requirements, Final Completion and occupancy requirements;

4.3.3.5. Identify each activity and provide a description for each activity broken down to: a maximum fifteen (15) day duration, the Contractor's resources and crew

size for each activity, early start dates, early finish dates, late start dates, late finish dates, predecessor and successor activities for each activity, free float, total float and percentage completion.

4.3.3.6. Identification of disruptions and shutdowns due to other operations;

4.3.3.7. Identify the logic relationship between all activities and shall show all submittal dates, coordination drawing input, review and approval durations.

4.3.3.8. Identification of the critical path of the Work;

4.3.3.9. Identification of the total resource hours for each activity in the schedule;

4.3.3.10. The Contractor's signature and the date thereof, which signature on the Construction Schedule shall serve as an affirmation that the Contractor agrees to and can meet the requirements of the schedule; and

4.3.3.11. Electronic back-up of the schedule data.

4.3.4. Unless otherwise provided in the Contract Documents, the Architect/Engineer shall provide complete specifications for the paper and electronic formats of the Construction Schedule, subject to acceptance by the Chief Engineer. The Contractor shall develop the Construction Schedule in both paper and electronic formats. Final copies shall be provided in color and in such size as shall clearly and legibly show all relevant information. The Contractor shall provide monthly updates of the Construction Schedule, in electronic and paper formats to the Architect/Engineer in graphic and tabular form. All base Construction Schedules shall be submitted by the Architect/Engineer to the Chief Engineer in graphic and tabular form. The Contractor shall provide clear graphics, legends and other necessary data, including without limitation, milestones, constraints and items required by the Project the Architect/Engineer and the Chief Engineer.

4.3.5. Unless otherwise specified by the Contract Documents, the Contractor shall, on a weekly basis, prepare and submit the following items at each Project Meeting to the Architect/Engineer:

4.3.5.1. A written report describing activities begun or finished during the preceding week, Work in progress, expected completion of the Work; and

4.3.5.2. A projection of all activities to be started or finished in the upcoming six (6) weeks, including without limitation, the Contractor's workforce crew size and total resource hours associated with such Work and any other information requested by the Architect/Engineer.

4.3.6. Unless otherwise specified in the Contract Documents, the Architect/Engineer shall provide monthly progress reports to the Chief Engineer, which shall include recommendations for adjusting the Construction Schedule to meet milestone completion dates and Final Completion dates.

4.3.6.1. When it is apparent to the Architect/Engineer that critical path activities, scheduled milestone completion dates or Final Completion dates will not be met, the Architect/Engineer shall immediately notify the Contractor of the impact for failing to meet such dates, and shall request that the Contractor submit to the Architect/Engineer a time recovery plan to avoid and/or minimize any delay. The time recovery plan shall

be submitted for review and acceptance within a period not in excess of five (5) days from the time it is requested by the Architect/Engineer. The Contractor shall be responsible for providing a recovery plan that is acceptable to the Architect/Engineer and the Chief Engineer and that represents the Contractor's best efforts to minimize the delay in achieving the milestone completion dates, including Substantial and Final Completion.

4.3.6.2. A time recovery plan may include, without limitation, increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work; increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof; rescheduling of activities to achieve maximum practical concurrency of Work and, if appropriate, time extensions.

4.3.6.3. Upon receipt and acceptance of the Contractor's recovery plan, the Contractor will prepare an updated Construction Schedule and submit the update to the Architect/Engineer and the Chief Engineer.

4.3.7. Unless otherwise specified in the Contract Documents, the Contractor shall update the Construction Schedule and the schedule of submittals on a monthly basis before the fifth calendar day of each month, and upon any approval of any recovery plan in accordance with subparagraph GC 4.3.6.3, and sign and furnish the update to the Architect/Engineer as the updated Construction Schedule. With each updated Construction Schedule, the Contractor shall provide a list of all changes to the previously accepted Construction Schedule, including, without limitation, logic, float and actual start and finish dates of activities.

4.3.7.1. Each updated Construction Schedule shall be signed by the Contractor. The Contractor's signature on the updated Construction Schedule shall constitute certification that the updated Construction Schedule conforms to the requirements of the Contract Documents.

4.3.7.2. Immediately after the Contractor has signed and submitted the updated Construction Schedule, the Architect/Engineer shall review the updated Construction Schedule for conformance with the requirements of the Contract Documents. Provided that the updated Construction Schedule meets the requirements of the Contract Documents, the Architect/Engineer shall note its acceptance of the updated Construction Schedule and submit a copy, along with the Architect/Engineer's comments and recommendations, and an updated Construction Schedule of submittals to the Chief Engineer.

4.3.7.3. In the absence of an updated Construction Schedule submitted on a monthly basis reviewed by the Architect/Engineer and accepted by the [Chief Engineer, the](#) Commission may withhold payments from the Contractor in accordance with paragraph GC 9.6. Alternatively, the Commission, in its sole discretion, may backcharge the Contractor in accordance with paragraph GC 5.2, reassign scheduling responsibility or suspend or terminate the Contract in accordance with Article GC 13.

#### **4.4. PROJECT MEETINGS**

4.4.1. The Contractor and all appropriate Subcontractors shall attend Project Meetings as requested by the Architect/Engineer or the Chief Engineer. The purpose of the Project Meetings is to review progress in the Work, discuss anticipated progress, and review critical operations and existing and potential problems.

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

4.4.2.1. The Architect/Engineer shall notify the Contractor of the time and place of each Project meeting.

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

4.4.2.3. The Contractor shall provide at each Project Meeting color copies of the items required in GC 4.3.6. The items provided by the Contractor shall be included as an attachment to the Project Meeting minutes.

4.4.3. The Architect/Engineer shall prepare written minutes of each Project Meeting and distribute such minutes to the Chief Engineer and the Contractor.

4.4.3.1. A separate section of the minutes will highlight issues on the Project and the associated action plan for each issue. Further, the meeting minutes will state whether the issue is new or ongoing. Once the issue is resolved, the following meeting minutes will reflect that it is resolved and what the resolution was.

4.4.3.2. If any Person in attendance objects to anything in the minutes of a Project Meeting, the Person shall notify the Architect/Engineer and any other affected Person in writing explaining the objection.

4.4.3.3. The Architect/Engineer shall attach any objection made to the minutes of a Project Meeting and any response thereto to the corresponding minutes.

#### **ARTICLE 5. COMMISSION'S RIGHTS AND RESPONSIBILITIES**

##### **5.1. GENERALLY**

5.1.1. The Chief Engineer shall be available to consult with the Architect/Engineer. The Chief Engineer shall be authorized to act on behalf of the Commission to perform specific responsibilities of the Commission under the Contract.

5.1.2. Information and services required of the Commission shall be furnished in good faith and in a timely manner to avoid interference with, delay, hindrance or disruption in the progress of the Project.

5.1.3. The Commission and the Commission's officers, employees, consultants, agents and representatives shall at all times have access to the Work whenever the Project is in preparation or progress.

5.1.4. The foregoing are in addition to other rights and responsibilities of the Commission enumerated herein and especially those in respect to the Commission's right to prosecute the Work, approve payments and accept the Project.

## **5.2. COMMISSION'S RIGHT TO PROSECUTE WORK AND BACKCHARGE CONTRACTOR**

5.2.1. If the Contractor provides Defective Work or fails or neglects to prosecute the Work with the necessary diligence so as to complete the Work within the time specified in the Contract Documents or any portion of the Work by the applicable milestone completion date as set forth in the current Construction Schedule, the Architect/Engineer shall notify the Contractor in writing of such failure or neglect and copy the Chief Engineer.

5.2.2. If the Contractor fails or refuses to cure such Defective Work or failure or neglect within three (3) working days after receipt of the written notice, also known as a "Seventy-Two (72) Hour Notice," the Architect/Engineer shall recommend enforcement of the Contract to the Chief Engineer pursuant to subparagraphs GC 3.1.2 and 3.2.1.5. Without prejudice to any other remedy the Commission may have, the Commission may employ the additional manpower needed to provide the required resources, or supply the materials or such part of any of the foregoing as is appropriate, to correct the deficiency in the Contractor's Work, as determined by the Chief Engineer.

5.2.2.1. In such case, a Change Order shall be issued deducting from payments then or thereafter due the Contractor the costs of correcting such Defective Work, failure or neglect, including without limitation Liquidated Damages.

5.2.2.2. If the payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor and the Contractor's Surety shall pay the amount of the insufficiency to the Commission.

5.2.2.3. The decision of the Chief Engineer to backcharge the Contractor shall be final, subject to proceedings in accordance with Article GC 8.

5.2.3. The Commission reserves the right to furnish at any time such materials and labor and to prosecute such work in addition to the Work of the Contractor as the Commission may desire; provided, however, that if such prosecution of additional work interferes with, disrupts, hinders or delays the Work of the Contractor, the Contractor shall be entitled to a reasonable extension of time in accordance with the Contract Documents. This provision is intended to be, and shall be construed as consistent with, Section 4113.62, ORC, to the fullest extent permitted.

## **5.3. COMMISSION'S RIGHT TO PARTIAL USE**

5.3.1. If the Commission finds it necessary to use a portion of the Project prior to Final Completion, such use may be accomplished if the Architect/Engineer informs the Commission that the area in question has been approved for use.

5.3.2. If Partial Use is approved, the Architect/Engineer may process either a Change Order or a Final Completion certificate listing uncompleted or Defective Work under the Contract for approval by the Commission, provided that no such use shall commence before any insurers providing property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby.

5.3.3. From the date of execution of the Change Order or Final Completion certificate by the Chief Engineer, the Contractor shall be relieved of obligation to maintain the accepted portion of the Work, but shall remain obligated to correct any incomplete or Defective Work. The Contractor shall continue to carry the appropriate insurance during performance of any such Work.

5.3.4. Partial Use or use of the premises by the Commission shall not constitute acceptance of any Work not in conformity with the Contract Documents. Partial Use shall not relieve the Contractor of liability for any express or implied warranties or responsibility for Defective Work.

## **ARTICLE 6. TIME**

### **6.1. TIME OF ESSENCE**

6.1.1. Time is of the essence to the Contract Documents and all obligations thereunder. By executing the Contract and by signing the Construction Schedule, the Contractor is acknowledging that the time for Final Completion and any specified milestone completion dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

6.1.1.1. The Contractor agrees that the Notice to Proceed shall establish the date for commencement of the Work.

6.1.1.2. The Contractor acknowledges that the Commission's toll revenue and the convenience of the traveling public will be adversely affected by any failure of the Contractor to achieve Final Acceptance within the time for Final Completion.

6.1.1.3. The Contractor agrees that the Work will be prosecuted in a reasonable, efficient and economical sequence, and in the order and time as provided in the current Construction Schedule. Further, the Contractor agrees to prosecute the Work in cooperation with the Architect/Engineer, any other Contractors, or the Commission's own maintenance forces (which the Commission expressly reserves the right to utilize for the completion of other or additional work on or near the Work covered by the Contract).

6.1.1.4. The Contractor agrees that the possibility that the Contractor may be subject to interference, disruption, hindrance or delay in the progress of the Work from any and all causes is within the contemplation of the parties and that the sole remedy for such interference, disruption, hindrance or delay shall be an extension of time granted pursuant to paragraph GC 6.2 except if otherwise required by section 4113.62, ORC.

### **6.2. EXTENSIONS**

6.2.1. If the Contractor is interfered with, disrupted, hindered or delayed at any time in the progress of the Work by any of the following causes, the time for Final Completion shall be extended for such reasonable time which the Chief Engineer determines, in consultation with the Architect/Engineer, has been caused by the interference, disruption, hindrance or delay in the Work:

6.2.1.1. Due to suspension of the Work for which the Contractor is not responsible; labor disputes, except informational picketing; acts of the public enemy; fires; floods;

epidemics; extraordinary delays in deliveries due to wrecks or freight embargoes; earthquakes; or

6.2.1.2. Due to any unforeseeable cause beyond the control and without fault or negligence of the Contractor; or

6.2.1.3. Due to weather or seasonal conditions that reduce production of Work on the critical path by more than fifty (50) percent.

### **6.3. SOLE REMEDY**

6.3.1. Except when the cause for a delay is the proximate result of the Commission's act or failure to act as required by Section 4113.62, ORC, any extension of time granted pursuant to paragraph GC 6.2 shall be the sole remedy which may be provided by the Commission, and the Contractor shall not be entitled to additional compensation from the Commission or mitigation of Liquidated Damages for any delay, interference with, hindrance or disruption, including, without limitation, costs of acceleration, consequential damages, loss of efficiency, loss of productivity, lost opportunity costs, impact damages, lost profits or other similar remuneration.

6.3.2. It is within the contemplation of the parties that the Contractor may accelerate its performance to meet the Construction Schedule and that such acceleration is solely within the discretion of the Contractor. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

### **6.4. REQUEST FOR EXTENSION**

6.4.1. Any request by the Contractor for an extension of time shall be made by written notice delivered to the Architect/Engineer no more than ten (10) days after the initial occurrence of any condition which, in the Contractor's opinion, entitles the Contractor to an extension of time. Failure to timely provide such notice to the Architect/Engineer shall constitute a waiver by the Contractor of any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.

6.4.2. To constitute a request for an extension, the Contractor's notice under GC 6.4.1 shall contain the following information so that a timely response may be made to minimize any resulting damage, injury or expense, otherwise any claim for extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law, is deemed waived.

6.4.2.1. Nature of the interference, disruption, hindrance or delay;

6.4.2.2. Identification of Persons and events responsible for the interference, disruption, hindrance or delay;

6.4.2.3. Date (or anticipated date) of commencement of the interference, disruption, hindrance or delay;

6.4.2.4. A Time Impact Analysis that documents how activities on the Construction Schedule are or may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities;

6.4.2.5. Anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period;

6.4.2.6. Specific number of days of extension requested and specific number of days for remobilization requested; and

6.4.2.7. Recommended action to avoid or minimize any future interference, disruption, hindrance or delay.

## **6.5. EVALUATION OF REQUEST**

6.5.1. Within fourteen (14) days of receipt of the Contractor's request, the Architect/Engineer shall evaluate the facts and extent of any interference, disruption, hindrance or delay to the Work, consult with the Chief Engineer about the request and respond in writing to the Contractor. If the Contractor fails to timely provide the information required by paragraph GC 6.4, the Chief Engineer shall have discretion to reject the request for time extension. If a request for time extension is so rejected, the Contractor shall be deemed to have waived any claim for extension, damages or mitigation of Liquidated Damages to the fullest extent permitted by law.

6.5.1.1. The time for Final Completion may only be extended by execution of an appropriate Change Order.

6.5.1.2. The Contractor shall make any necessary change in the Construction Schedule if an extension is granted.

## **6.6. CRITICAL PATH**

6.6.1. Notwithstanding any other provision of the Contract Documents, time extensions will depend upon the extent to which the Work on the critical path of the Construction Schedule is affected. As provided in subparagraph 4.3.3, the Contractor's signature on a baseline or updated schedule serves as an affirmation that the Contractor can meet the schedule and no time extension shall be granted based upon a claim that such a schedule did not provide the Contractor with sufficient time.

6.6.2. A Change Order granting a time extension may revise the completion dates for only those milestone, Substantial and Final Completion dates on the critical path so interfered with, disrupted, hindered or delayed and affords time for any related remobilization necessary.

# **ARTICLE 7. CHANGES IN THE WORK**

## **7.1. CHANGE ORDER**

7.1.1. The Commission, through the Chief Engineer, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, substitutions, including without limitation deletion of any requirement of the Contract relating to the construction or furnishing of any item required by the Contract Documents to be constructed or furnished by the Contractor or other revisions, including without limitation any Alternates accepted as contingencies and revisions resulting from an extension granted in accordance with paragraph GC 6.4. Change Orders may also be requested by the Contractor and approved by the Commission in accordance with any applicable price adjustment criteria referred to in the Special Provisions with respect to the prices of raw materials. To the



extent the time for milestone, Substantial or Final Completion or the Contract Price is affected, the Contract may be adjusted by Change Order in accordance with this Article.

7.1.1.1. The Contractor shall proportionately increase the amount of the Bond whenever the Contract Price is increased.

7.1.1.2. If notice of any change affecting the Contract is required by the provision of any Bond, the giving of any such notice shall be the Contractor's responsibility, and the amount of each applicable Bond shall be adjusted accordingly.

7.1.2. The Contractor shall not proceed with any change in the Work without the required written authorization or direction. If the Contractor believes that any item is not Work required by the Contract Documents, the Contractor shall obtain a Change Order before proceeding with such item. Except as provided in Article GC 8, failure to obtain such a Change Order shall constitute a waiver by the Contractor of any claim for compensation for such item. If the Contractor fails or refuses to perform any item which the Commission believes is Work required by the Contract Documents, the Commission may issue a Bulletin to the Contractor describing the Work with no change in the Contract Price and require the Contractor to perform the Work in accordance with subparagraph GC 7.1.3.

7.1.3. The Contractor understands and agrees that agreement to a Change Order is final and without reservation of any rights. If the Contractor does not agree to a Change Order, the Chief Engineer may require the Contractor in writing to perform any Work related to the Change Order; provided, however, the Contractor may seek a determination of whether compensation is due, and the amount of any compensation, for any such Work performed in accordance with GC Article 8 and the Change Order Procedure and Pricing Guidelines. Any dispute regarding the terms and conditions of a Change Order shall be resolved in accordance with Article GC 8.

7.1.4. The Commission reserves the right to cancel or modify any Change Order authorization.

## **7.2. PRICE DETERMINATION**

7.2.1. The maximum cost or credit resulting from a change in the Work shall be determined as described below.

7.2.1.1. Proposals which do not set forth all information as required by the Change Order Procedure and Pricing Guidelines will not be considered or accepted under any circumstances.

7.2.1.2. A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order except for Unit Price Work set forth on the Bid Form, included in the Contract Price and which does not exceed the estimated quantities set forth on the Bid Form.

7.2.1.3. The amounts allowed for overhead and profit are all-inclusive, include all Contractor Project costs relating to field and home office operations, and no additional or other amounts for overhead or profit shall be allowed.

7.2.1.4. The maximum cost or credit as determined by the Change Order Procedure and Pricing Guidelines includes all compensation for impact costs, and no additional or other amounts for impact costs shall be allowed.

7.2.2. The Contractor shall not assign any portion of the Work to another Person whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

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

7.2.3.1. The Contractor shall proceed with the Change Order Work when so required by the Chief Engineer.

7.2.3.2. The Contractor may dispute the Chief Engineer's determination by filing a claim in accordance with Article GC 8.

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

### **7.3. DIFFERING SITE CONDITIONS**

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

7.3.2. If the Contractor encounters, during the progress of the Work, subsurface or concealed physical conditions at the Project, differing materially from those upon which the Contract Documents permit the Contractor to rely or differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract, the Contractor shall notify the Architect/Engineer in writing of such conditions, before they are disturbed.

7.3.3. The Architect/Engineer shall promptly investigate the conditions and if the Architect/Engineer finds that such conditions do materially differ from those upon which the Contract Documents permit the Contractor to rely, or differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract, and cause an increase or decrease in the cost of performing the Work, an appropriate Change Order shall be processed subject to final approval by the Commission.

7.3.3.1. The Contractor will only proceed with a proper authorization, in writing, as provided by the Contract Documents.

7.3.3.2. No claim of the Contractor under subparagraph GC 7.3.3 shall be allowed unless the Contractor provided the notice required in subparagraph GC 7.3.2.

#### **7.4. TIME EXTENSION**

7.4.1. Notwithstanding any other provision of the Contract Documents, time extensions for changes in the Work will depend upon the extent to which the change causes delay in Work on the Critical Path of the Construction Schedule as determined pursuant to paragraph GC 6.4 to 6.5.

7.4.2. If the Chief Engineer determines that extending the time for milestone, Substantial or Final Completion is not possible, the Contractor shall price all costs of accelerated performance in the Contractor's Proposal.

7.4.3. A Change Order granting a time extension may revise the completion dates for only those milestone, Substantial and Final Completion dates on the critical path so interfered with, disrupted, hindered or delayed and affords time for any related remobilization necessary.

#### **7.5. RECONCILIATION OF UNIT PRICE ITEMS.**

7.5.1. The Commission shall issue a Change Order to reconcile the difference between the estimated and actual quantities of Work performed and materials furnished for Unit Price pay items ("Final Quantities Change Order.").

7.5.2. If the actual quantity of a Unit Price pay item exceeds the amounts described in Article 2.8.7 of the Instructions to Bidders, the Commission may adjust the Unit Prices in accordance with the Change Order Procedure and Pricing Guidelines. The adjusted Unit Prices shall only apply to the units of Work performed or supplied in excess of the threshold specified in Article 2.8.7 of the Instructions to Bidders.

### **ARTICLE 8. DISPUTE RESOLUTION PROCEDURE**

#### **8.1. FILING OF CLAIM**

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

8.1.2. The Contractor shall make any claim in writing filed with the Architect/Engineer, prior to Final Completion, provided the Contractor notified the Architect/Engineer, in writing, no more than ten (10) days after the initial occurrence of the facts, which are the basis of the claim. The Architect/Engineer shall inform the Chief Engineer in writing of such notice immediately upon receipt. To the fullest extent permitted by law, failure of the Contractor to timely provide such notice shall constitute a waiver by the Contractor of any claim for additional time or compensation or for mitigation of Liquidated Damages. Every such written notice shall provide the following information to permit timely and appropriate evaluation of the claim, determination of responsibility and opportunity for mitigation.

8.1.2.1. Estimated amount of the claim, including all costs for interference, disruption, hindrance, delay and any impact, which amount shall be calculated in accordance with the Change Order Pricing Guidelines, shall be based upon the

Contractor's experience and shall be a fair and reasonably accurate assessment of the damages suffered (or anticipated) by the Contractor;

8.1.2.2. Identification of Persons and events responsible for causing the claim, including without limitation the date (or anticipated date) of the commencement of any interference, disruption, hindrance, delay or impact;

8.1.2.3. Identification of activities on the Construction Schedule which will or may be affected by the claim or new activities which will or may be created and the relationship with existing activities;

8.1.2.4. Anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay and any remobilization period; and

8.1.2.5. Recommended action to avoid or minimize any interference, disruption, hindrance, delay or impact.

8.1.3. With respect to every claim submitted in accordance with this Article, the Contractor shall submit three (3) copies of its claim to the Architect/Engineer not more than thirty (30) days after the notice required by subparagraph GC 8.1.2, detailing to the Architect/Engineer, the amounts claimed and providing the following information to permit timely and appropriate evaluation of the claim, determination of responsibility and any remaining opportunity for mitigation. If the Contractor is unable to calculate any amount claimed in detail, the Contractor shall use its best efforts to provide a reasonable estimate of such amount.

8.1.3.1. A narrative of the event, or combination of events, claimed as resulting in interference, disruption, hindrance, delay or impact to the Contractor, including the start date of the event or events and the actual, or anticipated, finish date;

8.1.3.2. A quantification of the planned Work items and the changed scope of Work items claimed as having been impacted;

8.1.3.3. A time impact analysis, consistent with standard critical path methodology for scheduling, demonstrating the impact to the Contractor's scheduled activities;

8.1.3.4. Copies of the Contractor's daily log for each day of impact;

8.1.3.5. Copies of relevant correspondence and other information regarding or supporting Contractor entitlement;

8.1.3.6. Copies of Contractor payroll records for labor impacts claimed by Contractor and any Subcontractor affected by the event or events.

8.1.3.7. Copies of invoices for material impacts claimed by the Contractor and any Subcontractor affected by the event or events;

8.1.3.8. Copies of equipment records, or rental invoices, for any equipment, impacts claimed by the Contractor or any Subcontractor affected by the event or events;

8.1.3.9. Copies of the most recent Contractor Income Statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; and

8.1.3.10. A statement, signed by an authorized representative of the Contractor, certifying that the claims are made in good faith, the supporting data is accurate and complete to the best of the Contractor's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Commission is liable in accordance with the Contract Documents, in particular the Change Order Pricing Guidelines.

## **8.2. CLAIM RESPONSE**

8.2.1. Immediately upon receipt, the Architect/Engineer shall deliver two (2) copies of any claim submitted by the Contractor in accordance with Subparagraph 8.1.3 to the Chief Engineer. Upon submission of the claim by the Contractor, the Architect/Engineer shall convene a meeting with the Contractor and the Chief Engineer to review and discuss the claim. The Architect/Engineer shall review the Contractor's claim with all attendees and discuss any questions regarding the nature or content of the required items. Any items deemed deficient shall be corrected by the Contractor before the Architect/Engineer will commence review in accordance with subparagraph GC 8.3.1. The Architect/Engineer shall document the timeliness of notice and the actual date of corrected submission of the claim.

## **8.3. REVIEW AND DECISION**

8.3.1. Upon corrected submission of the claim by the Contractor, the Architect/Engineer shall review the claim and prepare a written analysis of its content. The analysis shall include a narrative of the examination of the facts giving rise to the claim, relevant Contract Documents and language therein, an analysis of claimed additional labor, materials and equipment for the scope of the Work items described, an analysis of any time extension for any interference, disruption, hindrance, impact or delay claimed (including the calculation of any concurrent delays affecting entitlement), confirmation of the calculation of claimed labor, materials and equipment as conforming to the Change Order Pricing Guidelines and a concluding recommendation regarding Contractor entitlement to, and the appropriateness and reasonableness of, all or any part of, the claimed costs and time extension. The Architect/Engineer shall include copies of contemporaneous documentation supporting any recommendation regarding the sufficiency or inadequacy of the Contractor's claim, the Contractor's performance or the rebuttal of the claim.

8.3.2. The Architect/Engineer shall prepare and submit their claim analysis to the Chief Engineer within thirty (30) days of the corrected submission of the claim.

8.3.3. The Chief Engineer shall examine the Contractor's claim, and the analysis of the claim submitted by the Architect/Engineer. The Chief Engineer shall approve or deny all, or any part of, the Contractor's claim and forward a written decision to the Contractor, the Architect/Engineer and the Commission within thirty (30) days after receipt of the Architect/Engineer's claim analysis.

#### **8.4. FINAL ADMINISTRATIVE DECISION**

8.4.1. The Contractor may appeal the Chief Engineer's decision to the Commission's Executive Director. The appeal shall be submitted by certified mail and addressed to the Commission's Director of Contracts Administration. Upon receipt of the Contractor's appeal, the Director of Contracts Administration shall conduct a meeting with the Contractor and shall notify the Contractor of the date of the meeting in writing. The Director of Contracts Administration may employ independent resources to assist in the meeting and review of the appeal. The Director of Contracts Administration shall make a recommendation to the Commission's Executive Director who shall, in turn, provide a written decision to the Contractor within fourteen (14) days after the meeting. The decision of the Executive Director shall be the final and conclusive decision of the Commission, subject to filing of litigation.

#### **8.5. ALTERNATIVE DISPUTE RESOLUTION**

8.5.1. The Commission and the Contractor recognize that litigation is an expensive, resource-consuming process for resolving business disputes. Therefore, the Commission and the Contractor agree that if any claim cannot be resolved via the dispute resolution process set forth above in this Article GC 8, they will attempt in good faith to settle the dispute expeditiously through mediation within thirty (30) days. Should the need arise, the Commission and the Contractor shall attempt to mutually agree as to the provider of neutral services, and the costs of mediation shall be evenly shared by the Contractor and the Commission.

#### **8.6. AUDITING OF CLAIMS**

8.6.1. All claims by the Contractor shall be subject to audit at any time following the filing of such claim, whether or not such claim is part of litigation pending in the courts of this State. The audit may be performed by employees of the Commission or by a consultant engaged by the Commission at any location designated by the Commission. The audit may begin on ten (10) days' notice to the Contractor, Subcontractor or Material Supplier, as applicable. The Contractor, Subcontractor or Material Supplier shall use its best efforts to cooperate with the audit. Failure of the Contractor, Subcontractor or Material Supplier to maintain and retain sufficient records to allow the Commission to verify the claim shall constitute a waiver of any portion of such claim that cannot be verified.

Without limiting the foregoing, and as a minimum, the Contractor, Subcontractor or Material Supplier shall make available to the Commission the following documents:

1. Daily time sheets and foreman's daily reports.
2. Union agreements, if any and employer agreements.
3. Insurance, welfare, fringes and benefits records.
4. Payroll register.
5. Earnings records.
6. Payroll tax returns.
7. Material invoices, purchase orders, Subcontractor contracts and all material and supply acquisition contracts.

8. Material cost distribution worksheets.
9. Equipment records (list of Contractor equipment, rates, etc.).
10. Vendor rental agreements, and Subcontractor invoices.
11. Subcontractor payment certificates.
12. Canceled checks (payroll and vendors).
13. Job cost reports.
14. Job payroll ledger.
15. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
16. Cash Disbursements journal.
17. Financial Statements for all years reflecting operations on the Project.
18. Income tax returns for all years reflecting operations on the Project.
19. Depreciation records on all equipment utilized whether such records are maintained by the Contractor involved, its accountant, or others.
20. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
21. All documents which reflect the Contractor's actual profit and overhead, or the calculation of overhead multipliers, during the years the Project was being performed and for each of the five (5) years prior to the commencement of this Project.
22. All documents related to the preparation of the Contractor's Bid, including the final calculations on which the Bid was based.
23. All documents which relate to each and every claim together with all documents which support or negate the amount of damages as to each claim.
24. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents which establish the time periods, individuals involved, the hours and rate of pay for the individuals.
25. All other documents required by the Commission to intelligently review the claim.

#### **8.7. FALSE CERTIFICATION OF CLAIMS**

8.7.1. If any Contractor falsely certifies all or any part of a claim, the entire claim shall be denied and deemed waived.

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

8.7.3. Any Contractor that knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim shall entitle the Commission to retain or recover from the Contractor, as Liquidated Damages, and not as a penalty, the amount of \$500,000.00 in addition to any other remedy available at law or equity, including the indemnity obligations under the Contract Documents. The amount of Liquidated Damages is agreed upon because of the impracticality and extreme difficulty of ascertaining the actual amount of damage the Commission, its tollpayers, and traveling public would sustain addressing such false or fraudulent claims.

## **8.8. PERFORMANCE AND PAYMENT**

8.8.1. The Contractor shall proceed with performance of the Work during any dispute resolution process, unless otherwise agreed by the Contractor and the Chief Engineer in writing.

8.8.2. The Commission shall continue to make payment of any undisputed amounts in accordance with the Contract Documents pending final resolution of a claim, unless otherwise agreed by the Contractor and the Chief Engineer in writing.

8.8.3. If the Contractor accepts the decision of the Chief Engineer pursuant to paragraph GC 8.3 or if the Contractor accepts the decision of the Commission's Executive Director pursuant to subparagraph GC 8.4.1 and the Contractor foregoes litigation of the claim, any payment to be made, credit to be provided or extension of time to be granted pursuant to the Commission's approval or decision shall be evidenced by a Change Order package consisting of a completed Change Order form signed by the Contractor, the Architect/Engineer, the Chief Engineer and the Executive Director, a copy of the Commission's approval or decision and any necessary supporting documentation, and any such payment shall be made pursuant to a Contractor Payment Request in accordance with paragraph GC 9.2 or 9.7, as applicable.

## **8.9. INTEREST**

8.9.1. The rate of any prejudgment interest shall be at the then current statutory rate pursuant to Ohio Revised Code Section 1343.03(A).

# **ARTICLE 9. CONTRACTOR PAYMENT**

## **9.1. CONTRACT COST BREAKDOWN**

9.1.1. The Contractor shall submit the Contract Cost Breakdown to the Architect/Engineer within ten (10) days of the Notice to Proceed. The Contract Cost Breakdown shall be provided in the format determined by the Architect/Engineer and approved by the Chief Engineer.

9.1.2. The grand total shown on the Contract Cost Breakdown must equal the total Contract Price. Separate items shall not be shown for overhead and profit, but shall be included in the totals for labor and materials. The Commission reserves the right to use



the approved Contract Cost Breakdown to determine the cost or credit to the Commission resulting from any change in the Work. For purposes of calculating retainage, “labor” means all items appearing on the Contract Cost Breakdown except material goods that become the property of the Commission through their incorporation in the Work.

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

## **9.2. CONTRACTOR PAYMENT REQUEST**

9.2.1. The Contractor shall submit monthly to the Architect/Engineer, an itemized Contractor Payment Request for Work performed based upon the Contract Cost Breakdown. Subject to approval of the Chief Engineer, Contractor Payment Requests may be made twice a month.

9.2.1.1. The Contractor Payment Request shall be supported by documentation substantiating the Contractor’s right to payment. The Contractor shall supply such additional documentation as the Architect/Engineer may request in connection with each payment to the Contractor.

9.2.1.2. Certified payroll reports for the period of time indicated shall be attached to one (1) copy of every Contractor Payment Request. See also paragraph GC 18.2.

9.2.1.3. The Contractor shall list on the Contractor Payment Request any approved Change Orders processed and performed during the time covered by the Contractor Payment Request.

9.2.1.4. The Contractor shall provide, and shall require all Subcontractors and Material Suppliers to provide, any requested data to determine compliance with the representations made in the approved SBE Participation Certification, Utilization Plan and Statements of Intent to Contract and Perform for each Contractor Payment Request through the Commission’s online diversity compliance portal: <https://ohioturnpike.diversitycompliance.com/Default.asp>. The Contractor and all Subcontractors and Material Suppliers shall timely submit all required data prior to any reasonable due dates, and to check the online diversity compliance portal on a regular basis to manage contact information and contract records. The Contractor shall require all Subcontractors and Material Suppliers to have completed all requested items and maintain contact information on record that is accurate and up-to-date. The Contractor shall include these disclosure and reporting requirements in all subcontracts and supplier contracts that it enters into for the Project and further require that all Subcontractors and Material Suppliers place the same payment 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 including but not limited to the following:

9.2.1.4.1. the name of the Subcontractor(s) and Material Supplier(s) and their SBE certification status;

9.2.1.4.2. the federal tax identification number of the Subcontractor(s) and Material Supplier(s);

- 9.2.1.4.3. the date of the Subcontract(s) and purchase order(s);
- 9.2.1.4.4. the actual start and projected or actual end dates of the performance under the Subcontract(s) and purchase order(s);
- 9.2.1.4.5. the original amount of the Subcontract(s) and purchase order(s);
- 9.2.1.4.6. the current amount of the Subcontract(s) and purchase order(s);
- 9.2.1.4.7. the amount invoiced to date on the Subcontract(s) and purchase order;
- 9.2.1.4.8. the amount paid and amount withheld as retainage to date on the Subcontract(s) and purchase order(s);
- 9.2.1.4.9. the status of the Subcontract(s) and purchase order(s) (active, complete, or void); and
- 9.2.1.4.10. a statement describing any substantive product or performance deficiencies of the Subcontractor(s) and Material Supplier(s).

9.2.1.5. The Contractor shall provide an Affidavit of Subcontractor Payment simultaneously with its final Contractor Payment Request certifying that the submitted document is a true and accurate accounting of the original Contract amount paid to, and received by, each Subcontractor and Material Supplier in detail and form acceptable to the Commission.

9.2.1.6. Failure to timely submit the data required for monitoring compliance with SBE Participation Certification, Utilization Plan and Statements of Intent to Contract and Perform, or the submission of reports that substantially deviate from the respective Statement of Intent to Contract and Perform without acceptable justification, shall result in withholding payment in accordance with GC 9.6.2.

9.2.2. Upon approval by the Architect/Engineer, the Architect/Engineer shall transmit the Contractor Payment Request to the Chief Engineer ~~for review~~. Upon completion of the review, the Chief Engineer shall transmit the Contractor Payment Request to the Commission's Executive Director with any recommendations about payment. Payment of non-disputed portions of a Contractor Payment Request shall be made within thirty (30) days from the date of approval by the Executive Director.

9.2.2.1. The Commission reserves the right to require proof of the renewal of required insurance as a condition precedent to payment.

9.2.2.2. Payments due and not paid to the Contractor within such thirty (30) day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rate established at the commercial banks in the city of over one hundred thousand (100,000) population that is nearest to the Project.

9.2.3. The amount of Liquidated Damages or other credits to which the Commission may be entitled under the Contract Documents may be deducted from any Contractor Payment Request.

### **9.3. PAYMENTS FOR LABOR**

9.3.1. Partial payments to the Contractor for labor performed under either a Unit Price or lump sum Contract shall be made at the rate of ninety-two percent (92%) of the amount invoiced through the Contractor Payment Request which shows the progress toward achieving Final Completion at fifty percent (50%) or less of the labor accounted for on the Contract Cost Breakdown.

9.3.2. After the Contract is fifty percent (50%) complete, as evidenced by payments to the Contractor in the amount of at least fifty percent (50%) of the total value of labor accounted for on the Contract Cost Breakdown approved under GC 9.1.1, except in the case of Contracts the total of which is less than Fifteen Thousand Dollars (\$15,000.00), no additional funds shall be retained from payments for labor.

### **9.4. PAYMENTS FOR STORED MATERIALS**

9.4.1. The Commission shall pay to the Contractor a sum at the rate of ninety-two percent (92%) of the invoice cost, not to exceed the Bid amount in a Unit Price or lump sum Contract, for material delivered on the site of the Project, or other point in the vicinity of the Project, or other storage site approved by the Architect/Engineer, provided the Contractor provides the following information with the Contractor Payment Request:

9.4.1.1. A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost.

9.4.1.2. A certification of materials stored off site, prepared by the Contractor and signed by the Architect/Engineer to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project. All costs incurred by the Architect/Engineer to visit a storage site, other than the areas adjacent to the Project, shall be paid by the Contractor.

9.4.2. When payment is allowed on account of material delivered on the site of the Project or in the vicinity thereof or under the possession and control of the Contractor but not yet incorporated therein, such material shall become the property of the Commission, but if such material is stolen, destroyed, or damaged by casualty before being used, the Contractor will be required to replace it at the Contractor's expense. Any such material not ultimately incorporated into the Project may, at the option of the Commission, be retained by the Commission or returned to the Contractor for credit to the Commission of a proportionate amount.

### **9.5. RETAINAGE ESCROW**

9.5.1. All funds retained for the faithful performance of the Work shall be deposited in an escrow account with a bank in the State in accordance with the terms and conditions provided in an escrow agreement executed by the Contractor, the Commission's Comptroller and the applicable bank.

9.5.2. When the major portion of the Project is in use, and there exists no other reason to withhold retainage, including without limitation compliance with Article GC 11, the retained percentages held in connection with such portion shall, upon request of the Contractor, be released from escrow and paid to the Contractor, withholding only that amount necessary to assure completion, at the discretion of the Chief Engineer.

- 9.5.2.1. Any reduction or release of retainage, or portion thereof, shall not be a waiver of the Commission's right to retainage in connection with other payments to the Contractor, or any other right or remedy the Commission has under the Contract Documents at law or in equity.
- 9.5.2.2. Funds in the escrow account not previously paid shall be released to the Contractor within thirty (30) days of the Commission's approval of a pre-final Contractor Payment Request and execution of the Certificate of Contract Completion.
- 9.5.2.3. The Contractor, as conditions precedent to execution of the Certificate of Contract Completion and release of retainage, shall provide all documents required pursuant to subparagraph GC 11.1.1 for approval by the Architect/Engineer and GC 11.1.2 for approval of the Prevailing Wage Coordinator.
- 9.5.2.4. The Contractor's failure to utilize good faith efforts to fulfill the conditions precedent for execution of the Certificate of Contract Completion under GC 11.1.1 and GC 11.1.2 within ninety (90) days after the Certificate of Final Completion's execution shall constitute the Contractor's waiver and abandonment of its claim to release of retainage and result in its forfeiture to the Commission as Liquidated Damages for the delay in achieving Contract Completion and closing out the Project due to the extreme difficulty in foreseeing or calculating actual damages. Provided, however, the Contractor shall remain liable for fulfilling the conditions precedent and the Liquidated Damages are not the exclusive remedy available to the Commission. The Contractor acknowledges that the failure to fulfill the conditions precedent for Contract Completion, could give rise to irreparable injury to the Commission which would be inadequately compensated in monetary damages. Accordingly, the Commission may seek a restraining order and/or an injunction prohibiting such breach in addition to any other legal remedies which may be available at law or in equity, including indemnification and specific performance.
- 9.5.3. Upon consent by the Contractor's Surety, the Commission may reduce the amount of funds retained for the faithful performance of Work by fifty percent (50) of the amount of funds required to be retained, provided the Contractor's Surety remains responsible for all damages that may be caused due to default by the Contractor, including without limitation, the following:
- 9.5.3.1. Completion of the Work;
  - 9.5.3.2. All interference, disruption, hindrance and delay claims;
  - 9.5.3.3. All Liquidated Damages; and
  - 9.5.3.4. All additional expenses incurred by the Commission.

## **9.6. PAYMENTS WITHHELD**

- 9.6.1. The Architect/Engineer and the Chief Engineer shall have the authority to recommend that payments be withheld from, or Liquidated Damages be assessed against, a Contractor's Contractor Payment Request, stating the reasons for such recommendation.
- 9.6.2. The Commission's Executive Director reserves the right to decline to approve any Contractor Payment Request or part thereof, or because of subsequent evidence or inspection, to nullify any previous Contractor Payment Request, in whole or in part, to such

extent as may be necessary in the opinion of the Executive Director to protect the Commission from loss because of:

- 9.6.2.1. Defective Work not remedied;
- 9.6.2.2. Damage caused by the Contractor;
- 9.6.2.3. Failure to comply with the requirements of Chapter 4115, ORC;
- 9.6.2.4. Failure to timely submit Certified Participation Reports in accordance with GC Article 9.2.1;
- 9.6.2.5. Failure to submit a Certified Final Participation Report that substantially conforms with the Statement of Intent to Perform in accordance with GC Article 9.2.1 unless the Contractor presents sufficient justification for the deviation;
- 9.6.2.6. Failure to timely submit the Contractor's Construction Schedule or update thereto;
- 9.6.2.7. Liquidated Damages; or
- 9.6.2.8. Credits due to the Commission.

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

9.6.4. Whenever the Commission receives a Claim Affidavit, the Commission's Executive Director shall detain the stated amount from the Contractor's subsequent Contractor Payment Requests unless the Contractor provides a release and waiver of lien with a Contractor Payment Request.

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

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

## **9.7. PRE-FINAL AND FINAL CONTRACTOR PAYMENT REQUEST**

9.7.1. Payment of the pre-final Contractor Payment Request shall be made within thirty (30) days from the date of approval by the Commission's Executive Director upon the recommendation of the Chief Engineer and execution of the Final Quantities Change Order and Certificate of Final Completion. Payments due and not paid to the Contractor within such thirty (30) day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rate established at the commercial banks in the city of over one hundred thousand (100,000) population that is nearest to the Project.

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

- 9.7.2.1. The Contractor and every Subcontractor shall execute an affidavit to certify that the Contractor has complied with all requirements of Chapter 4115, ORC.
- 9.7.2.2. The Contractor and every Subcontractor shall execute an affidavit to certify that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project.
- 9.7.3. The release of final retainage and making of final payment by the Commission shall constitute a waiver of all claims by the Commission except those relating to unresolved claims of the Contractor or the Commission and those arising after Final Completion including, without limitation, the following:
- 9.7.3.1. Defective or nonconforming Work resulting from latent defects, fraud or gross mistakes;
- 9.7.3.2. Outstanding liens;
- 9.7.3.3. Failure of the Contractor to comply with any Warranties or Guarantees required by the Contract Documents; and
- 9.7.3.4. [Errors disclosed by audit.](#)
- 9.7.4. The acceptance of released retainage and final payment by the Contractor shall constitute a waiver of all claims against the Commission except those that the Contractor has previously made in writing in accordance with Article GC 8 and which remain unresolved at the time of final payment. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

## **ARTICLE 10. FINAL INSPECTION AND ACCEPTANCE**

### **10.1. CONTRACTOR'S PUNCH LIST**

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

### **10.2. ARCHITECT/ENGINEER'S PUNCH LIST**

- 10.2.1. The Architect/Engineer shall, within seven (7) days of receipt of the request for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, stating reasons for any rejection.
- 10.2.1.1. Upon acceptance of the Contractor's request, the Architect/Engineer shall conduct the Final Inspection to determine whether the Work, or the designated portion thereof, is in conformity with the Contract Documents. The Architect/Engineer shall notify the Contractor and the Chief Engineer of the scheduled time of the Final Inspection.

10.2.1.2. Within three (3) days of the Final Inspection, the Architect/Engineer shall notify the Contractor of any items of Defective Work remaining in an incomplete or unacceptable condition. The list of such items shall be known as the Architect/Engineer's Punch List.

### **10.3. CORRECTION OF PUNCH LIST ITEMS**

10.3.1. Within thirty (30) days of receipt of the notice required by subparagraph GC 10.2.1.2, the Contractor shall complete and correct all items on the Architect/Engineer's Punch List.

10.3.1.1. If the Contractor does not complete the items on the Architect/Engineer's Punch List within thirty (30) days of receipt of the notice, the provisions of paragraph GC 5.2 may be invoked.

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

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

10.3.1.4. If multiple inspections of items on the Architect/Engineer's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall be responsible for any additional costs incurred by the Contractor, the Architect/Engineer and the Commission.

### **10.4. CERTIFICATE OF FINAL COMPLETION**

10.4.1. When all items on the Architect/Engineer's Punch List have been corrected to the satisfaction of the Architect/Engineer, the Architect/Engineer, shall process a Certificate of Contract Completion in accordance with this Section.

10.4.2. Contractor shall certify on the Certificate of Final Completion that all required physical repairs and improvements, except as noted, are one hundred percent (100%) complete and in conformance with the Contract Documents. Contractor shall agree that it shall complete any remaining Work noted in the Certificate of Final Completion on or before the date or dates indicated, as a contract obligation.

10.4.3. The Architect/Engineer shall certify on the Certificate of Final Completion that, based on actual observation and knowledge of a licensed professional engineer, the physical repairs and improvements required under the Contract are one hundred percent (100%) complete and completed in substantial compliance with the Contract Documents.

10.4.4. The Commission shall issue Final Acceptance of the Project through the Chief Engineer's approval of the Certificate of Final Completion bearing the required certifications of the Contractor and the Architect/Engineer.

## **10.5. DEFERRED ITEMS**

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

## **ARTICLE 11. CONTRACT COMPLETION**

### **11.1. PROJECT RECORD DOCUMENT SUBMITTALS**

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

11.1.1.1. Any Inspection Certificates required;

11.1.1.2. Operating and Maintenance Manuals, which shall be organized into suitable sets of manageable size. Indexed data shall be bound in individual binders, with pocket folders for folded sheet information and appropriate identification shall be marked on the front and the spine of each binder;

11.1.1.3. Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project as described in GC 11.2;

11.1.1.4. Reproducible detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;

11.1.1.5. Assignment to the Commission of all Warranties and Guarantees, including the most recent address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;

11.1.2. In addition to satisfying the conditions set forth in Article 11.1.1, the Contractor shall submit the following materials to the Prevailing Wage Coordinator as supplemental conditions precedent to the execution of the Certificate of Contract Completion, release of retainage and final payment:

11.1.2.1. Affidavits certifying that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project;

11.1.2.2. Final certified payroll reports; and

11.1.2.3. An affidavit certifying that the Contractor and all Subcontractors have complied with all requirements of Chapter 4115, ORC.

### **11.2. RECORD DRAWINGS**

11.2.1. Upon completion of the Work, the Contractor shall organize the As-Built Drawings into manageable sets, bind the sets with durable paper cover sheets, certify to the accuracy of the As-Built Drawings by signature thereon, and deliver the As-Built Drawings to the Architect/Engineer. The Architect/Engineer shall review the As-Built Drawings and verify that, to the best of the Architect/Engineer's knowledge as based upon the Architect/Engineer's observations during the process of the Work, the As-Built Drawings



detail the actual construction of the Project and shall transmit the As-Built Drawings to the Chief Engineer.

11.2.2. The Architect/Engineer shall revise the original contract Drawing tracings or computer files with the information contained on the As-Built Drawings provided by the Contractor. The revised original contract Drawing tracings or computer files shall be labeled "Record Drawings" and reflect the date of the Architect/Engineer's revision of the As-Built Drawings.

11.2.3. The Commission may thereafter use the Record Drawings for any purpose relating to the Project including, without limitation, additions to or completion of the Project.

### **11.3. GUARANTEE AND WARRANTY**

11.3.1. The Contractor shall provide a Guarantee to the Commission that all Work is in conformity with the Contract Documents and free from defects in workmanship, materials and equipment for a period of one (1) year or such longer period as specified in the Contract Documents. The Bond shall remain in effect until the expiration of that period unless the Chief Engineer agrees to permit the Contractor to provide a Maintenance Bond in form, amount and substance and from a Surety satisfactory to the Chief Engineer.

11.3.1.1. The Guarantee time period shall commence on the date of approval of the Certificate of Final Completion by the Chief Engineer, unless otherwise provided in writing.

11.3.1.2. The Guarantee time period for any incomplete or uncorrected Work at the time of Partial Use, if any, shall commence with the date of approval of the Certificate of Final Completion by the Chief Engineer, unless otherwise provided in writing.

11.3.1.3. The Guarantee provided in this Article shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy provided by law or by the Contract Documents.

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

11.3.3. If defects in material or equipment become apparent within the Warranty period, the Chief Engineer shall promptly notify the Contractor in writing and provide a copy of said notice to the Architect/Engineer.

11.3.3.1. Within ten (10) days of receipt of said notice, the Contractor shall visit the Project in the company of a representative of the Commission to determine the extent of all defects and shall promptly repair or replace the Defective Work, including all adjacent Work damaged as a result of such defects or as a result of remedying the defects, whether or not such adjacent Work was originally provided by the Contractor.

11.3.3.2. If the Defective Work is considered by the Chief Engineer to be an emergency, the Chief Engineer may require the Contractor to visit the Project within one (1) day of receipt of said notice.

11.3.3.3. The Contractor shall be fully responsible for the cost of temporary materials or equipment required during the repair or replacement of the Defective Work.

11.3.4. If the Contractor does not promptly repair or replace Defective Work, the Commission may repair or replace such Defective Work and charge the cost thereof to the Contractor or the Contractor's Surety.

11.3.5. Work which is repaired or replaced by the Contractor shall be inspected and accepted by the Chief Engineer and shall be guaranteed by the Contractor for one (1) year from the date of acceptance of the corrective Work by the Chief Engineer or the remaining period of any applicable Guarantee or Warranty, whichever is longer.

#### **11.4. FINAL CLEANING**

11.4.1. At the completion of the Work, the Contractor shall restore all property not designated for alteration by the Contract Documents to as near its original condition as practicable and clean the site of all dust, mud, waste and excess materials, false work, equipment and rubbish attributable to the Work to the reasonable satisfaction of the Chief Engineer.

### **ARTICLE 12. INSURANCE**

#### **12.1. CONTRACTOR'S LIABILITY INSURANCE**

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

12.1.1.1. Claims under workers' compensation, occupational sickness or disease, disability benefit and other similar employee benefit acts;

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

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

12.1.2. A Commercial General Liability policy and 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 these Contract Documents, 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**

\$10,000,000	General Aggregate
\$10,000,000	Products/Completed Operations Aggregate
\$5,000,000	Occurrence Limit
\$5,000,000	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.

Such insurance shall cover and include liability arising from all vehicles owned by, hired by, or used by or on behalf of the 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.

12.1.2.1. 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.

12.1.3. Contractor's Pollution Liability: If Work performed or provided by Contractor includes activities that could result in or give rise to a contamination or pollution incident, if the requirement is stated in the Notice to Bidders, the Contractor shall purchase and maintain in force insurance covering loss and liability arising out of or relating to Work. Insurance shall cover and include claims alleging bodily injury, property damage, or including claims alleging bodily injury, property damage or clean-up which shall include investigation, response, removal, remediation and neutralization of the pollution condition both on and off site claims or to any other location to which Hazardous Materials/Regulated Substances were transported from the Work site with limits not less than:

**Policy Limits – Contractor's Pollution Liability**

\$2,000,000	Bodily Injury and Property Damage, Third Party Claims, each occurrence
\$2,000,000	Bodily Injury and Property Damage, Third Party Claims, annual aggregate
\$2,000,000	Clean-up, Response, and Remediation On-Site, each occurrence
\$2,000,000	Clean-up, Response, and Remediation Off-Site, each occurrence

Contractor's Pollution Liability insurance may be written on a claims- made basis provided such policy shall either: (i) be renewed annually for a period of not fewer than twenty-four (24) months following completion with substantially the same terms and conditions; or (ii) include an extended reporting period endorsement or clause providing not less than twenty-four (24) months within which a claim may be made under the policy respecting the Contractor's performance of the Work. The cost for such twenty-four (24) month period shall be borne exclusively by Contractor; provided further that, if such insurance is written on a claims-made basis, then the per occurrence limits stated above shall apply per incident and limits of liability shall apply on a per-Project basis.

12.1.4. **Riggers Liability:** If Work performed or provided by Contractor includes activities that could include the use or operation of a crane or any other device or piece of equipment by which materials or equipment, or the movement of property, are rigged, hoisted, lowered, elevated, raised, loaded or unloaded, the Contractor shall purchase and maintain in force, or cause to be purchased and maintained in force insurance covering damage or loss to such property or equipment, with a limit of liability not less than the purchase price of the most expensive device or piece of equipment that may be rigged, hoisted, lowered, elevated, raised, loaded or unloaded; such coverage shall include a limit for liability arising from any consequential or indirect losses including without limitation, any delay or loss of use claim.

12.1.5. Contractor shall not subcontract any part of this agreement 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 Article 12.3.1 below, may be deemed a material breach of this agreement. 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 agreement.

<b>SUBCONTRACTOR INSURANCE LIMITS BY LINE OF COVERAGE</b>	<b>SUB-CONTRACT AMOUNT \$0 - \$1,000,000</b>	<b>SUB-CONTRACT AMOUNT \$1,000,000- \$5,000,000</b>	<b>SUB-CONTRACT AMOUNT &gt;\$5,000,000</b>
<b>Commercial General Liability</b>			
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
<b>Commercial Automobile Liability</b>			

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
<b>Worker's Compensation</b>			
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
<b>Pollution Liability (if requirement is stated in Notice of Bidders)</b>			
Bodily Injury and Property Damage, Third Party Claims, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000
Bodily Injury and Property Damage, Third Party Claims, annual aggregate	\$2,000,000	\$2,000,000	\$2,000,000
Clean-up, Response, and Remediation On-Site, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000
Clean-up, Response, and Remediation Off-Site, each occurrence	\$2,000,000	\$2,000,000	\$2,000,000
<b>Riggers Liability</b> (if applicable)	As determined by Contractor	As determined by Contractor	As determined by Contractor
<b>Property Insurance</b>	Same limits as Contractor	Same limits as Contractor	Same limits as Contractor

## 12.2. **PROPERTY INSURANCE**

12.2.1. 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 the Contractor, then Contractor shall purchase and maintain Property insurance covering the equipment.

12.2.2. 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.

12.2.3. 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 agreement 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).

### **12.3. INSURANCE POLICY REQUIREMENTS**

12.3.1. Immediately upon the execution of the Contract, the Contractor shall forward to the Commission certificates of insurance which show that the 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 the Contractor shall endorse the Commission as an additional insured; provided, however, such designation shall not cause any claim between the Contractor and the Commission to be waived, except as set forth in paragraph 12.5. 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 agreement 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.

12.3.2. The 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 the Contract Documents. 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 the Contractor to obtain insurance required to be purchased or maintained by the Contract Documents.

12.3.3. The Contractor shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract until the date of approval of the Certificate of Final Completion by the Chief Engineer. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract. If the Contractor fails to purchase and maintain, or fails to continue in force throughout the term of these Contract Documents through Final Completion, 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, the Contractor agrees to promptly pay the Commission the amount incurred by the Commission to purchase such insurance.

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

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

12.3.6. 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.

12.3.7. The 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.

12.3.8. The 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 Revised Code prior to a subcontractor providing labor at the site of the Project. The 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 Revised Code prior to a lower-tier Subcontractor providing labor at the project site of the Project. 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 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 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.

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

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

#### **12.4. WAIVERS OF SUBROGATION**

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



## **12.5. THIRD PARTY OVER**

12.5.1. In any and all claims against the Commission, the indemnification obligations of Contractor in this agreement 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 agreement. 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.

## **ARTICLE 13. CONTRACT SUSPENSION OR TERMINATION**

### **13.1. SUSPENSION OF THE WORK**

13.1.1. If, in the judgment of the Chief Engineer, the Contractor is causing undue risk of damage to any part of the Project or adjacent area, or the conditions are unfavorable for the suitable prosecution of the Work, the Chief Engineer may delay the start of or suspend the Work temporarily, either wholly or in part, for such period until, in the judgment of the Chief Engineer, the safe and proper prosecution of the Work may be resumed. The Chief Engineer shall provide notice to the Contractor's Surety of any suspension ordered pursuant to this Article.

13.1.1.1. In case of such suspension, an extension of time, if appropriate, will be allowed as provided in the Contract Documents but no payment will be made to the Contractor for any expense or damages resulting therefrom. This provision is intended to be, and shall be construed as, consistent with, and not in conflict with, Section 4113.62, ORC, to the fullest extent permitted.

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

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

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

### **13.2. TERMINATION FOR CONVENIENCE**

13.2.1. The Commission may, at any time upon fourteen (14) days written notice to the Contractor, terminate the Contract in whole or in part for the Commission's convenience and without cause.

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

13.2.2.1. Cease operation as specified in the notice;

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

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

13.2.2.4. Proceed to complete the performance of any Work not terminated; and

13.2.2.5. Take actions that may be necessary, or that the Chief Engineer may require, for the protection and preservation of the terminated Work.

13.2.3. Upon such termination, the Contractor shall be paid in accordance with the Contract Cost Breakdown for Work completed, including any amount retained, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them.

13.2.3.1. All materials, equipment, facilities and supplies at the Project site, or stored off site, for which the Contractor has been compensated, shall become property of the Commission.

13.2.3.2. The Contractor may submit evidence of any reasonable expenses directly attributable to the termination of the contract for consideration by the Chief Engineer. In no event shall the Contractor's compensation exceed the total Contract Price.

13.2.3.3. Any dispute as to the sum then payable to the Contractor shall be resolved in accordance with the provisions of Article GC 8.

### **13.3. TERMINATION FOR CAUSE**

13.3.1. If the Commission determines that the Contractor has failed to prosecute the Work with the necessary force or in a timely manner, or has refused to remedy any Defective Work, the Chief Engineer shall notify the Contractor and the Contractor's Surety of such failure or refusal. The Contractor shall begin to cure such failure or refusal within five (5) days of receipt of the notice.

13.3.2. If the Contractor fails to cure such failure or refusal within twenty (20) days of receipt of the notice, the Commission may terminate the Contract and employ upon the Work the additional force, or supply the materials or such part of either as is appropriate, and may remove Defective Work.

13.3.3. If the Contractor is so terminated, the Contractor's Surety shall have the option to perform the Contract with resources other than those of the terminated Contractor.

If the Contractor's Surety does not commence performance of the Contract within ten (10) days of the date on which the Contract was terminated and utilize its best efforts to timely achieve Final Completion in accordance with the contract dates, the Commission may complete the Work by such means as the Chief Engineer deems appropriate. The Commission may take possession of and use all materials, facilities and equipment at the Project site or stored off site for which the Commission has paid.

13.3.4. If the Contractor is so terminated, the Contractor shall not be entitled to any further payment. If the Commission completes the Work and if the cost of completing the Work exceeds the balance of the Contract Price, including compensation for all direct and consequential damages incurred by the Architect/Engineer and the Commission as a result of the termination, such excess shall be paid by the Contractor or the Contractor's Surety.

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

#### **13.4. CONTRACTOR BANKRUPTCY**

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

#### **13.5. IMPROPER TERMINATION**

13.5.1. Upon a final determination, by a court having jurisdiction, that the termination pursuant to paragraph GC 13.3 or paragraph GC 13.4 was improper, the termination will be deemed to be a termination for convenience in accordance with paragraph GC 13.2.

### **ARTICLE 14. SUBMITTALS**

#### **14.1. DESCRIPTION**

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

14.1.1.1. Construction of the various parts, type of material, grade, quality and thickness of material, alloy of material, profiles of all sections, reinforcement, anchorage, type and grade of finish.

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

14.1.2. The Chief Engineer may require any or all materials to be tested by means of samples or otherwise. The Contractor shall afford such facilities as the Chief Engineer may require for collecting and forwarding samples, and shall not use or incorporate in the Work any material represented by the samples until the tests have been completed and the materials found acceptable and in accordance with the requirements of the Contract Documents. The Contractor, in all cases, shall furnish the required samples without cost to the Commission.

## **14.2. FORM OF SUBMITTALS**

14.2.1. The Contractor shall provide a detailed listing of all required submittals not later than ten (10) days after the issuance of the Notice to Proceed for the Architect/Engineer's review. This listing is not an approvable submittal, but instead will be used to convey the Contractor's understanding of what is to be submitted. With each individual submittal, the Contractor will provide a submittal letter and shall submit the Shop Drawings or other submittals to the Architect/Engineer in accordance with a schedule established by the Architect/Engineer and the Contractor. It is the Contractor's responsibility to submit shop drawings and other submittals in a timely manner that allows for the proper review time, possible re-submittals, fabrication and delivery of the material so as to not impact the Construction Schedule.

14.2.1.1. Unless otherwise specified in the Contract Documents, the Contractor shall submit four (4) prints of all Shop Drawings and four (4) copies of any other submittal. If the Contractor desires to have copies returned, the Contractor shall submit the appropriate quantity of copies in excess of four (4).

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

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

14.2.1.4. Submittals shall be clearly legible and marked to indicate the Project Number, Specification or Special Provision, section number, name, the Contractor, the subcontractor (if applicable), the manufacturer or supplier and the date of submission. Submittals shall not be photocopies or reproductions of the Architect/Engineer's Drawings. Data sheets indicating a range of products or sizes shall be clearly marked to indicate the specific item or items to be considered. Submittals for a system shall be complete for the entire system. Color samples shall be samples of the actual material or finish to be considered for inclusion in the Work.

14.2.1.5. Submittals shall be sequentially numbered and cross-referenced to the submittal list provided by the Contractor.

#### **14.3. VARIATION FROM CONTRACT DOCUMENTS**

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

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

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

#### **14.4. CONTRACTOR'S REVIEW**

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

14.4.1.1. In submitting the Shop Drawings, the Contractor is certifying that the information was field verified and that any corrections of dimensions, location of various items, encroachments of Work of other Contractors or of the Commission, or variations from the requirements of the Contract Documents are incorporated into the submittal.

14.4.1.2. If required by the Contract Documents or applicable law, the Contractor shall have the Shop Drawings or other submittals prepared by Persons possessing expertise and experience in an appropriate trade or profession or by a licensed architect, engineer or other professional. Submittals for formwork, shoring or load bearing falsework shall include calculations and details for such items and shall be stamped by professional engineer registered in the State.

#### **14.5. ARCHITECT/ENGINEER'S REVIEW**

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

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

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

14.5.1.3. The Contractor shall pay all reasonable costs of the Architect/Engineer or the Commission for attendant delay, interference, hindrance or disruption of the Project due to excessive resubmittals without the fault of the Architect/Engineer or the Commission. Re-submittals in excess of two (2) without fault of the Architect/Engineer or the Commission may be deemed excessive by the Commission.

#### **14.6. RISK OF NONPAYMENT**

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

#### **14.7. SCOPE OF ARCHITECT/ENGINEER'S REVIEW**

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

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

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

#### **14.8. EQUIPMENT STATEMENT**

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

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

### **ARTICLE 15. SUBCONTRACTORS AND MATERIAL SUPPLIERS**

#### **15.1. LIMITS ON SUBCONTRACTING**

The Contractor shall not subcontract or otherwise assign any portion of the Work without the written consent of the Chief Engineer. Any such consent shall not relieve the Contractor from any responsibility for the Work under the Contract. The Contractor shall be responsible for the satisfactory settlement by any and all Subcontractors of all claims and obligations arising in connection with the execution of their respective portions of the Contract and for furnishing to the Commission evidence thereof, to the satisfaction of the Chief Engineer. In all events, the Contractor shall perform with the Contractor's own organization, Work amounting to not less than fifty-five percent (55%) of the total Contract Price. The term "the Contractor's own organization"

shall be construed to include only workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor with or without operators. Such term does not include employees or equipment of a Subcontractor, assignee, or agent of the Contractor. For purposes of this paragraph GC 15.1, assignment of Work is considered synonymous with a subcontract to perform Work. In determining whether the Contractor is in compliance with the requirement that it perform with the Contractor's own organization Work amounting to not less than fifty-five percent (55%) of the total Contract Price, the following criteria shall apply:

15.1.1. The Contract Price upon which the fifty-five percent (55%) requirement is computed shall include the cost of materials and manufactured products which are to be purchased or produced under the provisions of the Contract Documents.

15.1.2. The percentage of subcontracted Work shall always be based on original Contract Prices rather than actual subcontract prices. If only a part of a Contract item is to be subcontracted, its proportional value to that Contract item shall be determined on the same basis except when the part not subcontracted consists only of procuring the materials. The Contractor's own organization must incorporate the materials into the Project to receive credit for the value of the materials in meeting its fifty-five percent (55%) requirement. When a Person both sells materials to a Contractor and performs the Work of incorporating the materials into the Project, both functions shall be considered in combination and as constituting a single subcontract. If an affiliate of the Person either sells the materials or performs the Work, the Chief Engineer may refuse approval. For purposes of this paragraph GC 15.1, an affiliate is one who has some common ownership or other close relation to said Person.

## 15.2. CHIEF ENGINEER'S APPROVAL

15.2.1. As required by paragraphs IB 7.3, the Contractor shall prepare lists of the Contractor's proposed Subcontractors and Material Suppliers, and submit such lists, to the Commission for approval by the Chief Engineer.

15.2.1.1. The Chief Engineer reserves the right to request additional information about and to reject any Subcontractor or Material Supplier. Failure of the Chief Engineer to request additional information or to notify the Contractor of rejection within ten (10) days of receipt of the lists shall constitute notice that the Chief Engineer has no objection.

15.2.1.2. If the Chief Engineer rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier at no additional cost to the Commission.

## 15.3. **REPLACEMENT/ADDITIONS**

15.3.1. The Contractor shall not replace or add any Subcontractor or Material Supplier after execution of the Contract without written approval of the Chief Engineer. The Contractor shall submit to the Chief Engineer amended lists and a written justification for the change or addition to the Contractor's Subcontractors or Material Suppliers submitted through the Commission's Certification and Compliance online portal accessible here: <https://ohioturnpike.diversitycompliance.com/Default.asp>.

15.3.2. The Contractor may only terminate or replace a SBE participating on the Project unless the Chief Engineer determines good cause exists for the termination or replacement.

15.3.2.1. Before requesting to terminate or replace a SBE, the Contractor must give notice in writing to the SBE, with a copy to the Business Inclusion Program Manager, of its intent to request to terminate or replace the SBE, and the reason(s) for the request. The Contractor must give the SBE five (5) calendar days to respond to the notice and describe the reasons, if any, why it objects to the proposed termination or substitution and why the Commission should not approve the termination or substitution.

15.3.2.2. If the Chief Engineer approves the termination or replacement of a previously approved SBE Subcontractor or Material Supplier, the Contractor shall utilize and demonstrate its Good Faith Efforts to replace the terminated SBE with another SBE in a manner that substantially adheres with the scope and compensation of the original terminated SBE.

#### **15.4. CONTRACTOR'S RESPONSIBILITY**

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

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

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

15.4.1.3. The Contractor agrees to bind the Contractor's Subcontractors and Material Suppliers to the terms of the Contract Documents, so far as applicable to the Work of such Subcontractor or Material Supplier, and shall not agree to any provision which seeks to bind the Commission to terms inconsistent with or at variance from the terms of the Contract Documents.

#### **15.5. WARRANTY AND GUARANTEE**

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

#### **15.6. PROMPT PAYMENT**

15.6.1. If a Subcontractor or Material Supplier requests payment in time to allow the Contractor to include the request in the Contractor's Payment Request, the Contractor shall pay the Subcontractor or Material Supplier within ten (10) days after receipt of payment from the Commission:

15.6.1.1. To a Subcontractor an amount equal to percent of completion allowed by the Commission for the Subcontractor's Work;



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

15.6.2. The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to subparagraph GC 15.6.1 by the amount of any retainage withheld from the Contractor and may withhold amounts necessary to resolve disputed liens or claims involving the Work of the Subcontractor or Material Supplier.

15.6.3. If the Contractor fails to comply with the provision of paragraph GC 15.6, the Contractor shall pay to the applicable Subcontractor or Material Supplier eighteen percent (18%) interest, compounded annually, on any unpaid amount beginning on the eleventh (11<sup>th</sup>) day after receipt of payment from the Commission.

#### **15.7. CLAIM AFFIDAVIT**

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

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

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

15.7.2. In order to establish lien rights, a claimant must file a Claim Affidavit with the Director of Contracts Administration, within one hundred twenty (120) days from the date of the last Work or furnishing of materials.

15.7.2.1. In order to receive priority over similar claims, the claimant must file a copy of the claim with the applicable county recorder's office within thirty (30) days of serving the Director of Contracts Administration.

15.7.2.2. All claimants who serve the Commission's representative, and file with the applicable county recorder within thirty (30) days, have no priority among themselves and share in the funds prorata.

15.7.2.3. Claimants who file with the Director of Contracts Administration, but not with the county recorder, are paid only if there are sufficient funds left after paying those claimants who file with the county recorder.

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

15.7.3.1. The Contractor shall have twenty (20) days to dispute said claim.

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

15.7.4. The Commission shall detain the amount stated in the Claim Affidavit from subsequent Contractor Payment Requests and deposit said amount in an escrow account in accordance with a general escrow agreement between the Commission and a bank in the State.

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

15.7.4.2. The Commission reserves the right to pay a Claim Affidavit which is not timely disputed.

#### **15.8. CLAIMS AGAINST THE BOND**

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

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

### **ARTICLE 16. INDEMNIFICATION**

#### **16.1. INDEMNIFICATION FOR INJURY OR DAMAGE**

16.1.1. General. The Contractor hereby expressly agrees and shall, to the fullest extent permitted by law, indemnify, hold harmless, and, at the option of the Commission as decided in its sole discretion, defend or pay for the defense of the Commission, Commission members, Executive Director, Deputy Directors, and the Architect/Engineer and both their respective officers, agents, representatives, consultants, and employees, in both their individual and official capacities, (the "Indemnified Parties") from and against any and all liability, claims, suits, causes of action, liens, demands, losses, damages, (including fines, penalties, incidental and consequential damages), settlements, judgments, costs, and expenses (including reasonable attorneys' fees and any other costs of defense) of every kind, nature, or description arising out of or in connection with, caused by, resulting from, or occurring during the course of the performance of the Work, whether directly or indirectly, where such liability is founded upon or grows out of, directly or indirectly, the acts, errors, omissions, undertakings, representations or warranties of the Contractor, its officers, employees, agents, independent contractors or subcontractors (or subcontractors or independent contractors thereof), or any other person or party for which the Contractor is legally liable, and is attributable in any manner and to any extent to bodily injury, personal injury, sickness, disease or death of any person, loss of revenue, delay, or the injury to or damage, destruction, or loss of use of property.

16.1.2. Intellectual Property. The Contractor hereby expressly agrees and shall, to the fullest extent permitted by law, indemnify, hold harmless, and, at the option of the Commission as decided in its sole discretion, defend or pay for the defense of the Indemnified Parties from and against any and all liability, claims, suits, causes of action,

liens, demands, losses, damages (including fines, penalties, incidental and consequential damages), settlements, judgments, costs, and expenses (including reasonable attorneys' fees and any other costs of defense) of every kind, nature, or description arising out of or in connection with, caused by, resulting from, or occurring during the course of the performance of this Agreement, whether directly or indirectly, where such liability is founded upon or grows out of, directly or indirectly, the acts, errors, omissions, undertakings, representations or warranties of the Contractor, its officers, employees, agents, independent contractors or subcontractors, (or subcontractors or independent contractors thereof), or any other person or party for which the Contractor is legally liable, and is attributable in any manner and to any extent to any claimed infringement of any copyright, patent, intellectual property right, or other intangible property right. The Contractor shall not be required to defend, indemnify, or hold harmless the Indemnified Parties when the claimed infringement occurs in materials provided to the Contractor by the Commission.

16.1.3. Conditions. The provisions of this Article 16, Indemnification, shall survive the expiration or termination of this Agreement. Should the Commission elect to have the Contractor defend one or more of the Indemnified Parties, the Commission shall have the right, but not the obligation, to associate in such defense, whether directly or through outside legal counsel, or both. Nothing herein shall require the Contractor to reimburse the Commission for damages or liabilities solely caused by the negligent acts, errors or omissions of one or more of the Indemnified Parties. This Article 16, Indemnification, is intended to be, and shall be construed as consistent with, and not in conflict with Ohio Revised Code Section 2305.31. The obligations of the Contractor hereunder shall not be limited by the types, terms, conditions, or limits of liability of any insurance purchased and maintained by the Contractor. The indemnification obligations of the Contractor under this Article 16, Indemnification, shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's consultants, agents, representatives or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and any other responsibility of the Architect/Engineer, except to the extent covered by the Contractor's insurance.

## **ARTICLE 17. AUDITS AND RECORDS**

### **17.1. EXAMINATION**

17.1.1. The Commission shall have the right to examine and/or audit all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work, including without limitation for the purpose of evaluating any Proposal or claim. [The examination may be performed by employees of the Commission or by a consultant engaged by the Commission.](#)

17.1.2. The above referenced materials shall be made available at the office of the Contractor, Subcontractor or Material Supplier, as applicable, at all reasonable times for inspection, audit and reproduction until the expiration of seven (7) years after Contract Completion.

17.1.3. To the extent that the Contractor, Subcontractor or Material Supplier, as applicable, informs the Commission in writing that any documents copied by the Commission are trade

secrets, the Commission shall treat such documents as trade secrets of the Contractor, Subcontractor or Material Supplier, as applicable. In the event any dispute arises with any other Person about whether such other Person should be given access to the documents, the Contractor, Subcontractor or Material Supplier, as applicable, agrees to indemnify the Commission against all costs, expenses, and damages, including without limitation attorney fees, incurred or paid by reason of that dispute.

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

17.1.5. If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to the Commission for a period of three (3) years from the date of any final settlement or payment, as applicable.

17.1.6. Records that relate to disputes, litigation, or settlement of claims arising out of the performance of the Work shall be made available until such dispute, litigation or claims have been finally decided or settled.

## **17.2. NON-DISCLOSURE BY CONTRACTOR**

17.2.1. The Contractor shall not disclose at any time during or after the Work, either directly or indirectly, any confidential records, knowledge or information including without limitation security or infrastructure records as defined in section 149.433, ORC. which the Contractor may acquire about the Project or the Commission, except as may be required by law or order of a court of competent jurisdiction.

## **ARTICLE 18. PREVAILING WAGE PAYROLL SUBMITTALS**

### **18.1. SUBMISSION OF WAGE PAYMENT SCHEDULE**

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

18.1.2. On the occasion of the first pay date for work performed on the project, the Contractor and Subcontractor 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. The Contractor and Subcontractors shall furnish the same notification to each affected employee every time the job classification of the employee is changed.

## **18.2. SUBMISSION OF PAYROLL REPORTS**

18.2.1. The Contractor shall deliver certified copies of the Contractor's and Subcontractors' payroll reports within two weeks after the initial pay date to the prevailing wage coordinator, and supplemental reports for at least each month thereafter. The certification of each payroll shall be executed by the Contractor, Subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract. The Contractor shall be responsible for submitting all payroll reports of the Subcontractors.

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

18.2.1.2. The payroll report shall list the number of hours each employee worked each day on the Project during the reporting period, the total hours each week on the Project, the employee's hourly rate of pay, job classification, fringe benefits and all deductions from wages and net pay.

18.2.1.3. 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.

18.2.1.4. 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.

18.2.1.5. The Contractor and the Contractor's Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.

## **ARTICLE 19. PERFORMANCE EVALUATIONS**

### **19.1. CONTRACTOR PERFORMANCE**

19.1.1. The Architect/Engineer and the Commission shall, at the completion of the Project or as determined by the Chief Engineer, evaluate the Contractor's performance. The evaluation form shall be submitted to the Chief Engineer.

19.1.1.1. The Contractor may request a copy of the completed evaluation form. If the Contractor wishes to comment or take exception to any rating or remark, the Contractor shall send a response in writing to the Commission with a copy to the Architect/Engineer.

19.1.1.2. The evaluation shall be used by the Commission in determining the responsibility of the Contractor for award of future Contracts.

## **ARTICLE 20. MISCELLANEOUS**

### **20.1. TAXES**

20.1.1. 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.

## **20.2. ROYALTIES AND PATENTS**

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

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

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

## **20.3. ASSIGNMENT OF ANTITRUST CLAIMS**

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

## **20.4. BOND REDUCTION**

20.4.1. Upon notice and consent of the Contractor's Surety, the Commission may reduce the Bond by twenty-five percent (25%) of the total amount of the Bond after at least fifty percent (50%) of the Work has been completed, and by fifty percent (50%) after at least seventy-five percent (75%) of the Work has been completed, provided that all of the following conditions are met:

20.4.1.1. The Commission determines that the percentage of Work that has been completed at the time of determination has been satisfactorily performed and meets the terms of the Contract Documents, including a provision in regard to the time when the whole or any specified portion of the Work must be completed;

20.4.1.2. The Commission determines that no disputed claim caused by the Contractor exists or remains unresolved; and

20.4.1.3. The Bid upon which the Contract is based was not more than ten percent (10%) below the next lowest Bid or not more than ten percent (10%) below the cost estimate for the Work.

## **20.5. ACTIONS REQUIRED OUTSIDE STATE OF OHIO**

20.5.1. If this project requires traffic management of any kind in a state bordering the Ohio Turnpike, the Contractor shall comply with any and all statutes, rules or other requirements of the authority governing the adjoining road. Whenever possible, forms, right of entry agreements, use restrictions and information from the bordering state are included in the Appendix to the Special Provisions and noted in drawings for the convenience of the Contractor. The Ohio Turnpike and Infrastructure Commission has no authority to grant permission to enter or make changes to a roadway other than the Ohio Turnpike. Therefore,

the Contractor shall fulfill all requirements to lawfully obtain access to the adjoining road as required to safely manage traffic, as specified in the Contract Documents, for the Work.

## **20.6. EXECUTIVE ORDERS REGARDING EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES**

### **20.6.1 EXECUTIVE ORDER 2019-12D – GOVERNING THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES - PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.**

20.6.1.1 This Executive Order was signed on March 4, 2019, and will automatically expire ten (10) calendar days after Governor DeWine’s last day as Governor of Ohio unless rescinded before then.

20.6.1.2 The Commission shall not enter into any contract which uses any funds within its control to purchase services which will be provided outside the United States.

20.6.1.3 Contractor must complete the Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of the Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, the Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

### **20.6.2 EXECUTIVE ORDER 2022-02D – STATE OF OHIO’S RESPONSE TO RUSSIA’S UNJUST WAR ON THE COUNTRY OF UKRAINE - PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.**

20.6.2.1 This Executive Order was issued on March 3, 2022, and will remain in effect unless rescinded or modified by a future Executive Order of the Governor.

20.6.2.2 The Commission will not enter into any contract to purchase services provided outside of the United States or that allows Commission data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of the Contract, the Commission reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The Commission will not waive any other rights and remedies provided to the Commission in the Contract.

20.6.2.3 The Commission will not make any purchase from or investment in any Russian institution or company. Notwithstanding any other terms of the Contract, the Commission reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company. These provisions will expire when the applicable Executive Order is no longer effective.

20.6.2.4 The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of the Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes.

IN WITNESS WHEREOF, the Commission and the Contractor have executed this Contract as of the date last written below.

**[CONTRACTOR]**

**OHIO TURNPIKE AND  
INFRASTRUCTURE COMMISSION**

By: \_\_\_\_\_  
[name/title]

By: \_\_\_\_\_  
Ferzan M. Ahmed, P.E.,  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jennifer Monty Rieker  
General Counsel