

CONSTRUCTION AGENCY AGREEMENT

by and among

YMCA OF GREATER CLEVELAND, as Construction Agent

and

CITY OF NORTH ROYALTON

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Dated

as of

[ \_\_\_\_\_ ] 1, 2010

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## CONSTRUCTION AGENCY AGREEMENT

This CONSTRUCTION AGENCY AGREEMENT, dated as of [\_\_\_\_\_] 1, 2010 (this “Agreement”), by and among the YMCA OF GREATER CLEVELAND, a non-profit corporation duly organized and validly existing under the laws of the State (the “YMCA”), together with any permitted successors and assigns of the YMCA (the “Construction Agent”), and the CITY OF NORTH ROYALTON, a city and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the “City”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as described in Operating Agreement):

### RECITALS:

WHEREAS, the Construction Agent and the City have agreed that the City shall acquire certain real estate and that the Construction Agent shall provide for the construction, renovation, installation, and equipping of a recreation center on the real estate, including the re-development of the existing 40,000 sq. ft. facility into a 40,000 to 60,000 sq. ft. recreation center (the “Project”); and

WHEREAS, in order to provide for the construction, renovation, installation, equipping, and improvement of the Project, the City and the Construction Agent, acting as an independent contractor and an agent of the City for such purpose, have determined to enter into this Agreement;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Construction Agent and the City covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Use of Defined Terms. Definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein.

Section 1.2. Definitions. As used herein:

“Allowable Costs” means all amounts paid or payable by the City or the Construction Agent within the categories encompassed by the line items of the Cost Budget pursuant to this Agreement, the other Operative Documents, the Approved Construction Documents, and any other agreements relating to the Project including all costs of designing, constructing, permitting, equipping and completing the Project, including all other costs of construction, interest, taxes, if any, insurance, permits, licenses, fees for architects, engineers, lawyers, accountants and consultants and other related expenses.

“Approved Construction Documents” shall have the meaning assigned to that term in Section 3.5 hereof.

“Available Funds” means the amounts on deposit in the Project Fund and, for purposes of determining whether a Project Funding Shortfall exists, any amounts that are placed on deposit for the Project with the City.

“Bonds” means bonds or bond anticipation notes issued by the City to finance the Project.

“Claims” means liabilities, obligations, damages, losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, utility charges, costs, expenses, and disbursements (including reasonable legal fees and expenses) of any kind and nature whatsoever.

“Condemnation” means any condemnation, requisition, confiscation, seizure or other taking or sale of the use, occupancy or title to the Project or any part thereof in, by or on account of any actual eminent domain proceeding or other action by any Governmental Authority or other person under the power of eminent domain, or any transfer in lieu of or in anticipation thereof. A Condemnation shall be deemed to have “occurred” on the earliest of the dates that use, occupancy or title is taken.

“Construction Event of Default” means the occurrence of an event described in Section 6.1.

“Construction Event of Loss” means an event of damage or casualty occurring during the Construction Period with respect to all or part of the Project that is determined to be a Construction Event of Loss pursuant to Section 5.1.

“Construction Event of Taking” means a Condemnation occurring during the Construction Period and determined to be a Construction Event of Taking pursuant to Section 5.2.

“Construction Loss Proceeds” means any Net Proceeds or recoveries from third parties (excluding personal property, business interruption so long as an Event of Default shall not have occurred and be continuing, fixtures other than those fixtures constituting a part of the Project, extra expense, expediting, and loss adjustment expense claim proceeds) reasonably expected by the Construction Agent to be available during the Construction Period on account of any Construction Event of Loss whether pursuant to any insurance, award or other Claim for damage or relief against a third party or otherwise.

“Construction Manager” means [\_\_\_\_\_] and any permitted successors and assigns, being the Construction Agent’s authorized representative for the Project.

“Construction Period” means the period beginning with the commencement of the Construction Agent’s construction management services and the termination of the Construction Agent’s services as provided in Section 2.3.

“Cost Budget” means the written budget, the form of which is attached hereto as Exhibit B setting forth the Allowable Costs for the construction, renovation, installation, equipping, and improvement of the Project, prepared in cost breakdown form, certified as to accuracy by the

Construction Agent and delivered by the Construction Agent to the City and approved by the City, with such changes and modifications from time to time that are approved in accordance with Sections 3.5 and 3.7 hereof.

“Draw Schedule” means the schedule of Construction Draws to be made of amounts on deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project.

“Estimated Project Costs” means the estimated aggregate total of costs incurred and to be incurred by or on behalf of the City to pay any related costs of constructing, renovating, installing, equipping and otherwise improving the Project, as set forth in the Cost Budget, including all costs and expenses for assessments, insurance, interest, permits, licenses, fees, taxes, if any, and like items paid from Construction Draws or Net Proceeds of insurance that are permitted to be capitalized as part of the cost of the Project under generally accepted accounting principles.

“Final Completion” means the date upon which all punch list items are completed and corrected, the Work is 100% complete and all contractors have complied with all conditions precedent to final payment and release of retainage.

Final Completion Certificate” means the Certificate described in Section 4.5.

“Force Majeure Event” means any cause, circumstance or event occurring during the Construction Period that is not reasonably within the control of the City or Construction Agent, their respective agents, employees, contractors, subcontractors and materials suppliers, and which may include, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections, civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; or partial or entire failure of utilities. An event or occurrence that arises or results from an intentional, wrongful or negligent action or failure to act by the Construction Agent, its agents, managers, employees, contractors, subcontractors and material suppliers during the Construction Period shall not be a Force Majeure Event.

“Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

“Material Delay” means any event or condition (or related series of events or conditions) that causes or results in a delay (or total stoppage) in the progress of the construction, renovation, installation, equipping, and improvement of the Project of such duration that the construction, renovation, installation, equipping, and improvement of the Project cannot reasonably be completed within the Cost Budget on or before the Final Completion date.

“Notice of Commencement” means the Notice of Commencement described in subsection 2.4(e).

“Operating Agreement” means the Operating Agreement between the City and the YMCA of Greater Cleveland for the operation and management of the Project.

“Operative Documents” means this Agreement, the Operating Agreement, the Standard Conditions, the Plans and Specifications, the Project Guaranty, and the other Approved Construction Documents.

“Owner’s Representative” means Richard L. Bowen + Associates Inc.

“Plans” means the graphic and pictorial portions of the construction documents for the Project, showing the design, type of construction, location, dimension and character of Work, generally including drawings, elevations, sections, details, notes and specifications in whole or in part.

“Project Funding Shortfall” means, at any time during the Construction Period, the aggregate amount by which (i) Construction Draws then outstanding, *plus* (ii) costs that have been incurred but not paid or reimbursed from the proceeds of a Construction Draw, *plus* (iii) costs of the Project that remain to be incurred in order to complete the construction, renovation, installation, equipping, and improvement of the Project, exceeds the sum of (x) amounts on deposit in the Project Fund to pay costs of the Project, *plus* (y) the amount of Construction Loss Proceeds reasonably expected by the Construction Agent to be available during the Construction Period for application to the payment of those costs.

“Project Guaranty” means a legally enforceable commitment to assure that debt service is paid as required by the Operative Documents in the form attached to the Operating Agreement as Exhibit A.

“Project Site” means the Property acquired by the City for the Project.

“Specifications” means those portions of the construction documents for the Project consisting of written detailed, technical requirements and standards for materials, equipment, construction systems and workmanship as applied to the Work and certain administrative and procedural details applicable thereto. Specifications may be set forth on Plans.

“Standard Conditions” means the Standard Conditions for Construction Contracts attached hereto as Exhibit A.

“Termination Documents” means instruments and documents in form reasonably satisfactory to the Construction Agent and the City that (i) evidence the termination of this Agreement and (ii) transfer to the City any and all rights with respect to all Claims to, and all proceeds of, casualty insurance, and all claims to any Construction Loss Proceeds related to the Project.

“Termination Event” means the occurrence of any of the events described as a Termination Event in subsection 6.1.

“Termination Notice” means a written notice delivered by the City under subsection 5.1, 5.2, 5.3, 6.1 or 7.1 to the Construction Agent after the occurrence of a Termination Event (including a Construction Event of Default), declaring a termination of [the Operating Agreement, and] this Agreement.

“Termination Payment” means the payment, if any, to be made by the Construction Agent upon the delivery of a Termination Notice in accordance with Section 6.1 hereof.

“Work” means the entire completed construction, renovation, installation, equipping and improvement or the various separately identifiable parts thereof required to be furnished under the Approved Construction Documents with respect to the Project.

“Work Schedule” means the schedule for the completion of the construction, renovation, installation, equipping and improvement of the Project.

### Section 1.3. Interpretation.

Any reference herein to the City, to the City’s legislative authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to an article, section or provision of the City’s Charter or ordinances, to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code or to any statute of the United States of America, includes that article, section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided that, no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way a limitation, restriction or impairment of the rights or obligations of the City or the Construction Agent under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof”, “hereby”, “herein”, “hereto”, “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Reference to a numbered or lettered Article, Exhibit, Section or subsection means that Article, Exhibit, Section or subsection of or to this Agreement, unless the context indicates a different meaning or intent.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

[End of Article I]

## ARTICLE II

### APPOINTMENT OF THE CONSTRUCTION AGENT

Section 2.1. Appointment. Subject to the terms and conditions hereof, the City hereby irrevocably designates and appoints the Construction Agent as the City's exclusive agent in connection with the construction, renovation, installation, equipping, and improvement of the Project on the Project Site in accordance with the Approved Construction Documents and pursuant to the terms of this Agreement and the other Operative Documents. Unless otherwise directed by the City, the Construction Agent shall have sole possession of the Project during the Construction Period and shall exercise exclusive control thereover, all for the purposes of performing its obligations hereunder.

Section 2.2. Acceptance and Undertaking. The Construction Agent hereby unconditionally accepts the appointment provided for herein as an independent contractor and an agent of the City and undertakes, for the benefit of the City, to act as the City's agent for the purpose of providing construction management services, including planning, coordination, management and administration for the construction, renovation, installation, equipping, and improvement of the Project during the Construction Period in accordance with the Standard Conditions, Plans and Specifications and pursuant to the terms of this Agreement and the other Operative Documents. The Construction Agent shall perform its services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Work Schedule so as to cause no delay, interference, disruption or hindrance in the Work and so that the Project shall be completed as expeditiously and economically as possible within the Cost Budget and in the best interests of the City.

Section 2.3. Term. The Construction Agent's duties related to its construction management services under this Agreement shall commence on the date of the issuance of a Notice to Proceed by the City to the Construction Agent, or if no such Notice is issued, the date of the issuance of the Bonds for the Project. All other duties of the Construction Agent under this Agreement shall commence upon the execution of this Agreement by the City. The Construction Agent's duties under this Agreement shall terminate upon the earliest to occur of (i) Final Completion Date or (ii) termination of the Construction Agent's authority pursuant to Section 6.1 or Section 7.3 hereof.

Section 2.4. Scope of Authority and Duties of Construction Agent.

(a) The Construction Agent shall perform its duties in coordination and cooperation with the Owner's Representative. Subject to the terms of this Agreement, the City hereby expressly authorizes the Construction Agent, or any agent or representative of the Construction Agent, and the Construction Agent unconditionally agrees, for the benefit of and as the agent of the City, to take all action necessary or desirable for the construction, renovation, installation, equipping, and improvement, in a good and workmanlike manner, of the Project on behalf of the City and on its behalf and as its agent pursuant to and in accordance with the Approved Construction Documents and the other Operative Documents, and for the performance and satisfaction of any and all of the Construction Agent's or of the City's obligations under any contract for the construction, renovation, installation, equipping and improvement of the Project

and to fulfill all of the obligations of the Construction Agent hereunder and under the other Operative Documents, including:

(i) all design and supervisory functions relating to the construction, renovation, installation, equipping, and improvement of the Project and performance of all architectural and engineering work related thereto;

(ii) bid or negotiation, as required by applicable law, and performance of the obligations of the City under all contracts and arrangements for construction, renovation, installation, equipping, and improvement of the Project on such terms and conditions as are consistent with applicable law and in a manner that conforms to all applicable zoning, planning, building, environmental, and other regulations of each Governmental Authority having jurisdiction over the Project;

(iii) bid or negotiation, as required by applicable law, and performance of the obligations of the City under all contracts and arrangements to procure all materials and equipment necessary for the construction, renovation, installation, equipping, and improvement of the Project (including the removal of all waste and rubbish and the enforcement of all construction warranties) on such terms and conditions as are consistent with applicable law;

(iv) performance of the Construction Agent's obligations under all contracts and arrangements to procure all labor, materials and equipment necessary to or desirable for any of the foregoing, to provide administration of the Project, scheduling of work and coordination of contractors and other persons on the Project Site, to inspect the work of all contractors and subcontractors to assure conformity to the Approved Construction Documents and to assist the City in resolving any claims of or disputes with contractors;

(v) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations required under applicable laws (including environmental laws and regulations), from each Governmental Authority, including the City's Planning Commission, in connection with the design, construction, renovation, installation, equipping, and improvement of the Project in accordance with the Approved Construction Documents, and all of the foregoing required for the use and operation of the Project by the City;

(vi) maintaining all books and records with respect to the construction, renovation, installation, equipping, and improvement of the Project; and

(vii) performance of all other acts necessary in connection with the construction, renovation, installation, equipping and improvement of the Project in accordance with the Standard Conditions, Plans and Specifications; and

(viii) completing Disbursement Request Form and a Final Completion certificate, both in form and substance satisfactory to the City.

(b) Subject to the terms and conditions of this Agreement and the other Operative Documents, during the Construction Period, the Construction Agent shall have sole management and control over the Project, as provided in the Standard Conditions.

(c) The Construction Agent expressly acknowledges and agrees that the Construction Agent shall require that all wages paid to laborers and mechanics employed in connection with the construction, renovation, installation, equipping and improvement of the Project shall be paid at not less than the prevailing rates of wages for laborers and mechanics for each class of work called for by the Project, which wages shall be determined in accordance with the requirements of Section 4115.03 to 4115.21, Ohio Revised Code, for determination of prevailing wage rates or by the Federal Davis-Bacon Act and related acts, whichever is applicable. To the extent required by Section 4115.032 Ohio Revised Code or the applicable provisions of the Davis Bacon Act, the Construction Agent shall comply, and shall require compliance by all contractors or subcontractors on the Project, with all applicable requirements of Sections 4115.03 through 4115.21 Ohio Revised Code or the applicable provisions of the Davis-Bacon Act. In furtherance thereof, the Construction Agent shall be responsible for (i) obtaining from the proper agency, its determination of the prevailing rates of wages to be paid for all classes of work called for by the Project, (ii) obtaining the designation of a Prevailing Wage Coordinator for the Project pursuant to Section 4115.032, Ohio Revised Code (or its equivalent under the Ohio Revised Code or the Davis-Bacon Act), (iii) assisting the Prevailing Wage Coordinator and (iv) ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required. At such time as the City requests, the Construction Agent shall provide the City with evidence, as required by Section 4115.03 to 4115.21 of the Davis-Bacon Act, that there has been compliance with the foregoing requirements. The Construction Agent agrees that it shall require that representatives of the City have access to each contractor's and subcontractor's personnel and all documents pertaining to the Project at all times without notice and that such representatives shall have access to the Project, in each case to the extent as may be necessary to monitor and review compliance with this subsection, but that the City shall not be liable for any failure to comply with this subsection. The Construction Agent shall cooperate fully with representatives of the City in carrying out such tasks.

(e) The Construction Agent shall obtain and pay for any and all permits and bonds required to be obtained before commencement of the Work and for all other permits, governmental fees, sales taxes and use taxes, if any, licenses and inspections necessary for the proper execution and completion of the Work as and when the same are required to be obtained. A Notice of Commencement in proper form as provided in Section 1311.252 of the Ohio Revised Code shall be prepared and filed by the Construction Agent on behalf of the City in the Cuyahoga County Recorder's Office after the Closing Date and prior to the commencement of the Work and shall be provided to contractors, subcontractors and material suppliers for the Project upon request.

Section 2.5. Delegation of Duties. The Construction Agent may execute any of its duties under this Agreement by or through managers, agents, representatives, consultants, subcontractors, employees or attorneys-in-fact, provided *however, that* no such delegation shall limit or reduce in any way the Construction Agent's duties and obligations to the City under this Agreement and no assignment shall be made by the Construction Agent except in accordance with Section 9.2 of this Agreement. All contracts and purchase orders with the City for the construction, renovation, installation, equipping and improvement of the Project shall be pursuant to contracts made with the lowest and best bidder after public advertising and receipt of bids in the

manner acceptable to the City and in accordance with the applicable provisions set forth in the Standard Conditions. Nothing herein shall be construed to require the City to accept any bid.

[End of Article II]

## ARTICLE III

### OBLIGATIONS OF CONSTRUCTION AGENT

Section 3.1. Use of Amounts in the Project Fund. The amounts deposited from time to time and held by the City in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project shall be applied to pay costs of constructing, renovating, installing equipping, and improving the Project, permitted to be paid or reimbursed therefrom. After receipt of bids, but before any award of construction contracts to Contractors (as defined in the Standard Conditions) the Construction Agent shall submit to the City, a proposal for the total cost of the Project which shall include all Allowable Costs and any compensation of the Construction Agent and its agents, representatives and employees. Upon approval of the proposal by the City, the Construction Agent shall guarantee that the amount in the proposal will not be exceeded, subject to changes in the Work as provided in this Agreement. Such maximum amount is referred to herein as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Agent without reimbursement from the City.

Section 3.2. Competitive Bidding; Performance of and Payment for Costs of the Project.

(a) The Construction Agent agrees that it will competitively bid the construction of the Project as required by law, including Article XVI of the City's Charter, as applicable, and the Operating Agreement. The Construction Agent agrees that it shall cooperate with the City in carrying out competitive bidding including, but not limited to, preparing the bid packages, reviewing all bids submitted for the Project, attending meetings and making recommendations to the City of the lowest and best bidder for each construction contract for the Project, for approval by the City, and adjusting the Cost Budget as necessary as a result of the competitive bidding process and approval by City. The City reserves the right to reject any bidders recommended by the Construction Agent.

(b) The Construction Agent shall undertake to cause the construction, renovation, installation, equipping and improvement of the Project on the City's behalf, in accordance with the provisions of this Agreement and, subject to the provisions hereof, shall cause payment of all amounts required in accordance with the Standard Conditions, Plans and Specifications and the Cost Budget. Pursuant to Article IV, the Construction Agent shall cause payment of Allowable Costs from amounts made available by the City, subject in each case to the limitations set forth in applicable law. Except as required by Section 4113.62 of the Ohio Revised Code, the City shall not be liable to the Construction Agent for failure or delay in any aspect of the performance of the Work. Each request by the Construction Agent to the City for disbursement of funds with respect to the Project shall be signed by the Construction Agent and shall be deemed to be (i) a conclusive acknowledgment and admission by the Construction Agent, individually, that such aspect of the Work with respect to which such request relates, and all prior aspects of the Work, are fully and completely acceptable to the Construction Agent for all purposes; and (ii) a representation and warranty by the Construction Agent that the Work covered thereby and by all other prior requisitions has been done and completed in all material respects in accordance with the Approved Construction Documents and the applicable requirements of the Operative Documents; provided, however, any such deemed acknowledgment, admission, representation and warranty shall be made for the sole and exclusive benefit of the City and no other person shall have any

rights to rely upon such acknowledgment, admission, representation and warranty. Each request for disbursement of funds for the Project, whether for payment to the Construction Agent or to one or more contractors shall be on a Disbursement Request Form, substantially in the form attached hereto as Exhibit D.

Section 3.3. Reports. No later than the 20th day of each month after the execution of this Agreement by the City and prior to the Final Completion date, the Construction Agent shall provide a written report to the City setting forth in reasonable detail (a) all expenditures made or incurred during the previous month, (b) the total Allowable Costs as of the last day of the previous month, and (c) a construction status report, to include a written description of all material changes to the Work by the Construction Agent. Additionally, the Construction Agent shall provide to the City such additional reports and information as the City may reasonably request from time to time relating to the transactions contemplated hereby. The Construction Agent shall also certify to the City the aggregate total of all allowable costs incurred through the Final Completion date within One Hundred Twenty (120) days after the Final Completion date.

Section 3.4. Recovery on Contractor Warranties. So long as no Construction Event of Default has occurred and is continuing, the Construction Agent shall, at its cost in the name and on behalf of the City, negotiate, accept, and prosecute any claim for damages, compensation or other recoveries due from any contractors or subcontractors based on a breach of contract or breach of warranty (whether express or implied) and shall transfer any proceeds received on account of such collection efforts, net of any reasonable costs incurred by the Construction Agent in prosecuting such claim, to the City for deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project. If a Construction Event of Default has occurred and is continuing, the City is hereby expressly and irrevocably authorized, but not required, to exercise every right, option, power or authority which the Construction Agent has against any contractor or subcontractor and the City shall cause any such proceeds, net of any reasonable costs incurred or the City in prosecuting any claim or exercising any right, to be deposited in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project. The Construction Agent and the City shall be entitled to reimbursement for any reasonable costs incurred by them in negotiating, accepting and prosecuting such claims.

Section 3.5. (a) Approved Construction Documents. The Construction Agent shall submit preliminary Plans and Specifications, Cost Budget, and Work Schedule to the City for approval. Upon approval by the City's Council, the Standard Conditions, Plans and Specifications, Cost Budget and Work Schedule shall be developed to the extent necessary to commence competitive bidding of the Project. The Cost Budget will be revised, as necessary, and the Work Schedule and Draw Schedule, will be developed and completed by the Construction Agent prior to the commencement of construction and upon their completion will be submitted to the Owner's Representative for review and to the City for approval. The date of commencement of the Work shall be the date fixed in a Notice to Proceed given by the City to the Construction Agent. The Work Schedule shall provide for timely completion of the Project by the Construction Agent and timely receipt of debt service payments related to the Project. Upon the City's approval of such documents no further material changes shall be made except in accordance with Section 3.7 hereof. Said documents, as approved by the City, together with amendments or additions thereto, together with the Standard Conditions, Plans and Specifications, are called the "Approved Construction Documents." The City's approval of the Approved Construction Documents shall

not alter the Construction Agent's liability under this Agreement or any of the other Operative Documents and shall not impose any liability upon the City.

(b) Design Documents. In addition to its construction management services, the Construction Agent shall provide design documents and estimates of costs of construction for the Project to the Owner's Representative for review. Upon review and approval by the Owner's Representative of final Plans and Specifications, the Construction Agent shall deliver the Plans and Specifications to the City's Architectural Review Board and the City Planning Commission, together with any other information or documents required by the Architectural Review Board or the Planning Commission, for review in accordance with applicable procedures. The City and the Construction Agent agree that neither intends to unreasonably delay the review by the City's Architectural Review Board and City Planning Commission. The City also agrees that the Construction Agent shall be entitled to seek reasonable adjustments to the date of Final Completion and the Guaranteed Maximum Price (as defined herein) if any act or failure to act of the City is the sole cause of an unreasonable delay of such review and the date of Final Completion.

Section 3.6. Limits on Change in Construction Manager. The parties hereto agree that the Construction Agent selects its Construction Manager (the "Construction Manager"), subject to the approval of the City (which approval shall not be unreasonably withheld or delayed). No change shall be made by the Construction Agent in the identity of the Construction Manager if (i) such replacement Construction Manager is not generally known as a financially responsible and reputable architect, contractor or construction manager within northeastern Ohio, or (ii) any such change would result in any material changes to the terms of the Construction Agreement and such changes will or would reasonably be expected to (A) materially alter the nature of the Project, or (B) result in a reduction of the value, utility or marketability of the Project in any material respect or (C) increase the liability of the City to any persons. No change in the Construction Manager shall be made without the consent of the City (which shall not be unreasonably withheld or delayed).

Section 3.7. Limits on Change in Approved Construction Documents and Other Documents.

(a) Changes To Standard Conditions, Plans and Specifications; Contracts. The Construction Agent shall not change the Standard Conditions without the written consent of the City's Engineer. The Construction Agent may change the Plans and Specifications from time to time, without the written consent of the City's Engineer provided that no revision shall be made which would (a) change the Project in any material respect without the prior written consent of the City, which consent of the City shall not be unreasonably withheld, conditioned or delayed, (b) increase the cost of the Work without evidence reasonably satisfactory to the City, that moneys are available to meet such increased costs or (c) in any event increase the cost of the Work in excess of the Guaranteed Maximum Price.

(b) Changes to Work or Draw Schedule. The Construction Agent may change the Work Schedule or Draw Schedule upon written notification to the City; provided, however no such change may be made without the City's prior written consent if the effect of the change, in the reasonable opinion of the City, is reasonably likely to jeopardize the Final Completion of the

Project on or before November 1, 2011; and provided, that the City's consent does not obligate it to provide funds or take other actions to meet any revised Draw Schedule.

Section 3.8. Time is of the Essence of This Agreement. The City and the Construction Agent agree that time is of the essence in performance of the Work subject to this Agreement.

[End of Article III]

## ARTICLE IV

### CONSTRUCTION OBLIGATIONS AND COVENANTS

Section 4.1. Covenants of the Construction Agent. During the Construction Period (and, where indicated, thereafter), the Construction Agent shall:

(a) cause the construction, renovation, installation, equipping, and improvement of the Project and cause such construction, renovation, installation, equipping, and improvement to be prosecuted in a good and workmanlike manner, and substantially in accordance with (i) the Cost Budget, (ii) the Approved Construction Documents, and (iii) the Work Schedule and (iv) all applicable federal statutes and regulations, state laws, charter provisions, ordinances, building codes and policies of the City, including but not limited to competitive bidding procedures prescribed by the City for the Project, and the prevailing wage requirements of Chapter 4115, Ohio Revised Code or the Davis-Bacon Act;

(b) use all commercially reasonable efforts to cause construction, renovation, installation, equipping, and improvement of the Project to be completed as expeditiously as possible, and in all events by the Final Completion date;

(c) use all commercially reasonable efforts to cause all material outstanding punch list items with respect to the construction, renovation, installation, equipping, and improvement of the Project to be completed as expeditiously as possible, and in all events by the Final Completion date;

(d) at all times subsequent to the initial Construction Draw (i) file all necessary documents under the applicable real property law and the Uniform Commercial Code in order to perfect and maintain the perfection of such title and all other interests in favor of the City created and intended to be created or maintained under the Operative Documents, (ii) pay, or cause to be paid, all assessments, charges and taxes, if any, payable in connection with the construction, renovation, installation, equipping, and improvement of the Project to be paid as and when due, whether claim shall be made for payment thereof during or after the Construction Period, subject to the right of the Construction Agent to contest, in good faith, any such assessment charge or tax so long as, by nonpayment of any such items, neither the Project nor any property of the City shall be subject to imminent loss or forfeiture, and in the contest of which, the City hereby agrees to cooperate, at the cost and expense of the Construction Agent, (iii) not permit liens (other than Permitted Encumbrances or those in favor of the City) to be filed or maintained respecting the Project, provided that affidavits of claims for mechanics liens pursuant to Section 1311.25, *et seq.*, may be bonded and contested as provided herein, and (iv) on a monthly basis, deliver to the City true, correct and complete progress reports as required by Section 3.3 hereof regarding the construction, renovation, installation, equipping and improvement of the Project and adequacy of funding for the Project in relationship to the then current Cost Budget;

(e) cause title to the Project to be and remain, during the Construction Period and upon Final Completion, free from and clear of all liens, claims, and encumbrances, except for (i) those created by or arising under the Operative Documents, (ii) real estate taxes and assessments that are a lien but not yet due and payable, (iii) affidavits of claims for mechanics liens, materials supplied or labor or work performed in connection with the construction,

renovation, installation, equipping, and improvement of the Project that are bonded-off or otherwise removed in accordance with applicable laws within Ninety (90) days of the filing of such lien and in any event prior to the commencement of an action to foreclose on such lien, (iv) any Permitted Encumbrances under the Operative Documents and (v) any other liens or exceptions that are approved in writing by the City or that the City causes to be created;

(f) make available for inspection at the Construction Agent's office by a duly authorized representative of the City during normal business hours, any of the Construction Agent's books and records insofar as they relate solely to the Project at such times as reasonably requested by the City when requested to do so;

(g) reimburse the City from the proceeds of Construction Draws for all costs of the Project paid by the City in accordance with the Operative Documents, including but not limited to the costs of title insurance policies, title examinations, recording fees, surveys, fees of counsel for services rendered and out-of-pocket expenses to which the City is entitled to be reimbursed pursuant to the Operative Documents or the Bonds;

(h) not purchase or acquire under any conditional sales contract or security agreement or any lease agreement, any personal property of any kind intended to be incorporated into the Project or paid for with the proceeds of Construction Draws, and apply the proceeds of Construction Draws available for such purpose under the Operative Documents to pay in full the purchase price of personal property before payment therefor becomes past due or, in any event, within thirty (30) days after delivery thereof; provided, however, that, the foregoing shall not apply to amounts withheld and unpaid on account of bona fide disputes with the suppliers thereof;

(i) allow the City and the City's agents, at all times (i) during normal business hours, the right of entry and free access to the Project to inspect all Work done, labor performed and materials furnished in and about the Project, and (ii) to require to be replaced or otherwise corrected (at the Construction Agent's sole cost, or that of the contractors, subcontractors or material suppliers for the Project if the need for replacement or correction is the result of the breach of duty by or the intentional, wrongful or negligent act or failure to act of any such person, its agents or employees), any material or work that materially fails to comply with the respective Plans and Specifications therefore, provided that the City shall provide thirty (30) days' notice of its election to exercise such right and reasonable opportunity for the Construction Agent to cure such failure of compliance, and (iii) to prevent any person other than the City, and the City's agents, employees, licensees and invitees, the contractors, subcontractors, material suppliers for the Project or agents, employees or invitees of the Construction Agent, from entering upon the Project;

(j) during the Construction Period, obtain and maintain, on behalf of the City and submit to the City for review, evidence of the following insurance coverages set forth in the Standard Conditions:

(i) comprehensive general liability insurance, including auto, for property damage and personal injury or death, with limits of liability of at least \$5,000,000 per occurrence and with a deductible not in excess of \$5,000, which may be provided by umbrella or excess liability policies, and worker's compensation insurance (including employer's liability insurance), for all

employees, if any, of the Construction Agent and for all employees, if any, of the Construction Manager in such amounts as are established by law; provided that, the Construction Agent may satisfy the requirements of this subparagraph with respect to employees of the Construction Agent's agents, including the Construction Manager, through separate policies provided by each agent;

(ii) all risk (Builder's risk) property insurance in the amount of the full replacement cost of the Project under a policy satisfactory to the City in form and substance; and

(iii) flood hazard coverage, if appropriate, in an amount acceptable to the City and with a deductible acceptable to the City.

All insurance policies required by this Agreement shall name the Construction Agent as a named insured and the City as an additional insured and shall, unless otherwise agreed by the City in writing, be issued by carriers with a *Best's Insurance Reports* policyholder's rating, to the extent commercially reasonable, of "A" financial size category of "X" or better.

The Construction Agent shall deliver to the City prior to the commencement of Work copies of all such policies, together with endorsements and original certificates therefor. Copies of all renewal policies (including endorsements) and original certificates therefor shall be deposited with the City as evidence of such insurance. All policies shall contain provisions for thirty days' written notice to the City prior to expiration or cancellation. Each insurer under any policies shall be required to waive any defenses the insurer may have to payment as a consequence of acts or omissions of any party;

(k) in the event of any damage to or destruction of the Project, or any part thereof, during the Construction Period, to the extent that insurance proceeds, are not sufficient to cover the full cost of any repair, rebuilding or restoration due to deductible and co-insurance amounts under insurance policies maintained by the Construction Agent the Construction Agent shall provide funding, to pay the cost of repair, rebuilding or restoration; provided that, so long as a Project Funding Shortfall will not exist as a consequence of the use of amounts held in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project for that purpose, amounts in such construction account or project fund may be used for that purpose;

(l) notify the City in writing within three (3) days of the occurrence of any default or Event of Default hereunder as to which the Construction Agent has knowledge;

(m) not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry in violation of applicable laws, and ensure that applicants for employment are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status, or ancestry as required by applicable law, and incorporate the requirements of this paragraph in all of the respective contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials), and require all contractors for any part of the work involved in the provision of the Project to incorporate such requirements in all subcontracts for such work;

(n) obtain on a timely basis all utility connections and permits when needed and all utility services for water, gas, electric, telephone, sewer and storm drainage and sanitary waste disposal so that such utility services shall be available to an extent adequate to serve the Project; and

(o) upon execution of the Operating Agreement, cause the Project Guaranty to be delivered to the City, and thereafter maintained in full force and effect.

(p) assure quality materials and design, subject to the City's approval of the design and material for the Project and the Plans and Specifications therefor.

Section 4.2. Force Majeure Event. The Construction Agent shall give the City prompt written notice of the occurrence of any Force Majeure Event, as defined below, with respect to the Project that has caused, or is reasonably likely to cause a Material Delay.

Upon the occurrence of a Force Majeure Event, unless and until a Termination Notice shall be delivered pursuant to the provisions of Article VI, the Construction Agent shall use all commercially reasonable efforts to complete the construction, renovation, installation, equipping, and improvement of the Project, or cause the construction, installation, equipping, and improvement of the Project to be completed, on or before the Final Completion date and within the Cost Budget.

Following an occurrence that constitutes a Force Majeure Event, the Construction Agent shall prepare, as promptly as practicable, a written estimate of any resulting or reasonably expected Material Delay, and shall deliver such estimate to the City. If a Force Majeure Event should cause a Material Delay, the Final Completion Date shall be extended for such additional period of time as may be reasonably necessary to cure such Force Majeure Event and to permit expeditious completion of the construction, renovation, installation, equipping, and improvement of the Project, but in any event for a period ending not later than [\_\_\_\_\_], without the prior written consent of the City. If the extent of any Material Delay will not prevent completion of construction, renovation, installation, equipping, and improvement of the Project within the Cost Budget, the Construction Agent shall proceed to cause the construction, renovation, installation, equipping, and improvement of the Project to be completed and the completion conditions to be satisfied as expeditiously as possible in a commercially reasonable manner under the circumstances pursuant to Article II and the other Operative Documents.

Section 4.3. Disbursement Procedures from Project Fund. The Construction Agent acknowledges that it has no right to funds in the Project Fund other than as arise under the Operative Documents. All requests for disbursement of Construction Draws from any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project Fund shall be made by the Construction Agent to the City in accordance with the provisions of this Agreement. No disbursements shall be made while a Construction Event of Default (as defined in Article 7) exists and is continuing under this Agreement or any of the other Operative Documents, unless otherwise agreed by the City.

Section 4.4. Construction Draws. Construction Draws for the Project shall be made only upon satisfaction by the Construction Agent of the conditions set forth below. Based upon

Applications for Payment prepared by the contractors and reviewed and approved by the Construction Agent and including all supporting documentation required by the City, the Construction Agent shall submit Disbursement Request Forms to the City.

Section 4.5. Project Completion; Final Disbursement. The Project shall be deemed completed when the Construction Agent shall have provided to the City, and the City shall have approved, a completed Disbursement Request Form for the Project for such amount complying with the provisions of this Agreement, the Operative Documents, the Bonds, and a certificate for the Project (the “Final Completion Certificate”), in form and substance satisfactory to the City, prepared and signed by the Construction Agent in accordance with this Agreement.

Section 4.6. Correction of Work. The Construction Agent warrants to the City that it shall cause all materials to be of good quality and all Work to be of first-class, good and workmanlike quality, in conformance with the requirements of the Plans and Specifications in all material respects and as set forth in this Agreement and free from defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of one (1) year after delivery of the Final Completion certificate for the Project. The Construction Agent shall, at its sole cost and expense, (i) promptly correct or cause to be corrected, all of the Work not in material conformance with the Plans and Specifications and this Agreement, (ii) correct, or cause to be corrected, any defects in materials and workmanship of the Work (without regard to the standard of care exercised in its performance) that appear within a period of one year after delivery of the Final Completion Certificate for the Project and (iii) replace, repair or restore, or cause replacement, repairs or restoration of, any parts of the Work or any of the fixtures, equipment or other items placed therein that are injured or damaged as a consequence of corrective action taken pursuant hereto. Nothing contained in this Agreement shall be construed to establish a period of limitation with respect to any other obligation of the Construction Agent under this Agreement. Should the Construction Agent fail to make or cause to be made, corrections required by this Section, the City may do so at the sole expense of the Construction Agent. The obligations of the Construction Agent hereunder shall survive the termination of this Agreement.

Section 4.7. Certain Warranties and Representations. The Construction Agent warrants and represents to the City as follows:

(a) Organization and Power. The Construction Agent (a) is an Ohio non-profit corporation, duly organized, validly existing and in full force and effect under the laws of Ohio; and (b) has all power, authority and legal right to carry on its business as now conducted, to execute, deliver and perform its obligations under this Agreement and all other Operative Documents to which it is a party.

(b) Litigation. Except as disclosed to the City, there is no action, suit or proceeding pending, or to the best of the Construction Agent’s knowledge, threatened, against or affecting the Construction Agent at law or in equity before any court, or by or before any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality or arbitrator which, if adversely decided, could have a material adverse effect on the business, assets or financial condition of the Construction Agent or its right to enter into this Agreement or the other Operative Documents to which it is a party or the validity or effectiveness thereof.

(c) No Defaults. No default or Construction Event of Default by the Construction Agent has occurred and is continuing under this Agreement, the other Operative Documents or any other agreement or document contemplated thereunder to which it is a party.

(d) Insurance. All insurance required by this Agreement or the other Operating Document to be obtained by the Construction Agent is in effect and all premiums now due and payable in respect of such insurance have been paid.

(e) Construction Documents and Other Agreements. True and complete copies of the Standard Conditions, Plans and Specifications, and all other agreements relating to the Project have been delivered to the City and there have been no alterations, modifications, amendments or changes of any nature whatsoever to any one or more of the foregoing since the respective dates of delivery thereof to City except as expressly permitted hereunder (including Section 3.7(a) hereof). True and complete copies of all such alterations, modifications and amendments have been furnished to the City.

(f) Cost Budget. The Cost Budget set forth in Exhibit B attached hereto and incorporated by reference herein, as of the date hereof, sets forth and presents a full and complete representation by the Construction Agent of all costs, expenses and fees which the Construction Agent expects to be required to complete the Project on or before the Final Completion date.

[End of Article IV]

## ARTICLE V

### CASUALTY AND ENVIRONMENTAL EVENTS

#### Section 5.1. Construction Event of Loss or Casualty.

(a) The Construction Agent shall give the City written notice of the occurrence of any casualty during the Construction Period promptly following the occurrence thereof. As promptly as practicable, the Construction Agent shall prepare an estimate of the cost of restoring, rebuilding and repairing the related damage and shall deliver such estimate to the City. If the City, after consultation with the Construction Agent, in its good faith judgment determines that a Project Funding Shortfall will exist, after settlement with the applicable insurance carriers, to pay for the cost of restoring, rebuilding and repairing the related damage, upon written notice from the City, the Construction Agent shall promptly deposit or cause to be deposited in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project an amount sufficient to pay for the cost of restoring, rebuilding and repairing the related damage and completing the Project or shall provide evidence reasonably satisfactory to the City that such funds are available to cause such restoration, rebuilding or repair upon demand of the Construction Agent, or shall provide to the City a notice that such event shall constitute a Construction Event of Loss under Section 6.1, and pay to the City the Termination Payment.

(b) If a casualty shall occur with respect to the Project during the Construction Period, unless the cost of restoring, rebuilding and repairing the resultant damage is less than \$250,000 (in which case the proceeds of the insurance may be paid directly to the Construction Agent, who shall receive the same in trust for application to the costs of the restoration, rebuilding and repairing of the affected property), the Net Proceeds of the resulting insurance award shall be paid over to the City and disbursed by the City to the Construction Agent, or the contractors, as applicable, in advances pursuant to Disbursement Request Forms substantially in accordance with the provisions hereof and of the Operative Documents applicable to the disbursement of Construction Draws to pay costs of constructing, renovating, installing, equipping, and improving the Project. The Construction Agent shall apply insurance proceeds advanced to the Construction Agent to pay for the cost of rebuilding, restoring and repairing the resulting damage. Thereafter, the Construction Agent shall apply, or cause to be applied, the proceeds of Construction Draws available for such purpose under the Operative Documents to complete the construction, renovation, installation, equipping, and improvement of the Project and use good faith efforts to cause the construction, renovation, installation, equipping, and improvement of the Project to be completed prior to the Final Completion date.

#### Section 5.2. Construction Event of Taking or Condemnation.

(a) The Construction Agent shall give the City written notice of the occurrence of any Condemnation of all or any material part of the Project during the Construction Period promptly following the occurrence thereof together with a written estimate of the schedule and cost of restoring the Project and shall deliver such estimate to the City. If a Condemnation of all or any part of the Project occurs during the Construction Period that, in the good faith judgment of the City, after consultation with the Construction Agent, (i) renders impossible or impractical the restoration of the remaining portion of the Project as an architectural unit adequate for the

intended use of the Project, (ii) will not give rise to an award sufficient to pay, together with Available Funds, any increased costs and expenses of completing the construction, renovation, installation, equipping, and improvement of the Project pursuant to the Plans and Specifications, as modified to accommodate changes necessitated by the condemnation, without incurring a Project Funding Shortfall, or (iii) will cause a Material Delay such that the construction, renovation, installation, equipping, and improvement of the Project cannot reasonably be completed (any such event being called a “Construction Event of Taking”), whereupon the Construction Agent shall (x) (1) use all commercially reasonable efforts to eliminate the Material Delay or, (2) if necessary to eliminate such a Project Funding Shortfall shall also deliver moneys to the City, for deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project sufficient, together with other Available Funds, to complete the Project, or (y) declare that the Condemnation constitutes a Construction Event of Taking under Section 6.1 and deliver to the City the Termination Payment..

(b) If a Condemnation occurs with respect to any part of the Project during the Construction Period, unless the cost of restoring, rebuilding and repairing the resultant damage is less than \$250,000 (in which case the proceeds of the resulting award may be paid directly to the Construction Agent, who shall receive the same in trust for application to the costs of the restoration, rebuilding and repairing of the Project, the Net Proceeds of the resulting award shall be paid over to the City and disbursed by the City to the Construction Agent or the contractors, as applicable, in advances pursuant to Disbursement Request Forms substantially in accordance with the provisions hereof and of the Operative Document applicable to the funding of Construction Draws for payment of costs of constructing, renovating, installing, equipping, and otherwise improving the Project. The Construction Agent shall apply the proceeds of the award so advanced to the Construction Agent to pay for the cost of rebuilding, restoring and repairing the resulting damage, but the Construction Agent shall not be obligated to fund or pay for any portion of the costs of such restoration, rebuilding or repairing except to the extent of Construction Loss Proceeds and of the proceeds of Construction Draws, except to the further extent that the Construction Agent shall be obligated as the result of the intentional, wrongful or negligent acts or failures to act of itself, its agents, employees, contractors, subcontractors or material suppliers or shall otherwise elect. Thereafter, the Construction Agent shall apply, or cause to be applied, the proceeds of Construction Draws available for such purpose under the Operative Documents to complete the construction, renovation, installation, equipping and improvement of the Project and use good faith efforts to cause the construction, renovation, installation, equipping and improvement of the Project to be completed prior to the Final Completion date; provided that, if and to the extent any surplus of condemnation proceeds remains after completion of the construction, renovation, installation, equipping, and improvement of the Project, that surplus shall applied to the repayment of the Bonds for the Project.

### Section 5.3. Hazardous Materials.

(a) If, in the course of the construction of the Project the Construction Agent discovers Hazardous Materials or underground storage tanks that are not included in the Work pursuant to the Plans and Specifications, and which are not maintained in accordance with all applicable environmental laws and regulations, the Construction Agent shall notify the City promptly and, if directed by the City, or if commercially reasonable under the circumstances, shall stop and cause all contractors and subcontractors to stop the Work. If stopped, such Work shall be commenced again only after written notice from the City. All Hazardous Materials that may be

discovered shall be maintained, removed, transported and disposed of or otherwise rendered harmless by qualified contractors in accordance with all applicable state and federal environmental laws and regulations. Subject to the availability of sufficient funds, all costs incurred in connection with the discovery, removal, transportation and disposal of Hazardous Materials pursuant to this Section 5.3 shall be included in Allowable Costs, and the Cost Budget shall be revised as appropriate to include the same.

(b) The Construction Agent shall not permit a violation of any environmental laws and regulations to exist with respect to the Project. The Construction Agent shall not use or permit to be used all or any portion of the Project for the storage, treatment, use or disposal of any substance for which a license or permit is required by state, federal or local environmental laws and regulations and for which no such license or permit has been obtained. Without limitation express or implied, unless caused by the gross negligence or willful misconduct of the City or of any employee or agent of the City (other than the Construction Agent), the Construction Agent shall pay, or cause to be paid, all sums and take, or cause to be taken, all such actions as may be required to avoid or discharge the imposition of any lien on the Project under any environmental law or regulation, and the Construction Agent shall indemnify and save harmless City, or cause the City to be indemnified and saved harmless, from any and all loss, claims, liabilities and expenses (including attorney's and expert fees) incurred or suffered by City by virtue of the provisions of any environmental law or regulation now or hereinafter in effect or by virtue of the failure of the Construction Agent to comply or cause compliance with any environmental law or regulation now or hereinafter in effect or by virtue of the failure of the Construction Agent to comply with any environmental law or regulation in connection with the presence of any Hazardous Materials in violation of such environmental laws or regulations.

[End of Article V]

## ARTICLE VI

### TERMINATION

Section 6.1. Termination Events. Each of the following events shall be a “Termination Event”:

(a) The occurrence of a Force Majeure Event constituting a Construction Event of Loss or a Construction Event of Taking;

(b) The occurrence of a Force Majeure Event, other than a Construction Event of Loss or a Construction Event of Taking, as a result of which the construction, renovation, installation, equipping and improvement of the Project cannot be completed City; or

(c) The occurrence of a Construction Event of Default as defined in Section 7.1;

In the event there shall occur an event that constitutes a “Termination Event” under subsection 6.1(a) or 6.1(b) then the Construction Agent may, provided there shall be no event constituting a “Termination Event” under subsection 6.1(c) hereunder, deliver a Termination Notice to the City, together with the Termination Payment. In the event of the occurrence of an event that constitutes a “Termination Event” under subsection 6.1(c) then the City, as the case may be, may in its discretion issue to the Construction Agent a Termination Notice and require the Construction Agent to make a Termination Payment. Following the giving of a Termination Notice and the payment by the Construction Agent of a Termination Payment, this Agreement shall terminate on the dates specified in the first notice sent and the parties shall be governed by the following provisions of this Article VI.

Section 6.2. Terminations Resulting From Construction Event of Loss or Construction Event of Taking. If a Termination Notice is delivered by the Construction Agent pursuant to a Termination Event described in subsection 6.1(a) or (b) above, the notice shall provide that this Agreement shall terminate as of a date not fewer than Fifteen (15) nor more than Ninety (90) days from the date of the notice, and on the date so specified this Agreement shall so terminate, and, the City and the Construction Agent shall execute and deliver to each other sufficient counterparts of Termination Documents on or before the date of termination specified in such notice. Simultaneously, the Construction Agent shall immediately pay and deliver, or cause to be paid and delivered, to the City, all Construction Loss Proceeds or other recoveries with respect to any other Claims arising as the result of the related Force Majeure Event previously received by either of them, together with a Termination Payment, in an amount sufficient, together with such Construction Loss Proceeds or other recoveries and Available Funds, together with any amounts that may be on deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project or other funds established under the Bonds for the Project, to the extent that such moneys are available for such purpose, to cause the redemption of all outstanding Bonds to effect the redemption of the Bonds, occurring not fewer than Thirty (30) nor more than Sixty (60) days after the date of such delivery of funds. Upon the execution of such Termination Documents and the payment to the City of such proceeds (if any) and such Termination Payment, (a) the Construction Agent shall have no further rights or obligations in respect of the Project (except for rights and obligations that are expressly stated in

the Operative Documents to survive termination of this Agreement), (b) any Construction Loss Proceeds and any Termination Payment shall be paid over to the City for application, together with the Available Funds held by the City, together with any amounts that may be on deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project or other funds established under the Bonds for the Project, to the extent such moneys are available for such purpose, to the payment and discharge of the Bonds and any remaining balance or surplus shall be paid to the City for its own account without any duty or obligation to account to the Construction Agent with respect thereto.

Section 6.3. Other Termination.

(a) If a Termination Notice is given by the City as the result of a Termination Event described in Section 6.1(c) above, the Termination Notice shall so state, and the Construction Agent shall within Fifteen (15) days of receipt of such notice, pay to the City, a Termination Payment in an amount sufficient, together with such Construction Loss Proceeds or other recoveries and held by the City, together with any amounts that may be on deposit in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project, or other funds established under the Bonds for the Project, to the extent such moneys are available for such purpose, to cause the redemption of all outstanding Bonds for the Project designated by the City to effect the redemption of the Bonds occurring not fewer than Thirty (30) nor more than Sixty (60) days after the date of such delivery, and to pay any other amounts payable to the City, and all reasonable costs of consultants, legal counsel and other professional services incurred by the City in effecting such a transaction, whereupon the rights and obligations of the Construction Agent hereunder shall terminate, except as otherwise provided herein.

(b) Concurrently with payment of the amount contemplated by subsection (a) of this Section, (i) the City and the Construction Agent shall execute and deliver to each other sufficient counterparts of Termination Documents, and (ii) the Construction Agent shall pay or cause all Construction Loss Proceeds received by it to be immediately delivered to the City. Thereafter, the Termination Payment, together with the Construction Loss Proceeds and the Available Funds held by the City, and any amounts in any construction account or project fund established in connection with the Bonds or otherwise established by the City for the Project or other funds established under the Bonds for the Project, to the extent such moneys are available for such purpose, shall be applied to the payment and discharge of the Bonds and to the other amounts owed to the City, and all reasonable costs of consultants, legal counsel and other professional services incurred by the City in effecting the redemption and termination.

[End of Article VI]

## ARTICLE VII

### EVENTS OF DEFAULT

Section 7.1. Construction Events of Default. If any one or more of the following events (each a “Construction Event of Default”) shall occur:

(a) the Construction Agent fails to apply, or cause to be applied, the proceeds of any Construction Draw or any funds paid to the Construction Agent by or on behalf of the City, as the case may be, within ten (10) days after the receipt of the same in a manner consistent with the requirements of the Operative Documents and as specified in any applicable Disbursement Request Form, to the payment of costs of constructing, renovating, installing, equipping, and otherwise improving the Project;

(b) following the giving of a Termination Notice pursuant to any Termination Event, the Construction Agent shall fail to pay any amounts that become due as the result thereof, and such failure continues for five (5) Business Days;

(c) the Construction Agent shall commit or perform any act constituting fraud, misapplication of funds, intentionally illegal acts, or willful misconduct in connection with the performance of its obligations under this Agreement or any other Operative Document to which it is a party;

(d) the filing by Construction Agent of any petition for dissolution or liquidation of Construction Agent, or the commencement by the Construction Agent of a voluntary case under any applicable bankruptcy, insolvency or other similar law for the relief of debtors, foreign or domestic, now or hereafter in effect, or Construction Agent shall have consented to the entry of an order for relief in an involuntary case under any such law, or the appointment of or taking possession by a receiver, custodian or trustee (or other similar official) for the Construction Agent or any substantial part of its property, or a general assignment by the Construction Agent for the benefit of its creditors, or the Construction Agent shall have taken any corporate action in furtherance of any of the foregoing; or the filing against the Construction Agent of an involuntary petition in bankruptcy that results in an order for relief being entered or, notwithstanding that an order for relief has not been entered, the petition is not dismissed within Ninety (90) days of the date of the filing of the petition, or the filing under any law relating to bankruptcy, insolvency or relief of debtors of any petition against the Construction Agent that either (i) results in a finding or adjudication of insolvency of the Construction Agent or (ii) is not dismissed within Ninety (90) days of the date of the filing of such petition;

(e) the construction, renovation, installation, equipping, and improvement of Project is not completed on or before the Final Completion date, or the Construction Agent fails to comply with the provisions of subsection 4.1(a) for thirty (30) days following written notice from the City;

(f) the occurrence of any event designated as an “Event of Default” under the Project Completion Guaranty;

(g) the Construction Agent shall fail to maintain insurance as required by the provisions of subsection 4.1(j) and such failure continues for ten (10) days following written notice or the Construction Agent shall fail to perform as required by the provisions of subsection 4.1(k) and such failure continues for five (5) business days following written notice; or

(h) the Construction Agent shall breach in any material respect any of its representations or warranties under this Agreement or any other Operative Document to which it is a party or shall fail to observe or perform any material term, covenant or condition of this Agreement or any other Operative Document to which it is a party (other than as described in subsections (a) through (g) of this Section 7.1) and such breach or failure continues for five (5) Business Days following written notice;

then, in any such event, the City may, in addition to the other rights and remedies provided for in this Agreement, terminate this Agreement in accordance with Section 6.3 and require the Construction Agent to make a Termination Payment in accordance with that Section; provided, in the case of a failure or breach described in subsections (f) or (h), such failure or breach, shall not constitute a Construction Event of Default so long as the Construction Agent gives notice as defined in Section 9.1 of the Agreement to the City within thirty (30) days of its intention to cure such failure or breach; provided, however, that if such failure is other than payment of money and is of such a nature that it cannot be corrected within such thirty (30) day period, institutes curative action within such thirty (30) day period, diligently pursues such action to completion and cures such failure within a reasonable period, not to exceed one year, after such thirty (30) day period. The Construction Agent shall pay all reasonable costs and expenses incurred by or on behalf of the City, including without limitation reasonable fees and expenses of counsel, as a result of any Construction Event of Default. The Construction Agent acknowledges that its obligations to make such payments shall be absolute and unconditional under any and all circumstances and shall be paid and performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever is provided.

Section 7.2. Damages. In exercising remedies under this Agreement the defaulting party shall in no event be relieved of its liability and obligations hereunder, all of which shall survive any such termination.

Section 7.3. Remedies; Remedies Cumulative.

(a) In addition to the right to terminate this Agreement, if a Construction Event of Default shall have occurred and be continuing, the City shall have all other rights available at law, in equity or otherwise, including without limitation, the right to (i) remove and replace the Construction Agent or (ii) require the Construction Agent to complete, or cause to be completed, all or any part of the Project, and to hold the City harmless from any damages or additional costs arising from the Event of Default.

(b) No failure to exercise and no delay in exercising, on the part of the City, any right, remedy, power or privilege under this Agreement or under the other Operative Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and

privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 7.4. Costs of Enforcement. If an action shall be brought by the City for the enforcement of any provision of this Agreement, the Construction Agent shall pay to the City all costs and other expenses that may become payable as a result thereof, including, without limitation, reasonable attorneys' fees and expenses. If the City or any agent of the City shall be made a party defendant to any litigation commenced against the Construction Agent, the City, or any such agent arising out of any of the transactions contemplated by this Agreement or the Operative Documents, the Construction Agent shall pay all costs and reasonable attorneys' fees and expenses incurred or paid by the City or the City's agents in connection with such litigation. The obligations of the Construction Agent under this Section shall survive the termination of this Agreement.

[End of Article VII]

## ARTICLE VIII

### CERTAIN RIGHTS AND OBLIGATIONS OF THE CITY

Section 8.1. Cure of the Construction Agent's Defaults. The City, without waiving or releasing any obligation or Event of Default, may (but shall be under no obligation to), remedy any Event of Default for the account of and at the sole cost and expense of the Construction Agent after reasonable written notice to the Construction Agent with respect thereto and reasonable opportunity afforded to the Construction Agent to do and perform the same. All reasonable out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon from the date on which such sums or expenses are paid by the City, shall be paid by the Construction Agent to the City within five (5) days after written demand therefor.

Section 8.2. Reviews of Designs, Plans and Specifications. The City shall use all commercially reasonable efforts to expedite its review of designs, Plans and Specifications submitted by the Construction Agent to the City's Planning Commission for the Project, consistent with the City's procedures.

Section 8.3. Ownership of Approved Construction Documents. The City shall be the owner of all Approved Construction Documents, including all copyrights and other intangible property rights related thereto.

[End of Article VIII]

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and by first-class mail, postage prepaid, courier service, delivery charges prepaid, facsimile transmission (if the sender's system can confirm receipt of the transmission) or delivery addressed to the appropriate Notice Address and deemed effective on receipt, with a duplicate copy of such notice to be provided to the City and the Construction Agent, as the case may be. The Construction Agent, the City and any other Person to receive notices as provided in the definitions of Notice Address may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 9.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the City, the Construction Agent and their respective successors and the assigns. The Construction Agent may not assign this Agreement or any of its rights or obligations hereunder in whole or in part to any Person other than an Affiliate of the Construction Agent without the prior written consent of the City, which shall not be unreasonably withheld.

Section 9.3. Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of Ohio without regard to conflict of laws principles.

Section 9.4. Amendments and Waivers. This Agreement shall not be amended, supplemented or modified except by an instrument in writing executed by the City and the Construction Agent.

Section 9.5. Counterparts. This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile transmission shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

Section 9.6. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.7. Headings and Table of Contents. The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 9.8. Indemnification. To the extent permitted by law, including Section 2305.31 of the Ohio Revised Code, the Construction Agent agrees to assume liability for, and to indemnify, protect, defend, save and keep harmless the City and the City's officers, agents and employees (the "Indemnified Parties"), from and against, any and all claims of itself or by any third-party that may be imposed on, incurred by or asserted against an Indemnified Party, whether or not the Indemnified Party shall also be indemnified as to any such claim by any other Person (except to the extent such claim is covered by the insurance required by this Agreement), the basis of which claim (a) was caused by or results from the actions or failures to act of the Construction Agent, its agents, employees, contractors, subcontractors and materials suppliers while in possession or control of the Project, whether or not such action or inaction was negligent or reckless, or is in any way related to the construction of the Project or the selection of contractors, subcontractors or material suppliers relating thereto; (b) is based, in whole or in part upon the Construction Agent's failure or alleged failure to satisfactorily complete the Project, (c) relates to fraud, misapplication of funds, illegal acts, or willful misconduct on the part of the Construction Agent, or (d) the bankruptcy or insolvency of the Construction Agent. It is expressly understood and agreed that the indemnity provided for herein shall survive the expiration or termination of and shall be separate and independent from any remedy under any Operative Document.

Section 9.9. Non-Recourse; Limited Liability. Notwithstanding any other provision of this Agreement, the obligations of the City hereunder and with respect to the provision of the Project shall not be payable from any money or other property of the City except from Available Funds and any such obligations of the City shall be satisfied entirely from those sources and any money or other property provided by the Construction Agent for that purpose, and the City is not obligated to use any money or assets (other than Available Funds) in connection with this Agreement or to satisfy any duties, obligations, requirements or liabilities arising hereunder including the failure to perform any duty, obligation or agreement and any liability arising therefrom.

[End of Article IX]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized representatives as of the day and year first above written.

**YMCA OF GREATER CLEVELAND**  
as Construction Agent

By: *Glen Haley*

Name: *Glen Haley*

Title: *CEO/President*

**CITY OF NORTH ROYALTON**

By: \_\_\_\_\_

and by: \_\_\_\_\_

Approved as to form:

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Law Director  
City of North Royalton

**CERTIFICATE**

The undersigned, Fiscal Officer of the City of North Royalton, certifies that the moneys required to meet the obligations of the City during the year 2010 under the foregoing Construction Agency Agreement have been lawfully appropriated by the City Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Fiscal Officer,  
City of North Royalton

**EXHIBIT A**

DOC. 00760893

STANDARD CONDITIONS

**EXHIBIT A**

**STANDARD CONDITIONS  
(Construction Agent)  
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(This Table of Contents is for convenience only and is not part of the Contract Documents)

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## **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. Allowance - A not-to-exceed amount stipulated in the Contract Documents to be included in the Base Bid to permit campaign of bids for Work not completely defined.
3. Alternate - A proposed change in the Work described in the Contract Documents providing the City with an option to select between alternative materials, products or systems, or to add or delete portions of the Work.
4. Alternative Dispute Resolution - A method of resolving disputes other than arbitration or litigation.
5. Approved Equal - Article, device, material, equipment, form of construction or other item proposed by the Bidder and approved by the Architect/Engineer, with the assistance of the Construction Agent, for incorporation or use in the Work as being equivalent to essential attributes of a Standard specified in the Contract Documents.
6. Architect/Engineer - \_\_\_\_\_.
7. As-Built Drawings - Drawings or computer files revised by the Contractor to show changes made during the construction process.
8. Authorized Representative - The City Engineer or any of the City's duly authorized assistants or designees.
9. 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.
10. Bidder - A Person who submits a bid for a contract with the City.
11. Bid Form - The form furnished by the City that is to be completed, signed and submitted containing the Bidder's bid.
12. Bid Guaranty - Bid bond or other instrument of security furnished by the Bidder to provide assurance that the Bidder will execute the Contract Form.
13. BIM - Building Information Modeling, i.e. a digital representation of physical and functional characteristics of a Project.
14. Building Department - The Building Department of the City.
15. Bulletin - A document issued by the Architect/Engineer through the Construction Agent after the execution of the Contract Form requesting a Proposal from the Contractor which, if approved as provided in the Contract Documents, will cause the execution of a Change Order to modify, amend or alter the Contract Documents. The Bulletin becomes a part of the Contract Documents when a Change Order related to the Bulletin is executed by all applicable Persons.
16. Change Order - A document recommended by the Architect/Engineer and the Construction Agent and authorized by the Council [ or the Authorized Representative] issued after execution of the Contract Form, which authorizes a change in the Work or a modification, adjustment or alteration of the Contract Documents, the Contract Price or the Contract Time.
17. City - The City of North Royalton.

18. Claim Affidavit - A sworn document containing a claim on funds that are due to a Contractor, created by statute in favor of a Person supplying labor, materials or services for the value of labor, materials or services supplied.
19. Construction Budget - The total amount budgeted by the City for the Contracts required for the Project.
20. Construction Agent - The YMCA of Greater Cleveland.
21. Construction Schedule - The schedule proposed by the Contractor for the performance of the Work as required by the Contract Documents.
22. Contract - The agreement between the City and the Contractor as set forth in the Contract Documents.
23. Contract Bond - Performance and payment bond furnished by the Contractor and the Contractor's Surety to provide assurance that the Contractor will perform the Contract and make required payments.
24. Contract Completion - The date upon which all deficiencies noted in the Punch List have been corrected, the Contractor's Work is 100% complete, and the Contractor has complied with all conditions precedent to final payment and release of retainage.
25. Contract Documents - Collectively, the Drawings, Specifications, Addenda, Definitions, Notice to Bidders, Instructions to Bidders, Bid Form, Bidder's Affidavit, Non-Collusion Affidavit, Bid Guaranty, Substitution Sheet, Contract Form, Contract Bond, General Conditions, Prevailing Wage Rates and Supplementary Conditions and Change Orders, if any.
26. Contract Form - The form furnished by the City that, when completed and signed by the Contractor and the City, evidences the entry into the Contract.
27. Contractor - A Person with whom the City has entered into a Contract for the performance of Work on the Project in cooperation with other Contractors and Persons and in accordance with the Contract Documents.
28. Contractor Payment Request - The form furnished by the City that is to be used by the Contractor in requesting progress payments and final payment and which when signed by the Contractor serves as an affidavit that payments requested are in proportion to the Work completed as shown by the Schedule of Values and that payments previously paid by the City have been applied by the Contractor to discharge in full all of Contractor's obligations incurred in connection with the Work covered by all prior Contractor Payment Requests.
29. Contract Price - The amount to be paid to the Contractor by the City, as set forth in the Contract Form.
30. Contractor Punch List - A Punch List prepared by the Contractor.
31. Contract Time - The time during which the Contract is to be performed, as set forth in the Contract Form.
32. Council - The Council of the City, being the legislative authority of the City.
33. Day - Calendar day, unless otherwise expressly specified to mean a business day. A business day is any day other than a Saturday, Sunday or legal holiday.
34. Defective - When modifying the word Work, refers to Work that does not conform to the Contract Documents, or does not meet the requirements of any applicable statute, rule or regulation, policy, inspection, reference standard, test or approval, or has been damaged prior to Final Acceptance, unless responsibility for the protection thereof has been expressly assumed by the City, or that is not free from defects in workmanship, material or equipment during the period of any Warranty or Guarantee.

35. Drawings - The graphic and pictorial portions of the Contract Documents, showing the design, type of construction, location, dimension and character of the Work to be provided by the Contractor, generally including Plans, elevations, sections, details, schedules, diagrams, notes and Specifications, in whole or in part.
36. Final Acceptance - The City's acceptance of the Work from the Contractor upon approval by the Authorized Representative of the certificate of Contract Completion.
37. Final Inspection - Final review of the Work of the Contractor by the Architect/Engineer and the Construction Agent to determine whether certification of Contract Completion is appropriate.
38. Guarantee - Legally enforceable assurance, for a period after Contract Completion, of quality or performance of the Contractor's workmanship, material and equipment.
39. Hazardous Materials - Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Hazardous Materials Transportation Uniform Safety Act, the Toxic Substances Control Act, or any other applicable law relating to any hazardous, toxic, or dangerous waste, substance, or material. Any substance or material that, after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes, but is not limited to, asbestos, polychlorinated biphenyls ("PCBs"), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.
40. Liquidated Damages - The sum established in the Contract Documents as the predetermined measure of damages to be paid to the City due to the Contractor's failure to complete the Work, or portion thereof, within a stipulated time.
41. Maintenance Bond - Bond furnished by the Contractor's Surety to provide assurance that the Contractor will perform the Guarantee.
42. Material Supplier - A Person who furnishes materials and supplies for Work on the Project, in any tier.
43. Milestone - A significant date or event in the progress of the Work or the Project.
44. Notice of Commencement - The notice prepared by the City identifying the Project, the Contractors, the Surety for each Contractor and the name of the Authorized Representative upon whom a Claim Affidavit may be served.
45. Notice of Intent to Award - The notice provided by the City to the apparently successful Bidder stating that upon execution of the Contract Form by the Bidder and satisfactory compliance with all conditions precedent for execution of the Contract Form by the Bidder, within the time specified, the City intends to execute the Contract Form.
46. Notice to Proceed - A notice provided by the Authorized Representative to the Contractor authorizing the Contractor to proceed with the Work and establishing the date for commencement of the Work.
47. Or Equal - See Approved Equal.
48. OAC - The Ohio Administrative Code.
49. ORC - The Ohio Revised Code.
50. Owner - See City.

51. Owner's Representative - Richard L. Bowen + Associates Inc.
52. Partial Occupancy - 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 that the City occupies or utilizes the Project, or designated portion thereof, for its intended use, with the approval of all applicable governmental authorities.
53. Person - An individual, corporation, business trust, estate, limited liability company, partnership, association or other entity, public or private.
54. Plans - See Drawings.
55. Project - The public improvement to be constructed, of which the Work performed under the Contract Documents may be the whole or a part.
56. Project Schedule - The schedule for the construction of the Project showing the time for completing the Work, the planned sequence for performing the Work, the Contractor's resource loading curve and the interrelationship between the activities of the Contractors, the Architect/Engineer, the Construction Agent and the City.
57. Proposal - The offer of a Contractor to complete the Work set forth in a Bulletin.
58. Proposed Equal - Article, device, material, equipment, form of construction or other item proposed by the Bidder for incorporation or use in the Work as being equivalent to essential attributes of a Standard specified in the Contract Documents.
59. Punch List - A list of items of Work to be completed or corrected by the Contractor as a condition precedent to Contract Completion.
60. 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.
61. Request for Change Order - Written Request from the Contractor to the City seeking a modification, adjustment, or alteration of the Contract Documents, the Contract Price or the Contract Time.
62. Request for Information - Written request from the Contractor to the Architect/Engineer seeking an interpretation or clarification of the Contract Documents.
63. Samples - Physical examples furnished by the Contractor to illustrate materials, equipment or workmanship and to establish criteria by which the Work will be judged.
64. Schedule of Values - A statement furnished by the Contractor to the City reflecting the portions of the Contract Price allocated to the various portions of the Work and used as the basis for reviewing the Contractor's Contractor Payment Requests.
65. 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.
66. Site - The location of the Project.
67. Specifications - Those portions of the Contract Documents consisting of written detailed, technical requirements and standards for materials, equipment, construction systems and workmanship as applied to the Work and certain administrative and procedural details applicable thereto. Specifications may be set forth on Drawings.

68. Standards - The items named in the Specifications to denote kind, quality or performance requirement for the Work. All bids and Proposals shall be based on the Standards as set forth in the Specifications.
69. Standard Conditions - The City's Standard Conditions for the Project consisting of Definitions, Notice to Bidders, Instructions to Bidders, Bid Form, Bidder's Affidavit, Non-Collusion Affidavit, Bid Guaranty, Substitution Sheet, Contract Form, Contract Bond and General Conditions.
70. State - The State of Ohio.
71. Subcontractor - A Person who undertakes to perform any part of the Work on the Project under a contract with any Person other than the City, in any tier.
72. Substitution - An item that a Bidder suggests might be used instead of a Standard, but not considered in determining the lowest and best Bidder.
73. Supplementary Conditions - Amendments to the Standard Conditions, which may describe conditions unique to a particular Project, including without limitation, provisions regarding the assignment of responsibility for refuse removal and for safety and security precautions and programs, regarding traffic maintenance, landscaping, temporary Project facilities and utilities, weather and fire protection, scaffolding, commissioning and equipment, materials and services to be used commonly by the Contractors and requiring Contractors to provide assistance in the utilization of any applicable equipment or system, preparation of operation and maintenance manuals, and training of City personnel for operation and maintenance of the Project.
74. Surety - A Person providing a Bid Guaranty, Contract Bond, or Maintenance Bond to a Bidder or Contractor, as applicable, to indemnify the City against all direct and consequential damages suffered by failure of the Bidder to execute the Contract Form or of the Contractor to perform the Contract and to pay all lawful claims of Subcontractors, Material Suppliers and laborers or to perform the Guarantee, as applicable.
75. Unit Price - The price per unit of measurement for materials or services described in the Contract Documents, which shall include overhead, profit and any other expense for the applicable Work.
76. Warranty - Legally enforceable assurance for the specified duration from Final Acceptance of quality or performance of materials or equipment.
77. 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.

**NOTICE TO BIDDERS**

Sealed bids will be received by the \_\_\_\_\_, at the Construction Management Department and shall be addressed to the \_\_\_\_\_ at \_\_\_\_\_, until [DATE] at [TIME] and will be opened and read publicly immediately thereafter at the same address, for furnishing the material and performing the labor for the execution of:

[PROJECT TITLE]

in accordance with the Drawings and Specifications prepared by \_\_\_\_\_ (the “Architect/Engineer”), and on file in the office of \_\_\_\_\_ (the “Construction Agent”), \_\_\_\_\_.

Separate bids will be received for:

CONTRACT

ESTIMATE OF COST

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

A pre-bid meeting will be held on [DAY], [DATE], at [TIME] at [ADDRESS].

The Instructions to Bidders, Bid Form, Contract Form, Drawings, Specifications, Bid Guaranty, Contract Bond and other Contract Documents may be examined at the following offices:

Copies of the Contract Documents, together with any further information desired, may be obtained from the Construction Agent. Contract Documents will not be forwarded until receipt of a non-refundable deposit in the amount of \$ \_\_\_\_\_ per set in favor of the City of North Royalton plus estimated shipping charges, if any.

Subcontractors and Material Suppliers may acquire for their convenience, Contract Documents or portions thereof by paying for the cost of reproduction and handling.

All questions should be directed to the Construction Agent at \_\_\_\_\_; (\_\_\_\_) \_\_\_\_-\_\_\_\_.  
Prevailing Wage Rates are applicable to the Contract.

Any Proposed Equal for a Standard shall be submitted to the Construction Agent not later than 10 days prior to the bid opening for review by the Architect/Engineer. If no Addendum is issued accepting the Proposed Equal as an Approved Equal, the Proposed Equal shall be considered rejected.

APPROVED FOR PUBLICATION

IN \_\_\_\_\_

ON \_\_\_\_\_

APPROVED \_\_\_\_\_

CITY OF NORTH ROYALTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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## ARTICLE 1 - CONTRACT INFORMATION

### 1.1. PROJECT SCHEDULING AND COORDINATION

- 1.1.1. Unless otherwise provided in the Contract Documents, the time for completion of the Project indicated on the Bid Form shall be the Contract Time applicable to the Bidders.
- 1.1.2. The Construction Agent shall be responsible for scheduling the Project, coordinating the Contractors, and providing other services identified in the Contract Documents. Critical path scheduling methods shall be utilized.
- 1.1.3. The award of separate Contracts for the Project requires sequential, coordinated and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance, delay or impact in the progress of any individual Contractor's Work and any such interference, disruption, hindrance, delay or impact is within the contemplation of the Bidder and the City. Each Contractor shall cooperate with the Construction Agent, the Architect/Engineer, Owner's Representative and any other Contractors to minimize interference, disruption, hindrance or delay of any Work on the Project. Each Contractor shall be an intended third-party beneficiary of the Contract of each other Contractor performing Work on the Project.

Except when the cause of a delay is the proximate result of the City's act or failure to act as required by Section 4113.62, ORC, the Bidder agrees that the Contract Price, as amended from time to time, in accordance with the Contract Documents, shall cover all amounts due from the City resulting from interference, disruption, hindrance, delay or impact, and the Bidder agrees that the Bidder will make no claim against the City for additional compensation or mitigation of Liquidated Damages for any such interference, disruption, hindrance, delay or impact and will accept as full satisfaction any extension of the Contract Time which may be provided by the City in accordance with the Contract Documents. This provision is intended to give effect to Section 4113.62, ORC, but to permit the City to exercise any rights not precluded by Section 4113.62, ORC, to the fullest extent permitted.

### 1.2. GIVING NOTICE

- 1.2.1 Whenever any provision of the Contract Documents requires the giving of notice prior to the execution of the Contract Form, such notice shall be in writing and 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, return receipt requested, postage prepaid, to the last business address of such Person known to the giver of the notice.
  - 1.2.1.1. All notices provided to the Bidder by the Architect/Engineer or the Construction Agent shall be copied to the other and the Authorized Representative.
  - 1.2.1.2. All notices provided to the Architect/Engineer or the Construction Agent by the Bidder shall be copied to the other and the Authorized Representative.
  - 1.2.1.3. All notices provided to the Authorized Representative by the Bidder shall be copied to the Architect/Engineer and the Construction Agent.

The Construction Agent shall provide to the Owner's Representative copies of all notices given or received.

- 1.2.2 Any notice required to be given under the Contract Documents may be given by facsimile, electronic mail or, if applicable, web-based project management software, provided the original signed notice is delivered within 3 business days after the electronic transmission.

## **ARTICLE 2 - BIDDING PROCEDURES**

### **2.1. EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

- 2.1.1 Before submitting a bid, the Bidder shall examine all Contract Documents, including the Drawings and Specifications for all divisions of Work for the Project, noting particularly all requirements which will affect the Bidder's Work in any way.
- 2.1.2 Failure of a Bidder to be acquainted with the amount, extent and nature of Work required to complete any portion of the Work, in conformity with all requirements of the Project as a whole wherever set forth in the Contract Documents, or reasonably inferred therefrom, shall not be a basis for additional compensation or time extension.
- 2.1.3 Before submitting a bid, the Bidder shall evaluate when the Work may be performed and examine and evaluate the Site and related Project conditions where the Work will be performed, including without limitation the following:
- 2.1.3.1 The possibility of interference, disruption, hindrance, delay or impact from other Contractors and from Persons other than the City;
  - 2.1.3.2 The condition, layout and nature of the Site and surrounding area;
  - 2.1.3.3 The availability and cost of labor;
  - 2.1.3.4 The availability and cost of materials, supplies and equipment;
  - 2.1.3.5 The cost of temporary utilities required;
  - 2.1.3.6 The cost of any permit or license required by a local or regional authority having jurisdiction over the Project;
  - 2.1.3.7 The usual weather conditions at the Site;
  - 2.1.3.8 Conditions bearing upon transportation, disposal, handling, and storage of materials and waste.
- 2.1.4 The Bidder shall correlate the Bidder's examination of the Contract Documents with the Bidder's evaluation of when the Work may be performed and examination and evaluation of the Site and related Project conditions.
- 2.1.5 [Unless otherwise specified in the Contract Documents, borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions, if any, are provided solely to share information available to the City and any use of, or reliance upon, such items by the Bidder is at the risk of the Bidder. The Bidder shall be afforded access to examine the Site and to obtain the Bidder's own borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions upon request made not less than 10 days prior to opening of the bids. No part of the Contract Documents shall be deemed to show actual or anticipated subsurface or concealed physical conditions or is to be relied upon by the Bidder as permitting any particular means, manner or technique of construction with respect to such conditions.]

## 2.2 PRE-BID MEETING

- 2.2.1 The Bidder is strongly encouraged to attend the pre-bid meeting, where the Architect/Engineer and the Construction Agent will answer questions regarding the Contract Documents. If not given in the Notice to Bidders, notice of the time and place of any pre-bid meeting to be held will be given by the Construction Agent to each Person of record holding Contract Documents.
- 2.2.2 The Construction Agent, with the assistance of the Architect/Engineer, shall prepare minutes of the pre-bid meeting, which will be provided to a Bidder upon request.
- 2.2.3 Failure of the Bidder to attend the pre-bid meeting, which results in the Bidder not being fully acquainted with the requirements of the Project, shall not be a basis for additional compensation or time extension.

## 2.3 REQUEST FOR INFORMATION

- 2.3.1 If the Bidder finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including the Drawings and Specifications, or between any Contract Document and any applicable provision of law, including the Ohio Building Code, the Bidder shall submit a written Request for Information (“RFI”) to the Architect/Engineer through the Construction Agent, an interpretation or clarification.
  - 2.3.1.1 The Bidder shall be responsible for prompt delivery of any RFI.
  - 2.3.1.2 In order to prevent an extension of the bid opening, the Bidder is encouraged to submit all such RFIs a minimum of 7 days before the bid opening.
- 2.3.2 If the Architect/Engineer determines that an interpretation or clarification is warranted, the Architect/Engineer shall issue an Addendum, and provide a copy to each Person of record holding Contract Documents. Any Addendum issued within 72 hours before any bid opening, excluding Saturdays, Sundays and legal holidays, shall extend the bid opening by 1 week, with no further advertising required. An Addendum may be provided by facsimile, electronic mail or, if applicable, web-based project management software, or may be otherwise furnished to each Person of record holding Contract Documents.
- 2.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect/Engineer, or in any manner other than a written Addendum, shall not be binding and the Bidder shall not rely upon any such interpretation or clarification.
- 2.3.4 The Bidder shall not, at any time before or after the execution of the Contract Form, be compensated or granted a time extension for a Request for Change Order or claim alleging insufficient data, incomplete, ambiguous, conflicting or erroneous Contract Documents, any discrepancy on or between Contract Documents or between any Contract Document and any applicable provision of law or incorrectly assumed conditions, including subsurface or other concealed physical conditions, regarding the nature, extent or character of the Work, if the Bidder did not submit an RFI regarding such matter prior to the bid opening.

## 2.4 STANDARDS

- 2.4.1 The articles, devices, materials, equipment, forms of construction, fixtures and other items named in the Specifications to denote kind, quality or performance requirement for each significant portion of the Work shall be known as Standards and all bids shall be based upon those Standards.
- 2.4.2 Where 2 or more Standards are named, the Bidder may furnish any one of those Standards.

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

## 2.5 PROPOSED EQUALS AND SUBSTITUTIONS PRIOR TO BID OPENING

2.5.1 If the Bidder proposes to use an article, device, material, equipment, form of construction, fixture or item other than those Standards named in the Specifications, the Bidder shall certify that the item is equal in quality, and in all aspects of performance and appearance, to the Standards specified.

2.5.2 In addition, the Bidder shall submit information to the Architect/Engineer, through the Construction Agent, not later than 10 days prior to the bid opening, which information shall include:

2.5.2.1 The name and a complete description of the Proposed Equal, including plans, performance and test data, and other information necessary for a complete evaluation of the Proposed Equal;

2.5.2.2 A statement setting forth any changes which the Proposed Equal will require in the Contract Documents or the Project.

2.5.3 If the Architect/Engineer approves the Proposed Equal as a Standard, the Architect/Engineer shall issue an Addendum to that effect to each Person of record holding Contract Documents.

2.5.4 If the Architect/Engineer does not approve the Proposed Equal as a Standard, the Architect/Engineer shall inform the Bidder of the disapproval in writing, stating the reason for the disapproval, which decision shall be final. The Architect/Engineer may reject a Proposed Equal because that the Bidder failed to provide sufficient information to enable the Architect/Engineer to completely evaluate the Proposed Equal without delaying the scheduled bid opening.

2.5.5 If no Addendum is issued approving the Proposed Equal as a Standard, the Bidder may list the item on the Substitution Sheet in accordance with the following subparagraph.

2.5.6 A Bidder desiring consideration for the use of an article, device, material, equipment, form of construction, fixture or item other than those Standards named in the Specifications shall submit a proposal for the substitution of same for the applicable Standard, using the Substitution Sheet attached to the Bid Form and listing, for each proposed substitution: the Standard specified, the substitution, and the change in bid amount, (or indicate no change, if applicable). The name and a complete description including plans, performance and test data, and other information necessary for a complete evaluation of each substitution shall be furnished to the Architect/Engineer by the Bidder promptly upon request.

2.5.7 Substitutions shall not be considered in determining the lowest and best Bidder but may be considered in rejecting all bids.

2.5.8 A substitution from any Bidder may be incorporated in the Contract by Change Order.

## 2.6 BID FORM

2.6.1 Each bid shall contain the name of every Person interested therein, be submitted on the Bid Form and be sealed in an envelope clearly marked as containing a bid, indicating the Project name, the date of the bid opening and the Contract or scope of Work, if applicable, on the envelope.

2.6.1.1 Any change, alteration, deletion or addition in the wording of the Bid Form may cause a bid to be rejected.

2.6.1.2 Unless the Bidder withdraws the bid as provided in Article IB 4, the Bidder is required to comply with all requirements of the Contract Documents, regardless of whether the

Bidder had actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.

- 2.6.2 The Bidder shall fill in all relevant blank spaces in the Bid Form in ink or other permanent means and not in pencil.
- 2.6.2.1 The Bidder shall show the final total amount of the Base Bid and the amounts of any Alternates in both words and figures. In the case of a conflict between the words and figures, the amount shown in words shall govern, where such words are not ambiguous. When the Bidder's intention and the meaning of the words are clear, omissions or misspellings of words will not render the words ambiguous. Where there is a conflict between the separate amounts for Labor and Materials and the total thereof, the separate amounts shall govern and a corrected total shall be used for the comparison of the bids.
- 2.6.2.2 Any alteration or erasure of items filled in on the Bid Form shall be initialed by the Bidder in ink or other permanent means and not in pencil.
- 2.6.3 If the Bidder is a corporation, limited liability company, partnership or sole proprietorship, an officer, member, partner or principal of the Bidder, as applicable, shall print or type the legal name of the Bidder on the line provided and **sign the Bid Form**. If the Bidder is a joint venture, an officer, member, partner or principal, as applicable, of each participant in the joint venture shall print or type the legal name of the applicable participant on the line provided and sign the Bid Form on behalf of that participant. All signatures must be original.
- 2.6.4 Subject to the provisions of this paragraph IB 2.6, the completed Bid Form of the Bidder with whom the City executes a Contract Form shall be incorporated into the Contract Form as if fully rewritten therein.
- 2.6.5 The Bidder shall not provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any kickback or illegal gratuity to or from any officer or employee of the City; nor shall the Bidder knowingly include, directly or indirectly, the amount of any kickback or illegal gratuity in any bid.

## 2.7 ALTERNATES

- 2.7.1 When an Alternate is listed on the Bid Form, the Bidder shall fill in the applicable blank with an amount that will increase or decrease the Base Bid and indicate which by circling the word "ADD" or the word "DEDUCT" as applicable. The City reserves the right to accept or reject any or all bids on Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected in any order.
- 2.7.1.1 If no change in the bid amount is required, indicate "No Change" or \$0 dollars.
- 2.7.1.2 Failure to make an entry or an entry of "No Bid," "N/A," or similar entry for any Alternate may cause the bid to be rejected as nonresponsive if that Alternate is selected.
- 2.7.1.3 If an Alternate is not selected, an entry as listed in paragraph IB 2.7.1.2 on that Alternate will not, by itself, render a bid nonresponsive.

## 2.8 ALLOWANCES

- 2.8.1 When an Allowance is listed on the Bid Form, the amount of the Allowance shall be included in the Base Bid. A deduct Change Order shall be issued for any difference between the amount of the Allowance and the cost of the related Work. The Contractor must obtain a Change Order before

performing any Work in excess of the amount of an Allowance in order to be compensated for the excess.

## 2.9 UNIT PRICES

- 2.9.1 When Unit Prices are requested on the Bid Form, the Bidder shall complete all applicable blanks. Any scheduled quantities listed by the City are to be considered as approximate and are to be used only for the comparison of bids for purposes of award of the Contract and to determine the maximum quantity to be provided without a Change Order. If Unit Prices are sought only for informational purposes, they shall not be used for comparison of bids.
- 2.9.2 Unless otherwise specified in the Contract Documents, the Unit Prices and the totals or extensions thereof set forth shall include all materials, equipment, insurance, labor, delivery, installation, overhead, profit and any other cost or expense, in connection with or incidental to, the performance of that portion of the Work to which the Unit Prices apply. The Bidder shall submit Unit Prices for all items listed unless other instructions are stated on the Bid Form.
- 2.9.3 Where there is a conflict between a Unit Price and any total or extension thereof made by the Bidder, the Unit Price shall govern and a corrected total or extension of such Unit Price shall be made and such corrected total or extension shall be used for the comparison of the bids and to determine the maximum quantity to be provided without a Change Order.
- 2.9.4 The Bidder agrees that the City may increase, decrease or delete entirely the scheduled quantities of Work to be done and materials to be furnished after execution of the Contract Form without invalidating the Contract.
- 2.9.5 Payments, except for lump sum items in Unit Price Contracts, will be made to the Contractor only for the actual quantities of Work performed or materials furnished in accordance with the Contract Documents, but not in excess of the maximum set by the scheduled quantities. The Contractor must obtain a Change Order prior to performing Work or furnishing materials in excess of the scheduled quantities in order to be compensated for the excess.

## 2.10 REQUIRED SUBMITTALS WITH BID FORM

- 2.10.1 A bid shall be rejected as nonresponsive if the Bidder fails to submit the following submittals with the Bid Form in a sealed envelope:
  - 2.10.1.1 A Bid Guaranty as provided in Article IB 6 meeting the requirements of Section 153.54 to 153.571, ORC;
  - 2.10.1.2 Power of Attorney of the agent signing for the Surety.
  - 2.10.1.3 An executed Bidder's Affidavit in the form provided.
  - 2.10.1.4 An Executed Non-Collusion Affidavit in the form provided.
  - 2.10.1.5 Adequate proof that the Bidder is enrolled in the Ohio Bureau of Workers' Compensation Drug-Free Workplace Program or a similar program approved by the Bureau of Workers' Compensation and in good standing in the drug-free workplace program. The Bureau of Workers' Compensation Drug Free Workplace Program includes and requires a written substance abuse policy, drug/alcohol educational awareness, substance testing, assistance for all employees, and training for all supervisors of the Bidder. Such program must be sponsored or approved by the Bureau of Workers' Compensation. This policy shall apply to all support employees, staff, management, craft persons, estimators, supervisors, owners, delivery personnel, and all those employed by the Bidder.

## 2.11 CHANGE IN THE BID AMOUNT

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

## 2.12 COMBINED BIDS

- 2.12.1 If only 2 items are listed on the Bid Form, the Bidder may only submit 1 Combined Bid with the combination of those 2 items.
- 2.12.2 If more than 2 items are listed on the Bid Form, the Bidder may, as described on the Bid Form, submit a combined Bid by circling the items on which the Bidder is bidding in the Combined Bid.
  - 2.12.2.1 The Bidder may only submit 1 Combined Bid on a Bid Form.
  - 2.12.2.2 The Bidder may submit multiple Combined Bids by submitting separate Bids in accordance with the Contract Documents. Such separate Bids shall contain no more than 1 Combined Bid per Bid Form pursuant to IB subparagraph 2.12.2.1. If the Bidder submits multiple Combined Bids with a single Bid Form, the Bidder's bid maybe rejected as non-responsive.

## **ARTICLE 3 - BID OPENING AND CONSIDERATION OF BIDS**

### 3.1 DELIVERY OF BID

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

### 3.2 BID OPENING

- 3.2.1 Sealed bids will be received at the office designated by the City until the time stated when all bids will be opened, read and the tabulation made public.
- 3.2.2 The public opening and reading of bids is for informational purposes only and is not to be construed as an acceptance or rejection of any bid submitted.
- 3.2.3 The contents of the bid envelope, except for any information which is not subject to disclosure as a public record in accordance with applicable law, shall be public records and open for inspection, upon request, at any time after the bid opening.

### 3.3 BID OPENING EXTENSION

- 3.3.1 If any Addendum is issued within 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays and legal holidays, the bid opening shall automatically be extended 1 week, with no further advertising required.
- 3.3.2 If any Addendum is issued more than 72 hours prior to the published time for the bid opening, excluding Saturdays, Sundays, and legal holidays, the bid opening date may be revised by the Addendum.

### 3.4 BID EVALUATION CRITERIA

- 3.4.1 The City reserves the right to accept or reject any or all bids, in whole or in part, and reserves the right to reject any bid or bids and to award the Contract to any remaining Bidder the City determines to be the lowest, responsive, and responsible Bidder. The City reserves the right to accept or reject any or all Alternates, in whole or in part, and the right to reject any Alternate or Alternates and to accept any remaining Alternate or Alternates. Alternates may be accepted or rejected in any order.
- 3.4.2 The City may reject the bid of any Bidder who has engaged in collusive bidding, been involved in violations of ethics laws or who has an unresolved finding against it by the Auditor of State as provided in Section 9.24, ORC, as not the lowest and best bid.
- 3.4.3 The City reserves the right to waive, or to allow any Bidder a reasonable opportunity to cure a minor irregularity or technical deficiency in a bid, provided the irregularity or deficiency does not affect the bid amount or otherwise give the Bidder a competitive advantage. Noncompliance with any material requirements of the Contract Documents may cause a bid to be rejected as non-responsive.

### 3.5 BID EVALUATION PROCEDURE

- 3.5.1 The Contract will be awarded to the lowest and best Bidder as determined in the discretion of the City or all bids will be rejected in accordance with the following procedures:
  - 3.5.1.1 In determining which Bidder is the lowest, the City shall consider the Base Bid and the amounts bid for any Alternate or Alternates which the City determines to accept. Substitutions shall not be considered.
  - 3.5.1.2 The total of the bid amounts for the accepted Alternate or Alternates shall be added to or deducted from the Base Bid, as applicable, for the purpose of determining the lowest Bidder.
  - 3.5.1.3 If a Bidder submits a Combined Bid for two or more Contracts, the City may determine that such Bidder is lowest if the Combined Bid is lower than the lowest separate bids for such Contracts in the aggregate or if the separate bids do not cover all applicable Work.
- 3.5.2 A Bidder for a Contract shall not be considered best if the Bidder's bid fails to respond to the Contract Documents in any material respect or contains any irregularities or deviations from the Contract Documents which would affect the amount of the bid or otherwise give the Bidder a competitive advantage.
  - 3.5.2.1 A Bidder shall be rejected as not best if the Bidder's bid contains a Bid Guaranty executed by a Surety not licensed in Ohio or a Bid Guaranty that is otherwise determined to be insufficient by the City.

- 3.5.2.2 A Bidder may be rejected as not best if the Bidder's Bid does not contain an executed Bidder's Affidavit and Non-Collusion Affidavit.
- 3.5.2.3 If the lowest Bidder is rejected under this subparagraph IB 3.5.2, such Bidder shall be notified according to paragraph IB 3.6.
- 3.5.3 In determining whether a Bidder is best, factors to be considered include;
  - 3.5.3.1 Preferences required by law, where applicable;
  - 3.5.3.2 The experience of the Bidder;
  - 3.5.3.3 The financial condition of the Bidder;
  - 3.5.3.4 Compliance by the Bidder and related Persons with ethic laws.
  - 3.5.3.5 The conduct and performance of the Bidder on previous contracts, including compliance with prevailing wage laws
  - 3.5.3.6 The facilities of the Bidder;
  - 3.5.3.7 The management skills of the Bidder;
  - 3.5.3.8 The ability of the Bidder to execute the Contract properly;
  - 3.5.3.9 The evaluation of a bid below the median of other bids pursuant to paragraph IB 5.2;
  - 3.5.3.10 A Bidder who submits a bid for Work for which a Contractor's license is required by Chapter 4740, ORC, including electrical, plumbing, hydronics, refrigeration or heating, ventilating and air conditioning, shall provide evidence of a valid Contractor's license from the Ohio Construction Industry Licensing Board, or successor.
- 3.5.4 The Construction Agent shall obtain from the lowest Bidder who is not rejected under subparagraph IB 3.5.2 any information the Authorized Representative deems appropriate to the consideration of factors showing that such Bidder is best, including the following:
  - 3.5.4.1 Overall experience of the Bidder, including number of years in business under present and former business names;
  - 3.5.4.2 Complete listing of all ongoing and completed public and private construction contracts of the Bidder in the last three years, including the nature, status and value of each contract and a name, address, electronic mail address, and telephone number for a representative of the owner of each related project;
  - 3.5.4.3 Complete listing of any public or private construction projects for which the Bidder has been terminated for cause or declared in default and any Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), or other regulating entity issues, violations, notices or citations in the last 10 years including debarments and prevailing wage determinations;
  - 3.5.4.4 Certified financial statement with trade and bank references;
  - 3.5.4.5 Description of relevant facilities of the Bidder;
  - 3.5.4.6 Description of the management experience of the Bidder's project manager(s) and superintendent(s);

- 3.5.4.7 Complete list of all Subcontractors and Material Suppliers including addresses;
- 3.5.4.8 To support a Contract Bond, a current and signed Certificate of Compliance required under Section 9.311, ORC, issued by the Department of Insurance, showing the Surety is licensed to do business in Ohio;
- 3.5.4.9 Current Ohio Workers' Compensation Certificate;
- 3.5.4.10 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.94, inclusive, ORC.

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

- 3.5.5 If the City determines that such lowest Bidder is not best, and all bids are not rejected, the City shall follow the procedure set forth in subparagraphs IB 3.5.2, IB 3.5.3 and IB 3.5.4 with each next responsive Bidder until the Contract is awarded, all bids are rejected or all responsive Bidders are determined to be not best.
- 3.5.6 The Construction Agent may obtain the information described in subparagraph IB 3.5.4 from several Bidders simultaneously, but shall review each Bidder's information separately and not comparatively.
- 3.5.7 Each Bidder shall provide requested information within such time limits as the Construction Agent shall establish.

### 3.6 REJECTION OF BID

- 3.6.1 If the lowest Bidder is not best, the City shall reject such bid and shall notify the Bidder in writing by certified mail, return receipt requested, of the finding and the reasons for the finding.
- 3.6.2 A Bidder notified in accordance with subparagraph IB 3.6.1 may object to such Bidder's rejection by filing a written protest which must be received by the Authorized Representative within 5 days of the notification provided pursuant to subparagraph IB 3.6.1.
- 3.6.3 Upon receipt of a timely protest, the Authorized Representative shall meet with the protesting Bidder to listen to the Bidder's objections.
  - 3.6.3.1 No award of the Contract shall become final until after the Authorized Representative has met with all Bidders who have timely filed protests and the award of the Contract is affirmed by the Council.
  - 3.6.3.2 If all protests are rejected in the City's discretion, the award of the Contract shall be affirmed by the Council or all bids shall be rejected.
  - 3.6.3.3 If a protest is not rejected, any procedures for the determination of the lowest and best Bidder which have not already been applied to the applicable Bidder shall be completed. If, in accordance with the applicable procedures, such Bidder is determined to be the lowest and best Bidder, the Contract shall be awarded to such Bidder and any previous award or awards shall be reversed or all bids shall be rejected.

### 3.7 NOTICE OF INTENT TO AWARD

- 3.7.1 The City shall notify the apparently successful Bidder and its Surety that upon execution of the Contract Form by the Bidder and satisfactory compliance with all conditions precedent for execution of the Contract Form by the City in accordance with paragraph IB 7.3 by the Bidder, within the time specified, the City intends to award the Contract to the Bidder.
- 3.7.2 The City reserves the right to rescind any Notice of Intent to Award if the City determines the Notice of Intent to Award was issued in error, or if the Bidder fails to timely and satisfactorily execute the Contract Form or comply with all conditions precedent to execution of the Contract Form.
- 3.7.3 The issuance of a Notice of Intent to Award is for informational purposes only and is not to be construed as conferring upon the Bidder any rights to or under the Contract.

## **ARTICLE 4 - WITHDRAWAL OF BID**

### 4.1 WITHDRAWAL PRIOR TO BID OPENING

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

### 4.2 WITHDRAWAL AFTER BID OPENING

- 4.2.1 All bids shall remain valid and open for acceptance for a period of at least 60 days after the bid opening; provided, however that within 2 business days after the bid opening a Bidder may withdraw a bid from consideration if the bid amount was substantially lower than the amounts of other bids, providing the bid was submitted in good faith, and the reason for the bid amount being substantially lower was a clerical mistake, as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of Work, labor or material made directly in the compilation of the bid amount.
  - 4.2.1.1 Notice of a request to withdraw a bid must be made in writing and filed with the Authorized Representative within 2 business days after the bid opening. The City reserves the right to request that the Bidder submit evidence substantiating the Bidder's request to withdraw the bid.
  - 4.2.1.2 No bid may be withdrawn under paragraph IB 4.2.1 when the result would be the awarding of the Contract on another bid to the same Bidder, without the written approval of the City
- 4.2.2 If a bid is withdrawn under paragraph IB 4.2.1, the City may award the Contract to another Bidder the City determines to be the lowest and best Bidder or reject all bids and advertise for other bids. If the City advertises for other bids, the withdrawing Bidder shall pay the costs, in connection with the rebidding, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, if the City finds that such costs would not have been incurred but for such withdrawal.
- 4.2.3 A Bidder may withdraw its bid at any time after the 60-day period described in paragraph 4.2.1 by written notice to the Authorized Representative.

### 4.3 REFUSAL BY CITY TO ACCEPT WITHDRAWAL

4.3.1 If the City contests the right of the Bidder to withdraw a bid pursuant to paragraph IB 4.2.1, a hearing shall be held by the Authorized Representative within 10 days after the bid opening and an order shall be issued by the City allowing or denying the claim of such right within 5 days after such hearing is concluded. The City shall give the withdrawing Bidder timely notice of the time and place of any such hearing.

4.3.1.1 The City shall make a stenographic record of all testimony, other evidence, and rulings on the admissibility of evidence presented at the hearing. The Bidder shall pay the costs of the hearing.

#### 4.4 REFUSAL BY BIDDER TO PERFORM

4.4.1 If the City denies the request for withdrawal and the Bidder elects to litigate or otherwise refuses to sign or perform the Contract, the City may reject all bids or award the Contract to the next lowest and best Bidder, as determined by the City in its discretion.

#### 4.5 EFFECT OF WITHDRAWAL

4.5.1 No Bidder who is permitted, pursuant to paragraph IB 4.2.1, to withdraw a bid, shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the Person to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the Project for which the withdrawn bid was submitted, without the written approval of the City.

4.5.2 The Person to whom the Contract is awarded and the withdrawing Bidder shall be jointly liable to the City in an amount equal to any compensation paid to or for the benefit of the withdrawing Bidder without such approval.

### **ARTICLE 5 - BID ESTIMATE**

#### 5.1 LIMIT ON AWARD

5.1.1 No Contract shall be entered into if the price of the Contract, or if the Project involves multiple Contracts where the total price of all Contracts for the Project, is in excess of 10% above the estimate.

#### 5.2 SUBSTANTIALLY LOW BID

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

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

5.2.1.2 The City reviews and approves the Bidder as responsible pursuant to paragraph IB 3.5.

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

## ARTICLE 6 - BID ATTACHMENTS

### 6.1 BID GUARANTY

- 6.1.1 The Bidder must file a Bid Guaranty with the Bidder's bid, payable to the City of North Royalton, in the form of either:
- 6.1.1.1 The signed Bid Guaranty and Contract Bond contained in the Contract Documents, for the full amount of the Base Bid plus all add Alternates; or
  - 6.1.1.2 A certified check, cashier's check or letter of credit in the amount of 10% of the Base Bid plus all add Alternates. Any letter of credit shall be issued by a bank, comply with Chapter 1305, ORC and be revocable only by the City.
- 6.1.2 The Bid Guaranty shall be in form and substance satisfactory to the City and shall serve as an assurance that the Bidder will, upon issuance of a Notice of Intent to Award, execute the Contract Form and comply with all conditions precedent for Contract execution, by the City within the time specified by the Contract Documents. **ANY BID GUARANTY MUST BE PAYABLE TO THE CITY OF NORTH ROYALTON. A BID MAY BE REJECTED IF THE BID GUARANTY IS PAYABLE TO ANY OTHER PERSON.**
- 6.1.3 **IF THE BLANK LINES ON THE BID GUARANTY AND CONTRACT BOND FOR THE AMOUNT ARE NOT FILLED IN, THE PENAL SUM WILL AUTOMATICALLY BE THE FULL AMOUNT OF THE BASE BID PLUS ALL ADD ALTERNATES.** If those blank lines are filled in, the amount must not be less than the full amount of the Base Bid plus all add Alternates, stated in dollars and cents. **A PERCENTAGE IS NOT ACCEPTABLE.**
- 6.1.4 The Bid Guaranty and Contract Bond must be signed by an authorized agent with Power of Attorney from a Surety. The Bid Guaranty and Contract Bond must be issued by a Surety which has a Best's rating of "A" or better with a financial class of "VIII" or better and which is authorized by the State Department of Insurance to transact business in Ohio.
- 6.1.5 The requirements of Section 3901.86, ORC, may be applicable to require the Bid Guaranty and Contract Bond be countersigned by an Ohio resident agent. The Bidder must determine whether this requirement is applicable to the Bidder's Surety.
- 6.1.6 Bid Guaranties in the form of a certified check, cashier's check or letter of credit will be returned to all unsuccessful Bidders 90 days after the bid opening or upon execution of the Contract Form by the successful Bidder, whichever is earlier and will be returned to the successful Bidder upon providing the Contract Bond required by law in form and substance, and from a Surety, satisfactory to the City.

### 6.2 BOND FORFEITURE

- 6.2.1 If for any reason, other than as authorized by subparagraph IB 4.2.1 or paragraph IB 6.3, the Bidder fails to execute the Contract Form, and the City awards the Contract to another Bidder which the City determines is the lowest, responsive, and responsible Bidder, the Bidder who failed to execute the Contract Form is liable to the City for the difference between such Bidder's bid and the bid of the lowest, responsive, and responsible Bidder, or for a penal sum not to exceed 10% of the bid amount, whichever is less.
- 6.2.2 If the City then awards a Contract to another Bidder which the City determines is the lowest, responsive, and responsible Bidder and such Bidder also fails or refuses to execute the Contract Form, the liability of such lowest, responsive, and responsible Bidder, except as provided in paragraph IB 6.3, is the amount of the difference between the bid amounts of such lowest, responsive, and responsible Bidder and another Bidder which the City determines is the lowest,

responsive, and responsible Bidder, but not in excess of the liability specified in subparagraph IB 6.2.1. Liability on account of an award to each succeeding lowest and best Bidder shall be determined in like manner.

- 6.2.3 If the City does not award the Contract to the another Bidder which the City determines is the lowest, responsive, and responsible Bidder but resubmits the Project for bidding, the Bidder failing to execute the Contract Form, except as provided in paragraph IB 6.3, is liable to the City for a penal sum not to exceed 10% of such Bidder's bid amount or the costs in connection with the resubmission, of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders, whichever is less.

### 6.3 EXCEPTION TO BOND FORFEITURE

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

- 6.3.2 If a bid is withdrawn pursuant to subparagraph IB 6.3.1, the City may award the Contract to another Bidder which the City determines is the lowest, responsive, and responsible Bidder or reject all bids and resubmit the Project for bidding, and neither the withdrawing Bidder nor such Bidder's Surety shall be liable for the difference between the Bidder's bid and that of another Bidder which the City determines is the lowest, responsive, and responsible Bidder, for a penal sum, or for the costs of printing new Contract Documents, required advertising and printing and mailing notices to prospective Bidders.

### 6.4 CONTRACT BOND

- 6.4.1 At the time the Bidder provides the signed Contract Form to the City, the Bidder shall also provide the Contract Bond required by law in form and substance, and from a Surety, satisfactory to the City. The Surety must be authorized by the State Department of Insurance to transact business in Ohio.
- 6.4.2 The Contract Bond shall be in the full amount of the Contract to indemnify the City against all direct and consequential damages suffered by failure of the Contractor to perform according to the provisions of the Contract Documents and in accordance with the Drawings, Specifications, details and bills of material therefor and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed or materials furnished in carrying forward, performing or completing the Contract.
- 6.4.3 The Contract Bond shall be supported by a Power of Attorney of the agent signing for a Surety. The Contract Bond shall be supported by a current and signed Certificate of Compliance or Certificate of Authority required under Section 9.311, ORC, issued by the Ohio Department of Insurance, showing the Surety is licensed to do business in Ohio.

### 6.5 PERSONAL PROPERTY TAX STATEMENT

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

After the award by a taxing district of any contract let by competitive bid and prior to the time the contract is entered into, the person making a bid shall submit to the district's fiscal officer a statement affirmed under oath that the person with whom the contract is to be made was not charged

at the time the bid was submitted with any delinquent personal property taxes on the general tax list of personal property of any county in which the taxing district has territory or that such person was charged with delinquent personal property taxes on any such tax list, in which case the statement shall also set forth the amount of such due and unpaid delinquent taxes and any due and unpaid penalties and interest thereon. If the statement indicates that the taxpayer was charged with any such taxes, a copy of the statement shall be transmitted by the fiscal officer to the county treasurer within 30 days of the date it is submitted.

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

The completed and executed statement should be enclosed with the Bid Form.

[Balance of page intentionally left blank]

PROJECT NAME: \_\_\_\_\_  
CONTRACT NO.: \_\_\_\_\_

PERSONAL PROPERTY TAX  
CERTIFICATION  
REQUIRED BY OHIO REVISED CODE  
SECTION 5719.042

[NOTE: THIS AFFIDAVIT IS TO BE REPRODUCED ON THE BIDDER'S LETTERHEAD AND SIGNED BY  
THE APPROPRIATE SIGNATORY BEFORE A NOTARY PUBLIC.]

[TITLE]  
CITY OF NORTH ROYALTON

\_\_\_\_\_  
BIDDER'S NAME

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ SS:

THE UNDERSIGNED HEREBY CERTIFIES THAT THE BIDDER TO WHOM CONTRACT AWARD IS  
BEING CONSIDERED WAS NOT CHARGED WITH ANY DELINQUENT PERSONAL PROPERTY TAX  
ON THE GENERAL TAX LIST OF PERSONAL PROPERTY FOR ANY COUNTY IN THE STATE OF OHIO  
AT THE TIME THE BID WAS SUBMITTED FOR THE ABOVE-REFERENCED CONTRACT.

NAME: \_\_\_\_\_  
(SIGNATURE)

NAME: \_\_\_\_\_  
(PRINTED)

TITLE: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ SS:

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

## **ARTICLE 7 - CONTRACT AWARD AND EXECUTION**

### **7.1 NONCOMPLIANCE WITH CONDITIONS PRECEDENT**

7.1.1 The award of the Contract and the execution of the Contract Form by the City are conditional upon the requirements that the lowest and best Bidder will execute the Contract Form and comply with all conditions precedent for execution of the Contract Form by the City listed in paragraph IB 7.3 within 10 days of the date of the Notice of Intent to Award.

7.1.1.1 Failure by the Bidder to execute the Contract Form or to comply with the conditions precedent for execution of the Contract Form by the City within 10 days of the date of the Notice of Intent to Award shall be cause permitting the City to cancel the Notice of Intent to Award for the Bidder's failure to be best, and to award the Contract to another Bidder which the City determines is the lowest and best Bidder, to reject all bids or to resubmit the Contract for bidding, at the discretion of the City.

7.1.1.2 The City may extend the time for the Bidder to execute the Contract Form and comply with the conditions precedent for execution of the Contract Form by the City for good cause shown. No extension shall operate as a waiver of the requirements that the Bidder timely execute the Contract Form or comply with the conditions precedent for execution of the Contract Form by the City.

### **7.2 TIME LIMITS**

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

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

7.2.1.2 If the cause of the failure to execute the Contract within 60 days of the bid opening is due to matters for which the City is solely responsible, the Contractor shall be entitled to submit a Request for a Change Order seeking payment for verifiable increased costs in materials, labor or subcontracts pursuant to a Change Order, not to exceed the difference between the Contractor's bid amount and the bid amount of the next lowest Bidder

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

### **7.3 CONDITIONS PRECEDENT FOR EXECUTION OF THE CONTRACT FORM BY THE CITY**

7.3.1 Contract Bond, and to support the Contract Bond, a Certificate of Compliance issued by the State Department of Insurance, showing the Surety is licensed to do business in Ohio;

7.3.2 Current Ohio Workers' Compensation Certificate;

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

- 7.3.4 If the Bidder is a foreign corporation, i.e., not incorporated under the laws of Ohio, a Certificate of Good Standing from the Secretary of State showing the right of the Bidder to do business in the State; or, if the Bidder is an individual or partnership, the Bidder has filed with the Secretary of State a Power of Attorney designating the Secretary of State as the Bidder's agent for the purpose of accepting service of summons in any action brought under Section 153.05, ORC, or under Sections 4123.01 to 4123.94, inclusive, ORC;
- 7.3.5 Personal Property Tax Statement (if not included with bid);
- 7.3.6 Evidence of registration of the Contractor and all of the Contractor's Subcontractors with the Building Department and the City's Finance Department for municipal income tax purposes;
- 7.3.7 Declaration Regarding Material Assistance/Non-Assistance to Terrorist Organization in the form provided by the State Department of Public Safety;
- 7.3.8 Affidavit showing compliance with Section 3517.13, ORC;
- 7.3.9 Evidence of compliance with Sections 9.23 to 9.239, ORC, if applicable;
- 7.3.10 Current license issued by the Ohio Construction Industry Licensing Board, if applicable.

#### 7.4 NOTICE TO PROCEED AND SUBMITTALS

- 7.4.1 The Authorized Representative shall issue a Notice to Proceed to the Contractor, which shall establish the date for commencement of the Contract Time. Within 10 days of the date of the Notice to Proceed, the Contractor shall furnish the following submittals to the Architect/Engineer:
  - 7.4.1.1 Schedule of Values;
  - 7.4.1.2 Preliminary Construction Schedule including Shop Drawings and other submittals;
  - 7.4.1.3 List of Subcontractors including names, U.S. and electronic mail addresses and telephone numbers;
  - 7.4.1.4 List of Material Suppliers including names, U.S. and electronic mail addresses and telephone numbers;
  - 7.4.1.5 Outline of qualifications of proposed Superintendent.

#### 7.5 WAGE PAYMENT DATES

- 7.5.1 The Bidder shall base its bid upon the prevailing rates of wages as ascertained by the State Department of Commerce, Division of Labor & Worker Safety, Wage and Hour Bureau for the Project as provided in Sections 4115.03 through 4115.21, ORC, or the Federal Department of Labor as provided in the Davis-Bacon Act, as applicable.
- 7.5.2 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide to the Prevailing Wage Coordinator, through the Construction Agent, a schedule of dates during the Contract Time on which wages will be paid to employees of the Contractor and its Subcontractors for the Project.

### **ARTICLE 8 - APPLICABLE LAW AND FORUM**

#### 8.1 STATE COURTS AND LAW

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



ALL LABOR, for the sum of.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS, for the sum of .....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS (“BASE BID”) \$ \_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[If Alternates are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALTERNATE ITEM \_\_\_\_\_ If Alternate is accepted,

[add to/deduct from] Base Bid.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_]

[If Unit Prices are requested only for informational purposes, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (for information only)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
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ITEM 2. PLUMBING CONTRACT

[If Allowances are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALLOWANCES (Include the Allowances Subtotal in the All Labor amount below)

<u>Description</u>	<u>Section</u>	<u>Amount</u>
	ALLOWANCES SUBTOTAL	\$ _____

[If Unit Prices are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (Include the Unit Prices Subtotal in the All Materials amount below)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
	UNIT PRICES SUBTOTAL			\$ _____]

ALL LABOR, for the sum of.....\$\_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS, for the sum of .....\$\_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS (“BASE BID”) \$\_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[If Alternates are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALTERNATE ITEM\_\_\_\_\_ If Alternate is accepted,

[add to/deduct from] Base Bid.....\$\_\_\_\_\_

Sum in words: \_\_\_\_\_]

[If Unit Prices are requested only for informational purposes, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (for information only)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
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ITEM 3. HVAC CONTRACT

[If Allowances are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALLOWANCES (Include the Allowances Subtotal in the All Labor amount below)

<u>Description</u>	<u>Section</u>	<u>Amount</u>
	ALLOWANCES SUBTOTAL	\$_____

[If Unit Prices are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (Include the Unit Prices Subtotal in the All Materials amount below)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
			UNIT PRICES SUBTOTAL	\$_____]

ALL LABOR, for the sum of.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS, for the sum of .....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS (“BASE BID”) \$ \_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[If Alternates are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALTERNATE ITEM \_\_\_\_\_ If Alternate is accepted,

[add to/deduct from] Base Bid.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_ ]

[If Unit Prices are requested only for informational purposes, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (for information only)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
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ITEM 4. ELECTRICAL CONTRACT

[If Allowances are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALLOWANCES (Include the Allowances Subtotal in the All Labor amount below)

<u>Description</u>	<u>Section</u>	<u>Amount</u>
	ALLOWANCES SUBTOTAL	\$ _____

[If Unit Prices are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (Include the Unit Prices Subtotal in the All Materials amount below)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
			UNIT PRICES SUBTOTAL	\$ _____ ]

ALL LABOR, for the sum of.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS, for the sum of .....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS (“BASE BID”) \$ \_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[If Alternates are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALTERNATE ITEM \_\_\_\_\_ If Alternate is accepted,

[add to/deduct from] Base Bid.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_ ]

[If Unit Prices are requested only for informational purposes, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (for information only)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
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ITEM 5. FIRE PROTECTION CONTRACT

[If Allowances are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALLOWANCES (Include the Allowances Subtotal in the All Labor amount below)

<u>Description</u>	<u>Section</u>	<u>Amount</u>
	ALLOWANCES SUBTOTAL	\$ _____

[If Unit Prices are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (Include the Unit Prices Subtotal in the All Materials amount below)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
--------------------	-------------------	----------------	-----------------	------------------



ALL LABOR, for the sum of.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS, for the sum of .....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS (“BASE BID”) \$ \_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[If Alternates are used, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

ALTERNATE ITEM \_\_\_\_\_ If Alternate is accepted,

[add to/deduct from] Base Bid.....\$ \_\_\_\_\_

Sum in words: \_\_\_\_\_ ]

[If Unit Prices are requested only for informational purposes, the Construction Agent and the Architect/Engineer are to complete and insert the following format:

UNIT PRICES (for information only)

<u>Description</u>	<u>Unit Price</u>	<u>Measure</u>	<u>Quantity</u>	<u>Extension</u>
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ITEM 7. COMBINED BID

Any Bidder submitting a Combined Bid is encouraged, but not required, to also bid the Items separately.

Bidder has CIRCLED THE ITEMS BELOW for which it is submitting a Combined Bid:

ITEM 1. GENERAL TRADES CONTRACT

ITEM 2. PLUMBING CONTRACT

ITEM 3. HVAC CONTRACT

ITEM 4. ELECTRICAL CONTRACT

ITEM 5. FIRE PROTECTION CONTRACT

ITEM 6. \_\_\_\_\_ CONTRACT

[The Construction Agent and the Architect/Engineer are to insert any Allowances and Unit Prices in the formats set forth above.]

ALL LABOR FOR ITEMS CIRCLED ABOVE, for the sum of \$ \_\_\_\_\_

Sum in words: \_\_\_\_\_

ALL MATERIALS FOR ITEMS CIRCLED ABOVE, for the sum of \$\_\_\_\_\_

Sum in words: \_\_\_\_\_

TOTAL OF LABOR AND MATERIALS FOR ITEMS CIRCLED ABOVE ("BASE  
BID").....\$\_\_\_\_\_

Amount of Base Bid in Words: \_\_\_\_\_

[The Construction Agent and the Architect/Engineer are to insert any Alternates and information only  
Unit Prices in the formats set forth above.]

## **BIDDER'S CERTIFICATION**

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

1. The Bidder has read and understands the Contract Documents and agrees to comply with all requirements of the Contract Documents, regardless of whether the Bidder has actual knowledge of the requirements and regardless of any statement or omission made by the Bidder which might indicate a contrary intention.
2. The Bidder represents that the bid contains the name of every Person interested therein and is based upon the Standards specified by the Contract Documents.
3. The Bidder has evaluated when the Work may be performed and has visited the Site, become familiar with local conditions and has correlated the Bidder's evaluation and personal observations about the Site and related Project conditions with the requirements of the Contract Documents. The Bidder has no outstanding questions regarding the interpretation or clarification of the Contract Documents.
4. The Bidder acknowledges that all Work shall be completed in the Contract Time, and that each applicable portion of the Work shall be completed on the applicable Milestone completion date, unless an extension of time is requested and granted in accordance with the Contract Documents.
5. The Bidder understands that the award of separate Contracts for the Project requires sequential, coordinated and otherwise interrelated Contractor operations and may involve interference, disruption, hindrance, delay or impact in the progress of any individual Contractor's Work and that any such interference, disruption, hindrance, delay or impact is within the contemplation of the Bidder and the City. Except when the cause of a delay is the proximate result of the City's act or failure to act as required by Section 4113.62, ORC, the Bidder agrees that the Contract Price, as amended from time to time, in accordance with the Contract Documents, shall cover all amounts due from the City resulting from interference, disruption, hindrance, delay or impact, and the Bidder agrees that the Bidder will make no claim against the City for additional compensation or mitigation of Liquidated Damages for any applicable interference, disruption, hindrance, delay or impact and will accept as full satisfaction any extension of the Contract Time which may be provided by the City in accordance with the Contract Documents. This provision is intended to give effect to Section 4113.62, ORC, but to permit the City to exercise any rights not precluded by Section 4113.62, ORC, to the fullest extent permitted.
6. The Bidder and each Person signing on behalf of the Bidder certifies, and in the case of a bid by joint venture, each participant therein certifies as to such participant, under penalty of perjury, that to the responsible of the undersigned's knowledge and belief: (a) the Base Bid, any Unit Price and any Alternate submitted in the bid have been arrived at independently without collusion, consultation, communication or agreement, or for the purpose of restricting competition as to any matter relating to such Base Bid, Unit Price or Alternate submitted with any other Bidder; (b) unless otherwise required by law, the Base Bid, any Unit Price and any Alternate submitted in the bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to the bid opening, directly or indirectly, to any other Bidder who would have any interest in the Base Bid, Unit Price or Alternate submitted; (c) no attempt has been made or will be made by the Bidder to induce any other Person to submit or not to submit a bid for the purpose of restricting competition; (d) the statements made in the Bidder's Affidavit and Non-Collusion Affidavit are true and correct and the Bidder has not offered or provided any kickback or illegal gratuity to any officer or employee of the City; (e) no unresolved finding for recovery has been issued against the Bidder by the Auditor of State; (f) all applicable Persons listed in Division (I)(3) or (J)(3) of Section 3517.13, ORC, are in full compliance with Divisions (I)(1) and (J)(1) of Section 3517.13, ORC, respectively; and (g) as provided in Section 2909.33, ORC, the Bidder has not provided material assistance to an organization that is identified and included on, the United States Department of State Terrorist Exclusion List and has or will truthfully answer "no" to every question on the Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization provided to the City.

7. The Bidder understands that the Contract is subject to all the provisions, duties, obligations, remedies and penalties of Section 4115.03 to 4115.22 and 4115.99, ORC, and that the Bidder shall pay any wage increase in the locality during the Contract Time.
8. If a Contract is awarded on the basis of this bid, the Bidder shall timely execute the Contract Form with the City and if the Bidder does not timely execute the Contract Form for any reason, other than as authorized by law, the Bidder and the Bidder's Surety are liable to the City as provided in Article IB 6.
9. The Bidder certifies that the upon the award of a Contract, as the Contractor, the Bidder will make a good faith effort to ensure that all of the Contractor's employees, while working on the Site, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
10. The Bidder agrees to furnish any information requested by the Architect/Engineer, the Authorized Representative or the Authorized Representative to evaluate that the Bidder is responsible.
11. The Bidder agrees to execute the Contract Form and to furnish the submittals required by paragraph IB-7.3 for execution of the Contract Form by the City within 10 days of the date of the Notice of Intent to Award.
12. The Bidder acknowledges that, by signing the Bid Form, the Bidder is signing the actual bid which when submitted shall serve as the Bidder's authorization for further consideration and activity in the City's bidding and contracting process.

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

[Balance of page intentionally left blank]

BIDDER'S NAME: \_\_\_\_\_

Authorized Signature: By: \_\_\_\_\_

Print Name of Authorized Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Participant Name (If different from Bidder): \_\_\_\_\_

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Where Incorporated: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Contact Person for Contract processing: \_\_\_\_\_

ADDITIONAL SIGNATURE FOR JOINT VENTURE

Authorized Signature: By: \_\_\_\_\_

Print Name of Authorized Signatory: \_\_\_\_\_

Title: \_\_\_\_\_

Participant Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Where Incorporated: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Contact Person for Contract processing: \_\_\_\_\_

**BIDDER'S AFFIDAVIT**

[NOTE: THIS AFFIDAVIT IS TO BE REPRODUCED ON THE BIDDER'S LETTERHEAD AND SIGNED BY THE APPROPRIATE SIGNATORY BEFORE A NOTARY PUBLIC. CROSS OUT EITHER PARAGRAPH 2 OR 3, WHICHEVER IS NOT APPLICABLE. IF PARAGRAPH 3 IS NOT CROSSED OUT, EXHIBIT A MUST BE COMPLETED AND ATTACHED TO NAME AND DESCRIBE THE INTERESTS OF ALL RELATED PERSONS.]

PROJECT NAME: \_\_\_\_\_  
CONTRACT: \_\_\_\_\_

ETHICS CERTIFICATION PURSUANT TO OHIO  
REVISED CODE SECTIONS 9.24, 102.03, 102.04,  
2921.42 AND 3517.13

\_\_\_\_\_  
[TITLE]  
CITY OF NORTH ROYALTON

\_\_\_\_\_  
BIDDER'S NAME

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ SS:

The undersigned being duly sworn deposes and states as follows:

1. The undersigned is duly authorized to make the statement herein on behalf of the Bidder.
2. No unresolved finding for recovery has been issued against the Bidder by the Auditor of State.
3. No officer or employee of the City of North Royalton is an officer, director, trustee, shareholder, partner, member or owner of the Bidder (each, a "Related Person"), or is a business associate or a member of the family of the Bidder or a Related Person.
4. An officer or an employee of the City of North Royalton is an officer, director, trustee, shareholder, partner, member or owner (each, a "Related Person") of the Bidder, or is a business associate or a member of the family of the Bidder or Related Person, but
  - a. the subject of the Contract is necessary supplies or services for the City of North Royalton;
  - b. the supplies or services are unobtainable elsewhere for the same or lower cost, or are being furnished to the City of North Royalton as part of a continuing course of dealing established prior to the Related Person becoming a City officer or employee;
  - c. the treatment accorded the City of North Royalton is either preferential to or the same as that accorded other customers of the Bidder in similar transactions;
  - d. the entire transaction resulting in the Contract has been conducted at arm's-length, with full knowledge by the City of the interest of the Related Persons as described in Exhibit A attached hereto; and
  - e. the Related Person has taken no part in the deliberations or decision of the City with respect to the Contract.

5. The Bidder is a/an (select one):

Individual, partnership, or other unincorporated business association (including without limitation, a professional association organized under Ohio Revised Code Chapter 1785), estate, or trust.

Corporation organized and existing under the laws of the State of \_\_\_\_\_.

Labor organization.

6. The undersigned hereby affirms that the Bidder and each of the individuals specified in Section 3517.13(I)(3), ORC, (with respect to non-corporate entities and labor organizations) or Section 3517.13(J)(3), ORC, (with respect to corporations) are in full compliance with the political contributions limitations set forth in Sections 3517.13(I) and (J), ORC, as applicable. I understand that a false representation on this certification constitutes a felony of the fifth degree pursuant to Sections 3517.13(AA) and 3517.992(R)(3), ORC. Any contract that contains a falsified certification shall be rescinded.

7. Neither the Bidder, nor any Person on behalf of the Bidder, has offered or provided any kickback or illegal gratuity to any officer or employee of the City.

NAME: \_\_\_\_\_  
(SIGNATURE)

NAME: \_\_\_\_\_  
(PRINTED)

TITLE: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_ SS:

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

BIDDER'S AFFIDAVIT  
EXHIBIT A

Project Name: \_\_\_\_\_  
Contract: \_\_\_\_\_  
Bidder's Name: \_\_\_\_\_

Related officer/ employee:

Name:

Title/Position:

Relation to Bidder:



STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS \_\_\_DAY OF \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public

**SUBSTITUTION SHEET**

Refer to PROPOSED EQUALS AND SUBSTITUTIONS, paragraph IB-2.5 regarding the use of items other than Standards. All bids must be based on the Standards or Approved Equals specified in the Contract Documents.

Bidder is to list here any Substitutions for which consideration is desired, showing the addition or reduction in price to be made for each, if the Substitution is accepted by the City, or indicating "No Change in Price," if none is proposed.

<u>STANDARD OR APPROVED EQUAL</u>	<u>PROPOSED SUBSTITUTION</u>	<u>ADD</u>	<u>DEDUCT</u>

It is understood and agreed that the bid submitted is based on furnishing the Standards or Approved Equals as specified in the Contract Documents and that the City is entitled to require that such Standards or Approved Equals be incorporated into the Work, except as Substitutions for the same, based on the supplementary quotations entered above, are accepted and subsequently made a part of the Contract by Change Order. It is further understood that the City will not use the Substitutions to determine the lowest and best Bidder for the Contract.

**BID GUARANTY AND  
CONTRACT BOND**

(Section 153.571, Ohio Revised Code)

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned

\_\_\_\_\_  
(Name and Address)

as Principal, and \_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
as Surety, are hereby held and firmly bound unto the City of North Royalton, as Obligee, in the penal sum of the dollar amount of the bid submitted by the Principal to the Obligee on \_\_\_\_\_, 20\_\_\_\_, to undertake the Project known as:

PROJECT NAME:

CONTRACT:

The penal sum referred to herein shall be the dollar amount of the Principal's bid to the Obligee, incorporating any additive Alternate bids proposals made by the Principal on the date referred to above to the Obligee, which are accepted by the Obligee. In no case shall the penal sum exceed the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). **(If the above lines for the amount are left blank, the penal sum will be the full amount of the Principal's bid, including additive Alternates. Alternatively, if completed, the amount stated must not be less than the full amount of the bid, including additive Alternates, in dollars and cents. A PERCENTAGE IS NOT ACCEPTABLE.)** For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas the above-named Principal has submitted a bid for the above-referenced Project;

NOW, THEREFORE, if the Obligee accepts the bid of the Principal and the Principal fails to enter into a proper Contract in accordance with the Contract Documents, including without limitation the bid, Drawings, Specifications, details and bills of material; and in the event the Principal pays to the Obligee the difference, not to exceed 10% of the penal sum hereof, between the amount specified in the bid and such larger amount for which the Obligee may in good faith contract with the Bidder determined by the Obligee to be the next lowest, responsive, and responsible Bidder to perform the Work covered by the bid; or in the event the Obligee does not award the Contract to such next lowest, responsive, and responsible Bidder and resubmits the Contract for bidding, the Principal pays to the Obligee the difference not to exceed 10% of the penal sum hereof, between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new Contract Documents, required advertising, and printing and mailing notices to prospective Bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect. If the Obligee accepts the bid of the Principal and the Principal within 10 days after the awarding of the Contract enters into a proper Contract and executes the Contract Form in accordance with the Contract Documents, including without limitation the bid, Drawings, Specifications, details and bills of material, which said Contract is made a part of this Bond the same as though set forth herein;

NOW ALSO, IF THE SAID Principal shall well and faithfully perform each and every condition of such Contract; and indemnify the Obligee against all damage suffered by failure to perform such Contract according to the provisions thereof and in accordance with the Contract Documents, including without limitation the Drawings, Specifications, details and bills of material therefor; and shall pay all lawful claims of Subcontractors, Material Suppliers, and laborers for labor performed and materials furnished in the carrying forward, performing, or completing

of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any Subcontractor, Material Supplier or laborer having a just claim, as well as for the Obligee herein; then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal sum of this obligation as herein stated.

THE SAID Surety hereby stipulates and agrees that no modifications, omissions, or additions in or to the terms of the said Contract, the Work thereunder or the Contract Documents, including without limitation the Drawings and Specifications therefor shall in anyway affect the obligations of said Surety on this Bond, and the Surety does hereby waive notice of any such modifications, omissions or additions in or to the terms of the Contract, the Work or the Contract Documents, including without limitation the Drawings and Specifications.

SIGNED This \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

PRINCIPAL: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

SURETY: \_\_\_\_\_

SURETY ADDRESS:

\_\_\_\_\_  
Street

BY: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
City State Zip

( \_\_\_\_\_ ) \_\_\_\_\_  
Telephone Number

( \_\_\_\_\_ ) \_\_\_\_\_  
Facsimile Number

\_\_\_\_\_  
E-mail Address

SURETY AGENT'S ADDRESS:

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City State Zip

( \_\_\_\_\_ ) \_\_\_\_\_  
Telephone Number

( \_ ) \_\_\_\_\_  
Facsimile Number

\_\_\_\_\_  
E-mail Address

## CONTRACT FORM

The Contract, as evidenced by this Contract Form, made by and between [CONTRACTOR NAME] (the "Contractor") and the City of North Royalton, (the "City"), duly created, existing and operating under its Charter, ordinances and resolutions, on the date executed by the City.

In consideration of the mutual promises herein contained, the City and Contractor agree as set forth below:

### ARTICLE 1

- 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 NAME]  
[\_\_\_\_\_ CONTRACT]

### ARTICLE 2

- 2.1 The City shall pay the Contractor for the performance of the Contract, subject to additions and deductions as provided in the Contract Documents, the amount of \$\_\_\_\_\_ (the "Contract Price"), based upon the Bid Form, dated \_\_\_\_\_, 20\_\_\_\_, submitted by the Contractor.
- 2.2 The Contract Price shall be paid in current funds by the City upon Contractor Payment Requests submitted by the Contractor and approved by the City as provided in the Contract Documents.

### ARTICLE 3

- 3.1 The Contractor shall diligently prosecute the Work and shall complete all Work so that Final Acceptance occurs on or before \_\_\_\_\_ consecutive days following the date set forth in the Notice to Proceed, unless an extension of time is requested by the Contractor and granted by the City in accordance with the Contract Documents. The period of time established by the preceding sentence is referred to in the Contract Documents as the Contract Time. Failure by the Contractor to complete all Work within the Contract Time, or to complete the applicable portion of the Work upon the applicable Milestone completion date shall entitle City to Liquidated Damages as provided in the Contract Documents.

### ARTICLE 4

- 4.1 The Contract Documents embody the entire understanding of the City and the Contractor and form the basis of the Contract between the City and the Contractor. The Contract Documents shall be considered to be incorporated by reference into this Contract Form as if fully rewritten herein.
- 4.2 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.
- 4.3 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.
- 4.4 The Contract shall be binding on the Contractor and City, their successors and assigns, in respect to all respective covenants and obligations contained in the Contract Documents, but neither the Contract nor any rights under the Contract may be assigned by the Contractor without the prior written consent of the City.

**ARTICLE 5**

5.1 This Contract Form has been executed in several counterparts, each of which shall constitute a complete original Contract Form which may be introduced in evidence or used for any other purpose without production of any other counterparts.

IN WITNESS WHEREOF, the Contractor and the City hereto have executed this Contract Form.

**CONTRACTOR**

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

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Contractor Name)

\_\_\_\_\_  
(Print Name & Title)

**CITY OF NORTH ROYALTON**

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Law Director

CERTIFICATE OF FUNDS

In the Matter of: Contract with \_\_\_\_\_

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City under the foregoing Contract are in the treasury of the City, to the credit of the fund from which they are to be drawn, and not appropriated for any other purpose.

Dated: \_\_\_\_\_, 20\_\_

CITY OF NORTH ROYALTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**ARTICLE 1 - GENERAL PROVISIONS**

1.1 APPLICABLE AND GOVERNING LAW

- 1.1.1 The Contractor and the Architect/Engineer shall be familiar with all provisions of the Contract Documents. The Contractor, the Architect/Engineer and the Construction Agent shall comply with all applicable federal, State and local codes, statutes, ordinances and regulations in the performance of the Work on the Project.
- 1.1.2 No change shall be made to the Standard Conditions unless so provided in the Supplementary Conditions approved in writing by the Authorized Representative.
- 1.1.3 It shall be the responsibility of the Architect/Engineer to specify and the Contractor to supply domestically produced steel as required by law. The City reserves the right to reject any item or material provided or installed by a Contractor in violation of this requirement.
- 1.1.4 The Cuyahoga County Court of Common Pleas, or to the extent required by law the United States District Court for the Northern District of Ohio, shall be the exclusive jurisdiction in which any action or proceeding concerning any Contract, agreement or performance under the Contract Documents or in connection with the Project shall be filed. The Contractor irrevocably consents to such jurisdiction. In any such action or proceeding the Contract Documents shall be construed in accordance with the laws of the State which shall govern to the exclusion of the law of any other jurisdiction.
- 1.1.5 Other rights and responsibilities of the Contractor, the Construction Agent, the Architect/Engineer and the Owner's Representative and the City are set forth throughout the Contract Documents and are included under different titles, articles and paragraphs for convenience. Captions throughout the Contract Documents are for convenience and reference only and the words contained in a caption shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of the Contract Documents.

1.2 CONDITIONS OF CONTRACT

1.2.1 Nondiscrimination

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

1.2.2 Hiring Under Public Improvement Contracts

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

1.2.3 Prevailing Wages

- 1.2.3.1 The Contractor shall pay the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau or the Federal Department of Labor, as applicable, to laborers and mechanics performing Work on the Project.
- 1.2.3.2 The Contractor shall comply with the provisions, duties, obligations, and is subject to the remedies and penalties of Sections 4115.03 to 4115.21 and 4115.99, ORC, or the Davis-Bacon Act, as applicable. Throughout the Contract Time the Contractor shall post and maintain in a prominent place readily accessible to all workers on the Site a legible listing of the current classifications of laborers, workers and mechanics employed for the Work.
- 1.2.3.3 Attached pages include the prevailing rates of wages as ascertained by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau for the Project in accordance with Sections 4115.03 to 4115.21, ORC or the Federal Department of Labor in accordance with the Davis-Bacon Act, as applicable. By executing the Contract Form, the Contractor certifies that it based the Contractor's bid upon the applicable prevailing rates of wages.
- 1.2.3.4 Ohio prevailing wage rates, if applicable, are available at:  
<http://www.com.state.oh.us>.

- 1.2.3.5 The Contractor shall make any necessary adjustment in the prevailing wage rates and shall pay any revised wage rates during the Contract Time without any increase in the Contract Price.
- 1.2.3.6 Within 10 days of the date of the Notice to Proceed, the Contractor shall provide the City's Prevailing Wage Coordinator a schedule of dates during the term of the Contract on which wages will be paid to employees for the Project.
- 1.2.3.7 The Contractor shall submit payroll reports with each Contractor Payment Request, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Sections 4115.03 to 4115.21, ORC. The Contractor is responsible for submitting all payroll reports of the Contractor's Subcontractors.
  - 1.2.3.7.1 Each payroll report shall indicate the period covered and shall include a list containing the name, address and social security number of each employee of the Contractor and the Contractor's Subcontractors paid for the Work.
  - 1.2.3.7.2 Each 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.
  - 1.2.3.7.3 Each payroll report shall also list each fringe benefit and state if it is paid as cash to the employee or to a named plan.
  - 1.2.3.7.4 The Contractor and the Contractor's Subcontractors shall also submit apprenticeship agreements for all apprentices utilized on the Project.
  - 1.2.3.7.5 Each payroll report shall contain any other information required for compliance with applicable prevailing wage law.
- 1.2.4 Notice of Commencement
  - 1.2.4.1 In accordance with Section 1311.252, ORC, the Authorized Representative shall prepare a Notice of Commencement in affidavit form identifying the name and address of the City, the Project, the name, address 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 Authorized Representative upon whom a Claim Affidavit may be served.
  - 1.2.4.2 The Notice of Commencement shall be available upon request made to the Construction Agent.
- 1.2.5 Taxes
  - 1.2.5.1 Only those materials which ultimately become a part of the completed structure or improvement which constitutes the Project will be exempt from State sales tax as provided in Section 5739.02, ORC, and State use tax as provided in Section 5741.01, ORC.
  - 1.2.5.2 The purchase, lease or rental of material, equipment, parts or expendable items such as concrete form lumber, tools, oils, greases and fuels, which are used in connection with the Work are subject to the application of State sales tax and State use tax.

- 1.2.6 The Contractor shall not provide, attempt to provide, offer to provide, solicit, accept, or attempt to accept any kickback or illegal gratuity to or from any officer or employee of the City during the term of this Agreement; nor shall the Contractor knowingly include, directly or indirectly, the amount of any kickback or illegal gratuity in any Proposal or in the estimated cost of the Project, nor shall the Contractor knowingly include, directly or indirectly, the amount of any kickback or illegal gratuity in any request for payment or reimbursement.

### 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 Form, such notice shall be in writing and 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, return receipt requested, postage prepaid, to the last business address of such Person known to the giver of the notice.

1.3.1.1 All notices provided to the Contractor by the Architect/Engineer or the Construction Agent shall be copied to the other and the Authorized Representative.

1.3.1.2 All notices provided to the Architect/Engineer or the Construction Agent by the Contractor shall be copied to the other and the Authorized Representative.

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

The Construction Agent shall provide to the Owner's Representative copies of all notices given or received.

### 1.4 USE OF ELECTRONIC TRANSMISSION

- 1.4.1 Any notice required to be given by the Contract Documents may be given by facsimile, electronic mail or, if applicable, web-based project management software, provided the original signed document is delivered within 3 business days after the date of the electronic transmission.

- 1.4.2 Facsimile transmittals in excess of 10 pages are discouraged.

### 1.5 CONTRACT DOCUMENTS

#### 1.5.1 Ownership

1.5.1.1 The City owns the Contract Documents and every right, title, and interest therein, including copyrights and other intangible property rights, from the moment of creation.

1.5.1.2 The Contractor may retain copies, including reproducible copies, of the Contract Documents for information, reference, and performance of the Work. In making such copies available, the City does not confer a license or grant permission for any use other than for Work on the Project.

1.5.1.3 The submission or distribution of the Contract Documents to meet governmental regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contract Documents. Any unauthorized use of the Contract Documents shall be at the sole risk of the Person making the unauthorized use and any such Person shall indemnify and hold harmless the City from and against all claims, damages, losses and expenses, direct, indirect, or consequential arising out of or relating to the unauthorized use.

#### 1.5.2 Intent

- 1.5.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by an experienced, responsible Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Contractor shall provide all labor and materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable therefrom to produce the intended results.
- 1.5.2.2 The Standard Conditions may not be superseded or amended by the Drawings or Specifications unless so provided in Supplementary Conditions prepared by the Architect/Engineer and Construction Agent and approved in writing by the Authorized Representative.
- 1.5.2.3 The Drawings govern dimensions, details and locations of the Work. The Specifications govern quality of materials and workmanship.
- 1.5.2.4 The organization of the Specifications in divisions, sections and articles, and the arrangement of Drawings shall not restrict the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- 1.5.2.5 In the event of inconsistencies within the Contract Documents or between the Contract Documents and applicable law or standards, the Contractor shall provide the better quality or greater quantity of Work and comply with the stricter requirement.
- 1.5.2.6 Unless otherwise specified in the Contract Documents, words which have well-known technical or construction industry meanings, including delay, acceleration, hindrance, disruption and impact, are used in accordance with such recognized meanings.

### 1.5.3 Interpretation

- 1.5.3.1 If the Contractor finds any perceived ambiguity, conflict, error, omission or discrepancy on or between any of the Contract Documents, including the Drawings and Specifications, or between any of the Contract Documents and any applicable provision of law, including the Ohio Building Code, the Contractor, before proceeding with the Work, shall submit a written Request for Information (“RFI”) to the Architect/Engineer, through the Construction Agent, for an interpretation or clarification. Before submitting any RFI the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not resolve the issue. The Contractor shall be responsible for the prompt delivery of any such RFI.
- 1.5.3.2 The Architect/Engineer shall respond in writing to any and all RFIs within 3 business days of receipt.
- 1.5.3.3 Any interpretation or clarification of the Contract Documents made by any Person other than the Architect/Engineer, or in any manner other than in writing, shall not be binding and the Contractor shall not rely upon any such interpretation or clarification.
- 1.5.3.4 If any change to the Work is made to accommodate unforeseen circumstances, the Construction Agent or the Architect/Engineer shall initiate the appropriate action and notify the Authorized Representative.
- 1.5.3.5 If the Construction Agent and the Architect/ Engineer fail to initiate any action or the Contractor believes that the Contractor is entitled to any adjustment in the Contract Price or Contract Time due to the response to an RFI, the Contractor shall submit a Request for Change Order within 7 days of receipt of the response. If the Contractor fails to timely submit a Request for Change Order, the Contractor shall be denied any

claim for compensation, time extension, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law.

## 1.6 DRAWINGS AND SPECIFICATIONS

### 1.6.1 Copies

1.6.1.1 The Contractor may obtain additional copies of the Contract Documents from the Architect/Engineer, through the Construction Agent, upon request, at the cost of reproduction, if any.

### 1.6.2 Access

1.6.2.1 The Construction Agent shall maintain in good order at the Site 1 copy of the Drawings and Specifications approved by the Building Department, and of all Bulletins, Addenda, approved Shop Drawings and other submittals, catalog data, manufacturer operating and maintenance instructions, certificates, Warranties, Requests for Information and responses thereto, Requests for Change Orders, Change Orders, and other modifications, including As-Built Drawings.

1.6.2.2 The Construction Agent shall at all times permit access to the documents described in subparagraph GC 1.6.2.1 and any other Contract Documents by any governmental authorities having jurisdiction, the Authorized Representative, the Owner's Representative, Architect/Engineer and the Contractor.

1.6.3 As-Built Drawings and Documents

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

**ARTICLE 2 - THE CONTRACTOR**

2.1 CONSTRUCTION PROCEDURES

- 2.1.1 The Contractor shall have control over and responsibility for all construction means, methods, manners, techniques, sequences and procedures for all portions of the Work and shall coordinate the Subcontractors and Material Suppliers.
- 2.1.2 Before starting each portion of the Work, the Contractor shall carefully study and compare all of the Contract Documents related to the portion of the Work, shall take field measurements of any existing conditions related to the portion of the Work and shall observe any condition at the Site affecting the portion of the Work. The Contractor shall properly and accurately lay out and coordinate all lines, levels, elevations, grades and measurements for the Work, coordinate and verify existing conditions and notify the Architect/Engineer, through the Construction Agent, of any discrepancies or conflicts before proceeding with the Work.
- 2.1.3 The Contractor shall perform all cutting, fitting or patching required for the Work and shall not endanger the Project by cutting, excavating or otherwise altering the Project, or any part of it.
  - 2.1.3.1 If the Contractor requires sleeves for the Work, the Contractor shall furnish and coordinate the installation of the sleeves in the work of other Persons. The Contractor is responsible for the exact location and size of all holes and openings required to be formed or built for the Work, to permit coordination with any work performed by other Persons on the Project.
  - 2.1.3.2 The Contractor shall allow sufficient time for installation of any work performed by other Persons before covering or closing the applicable portion of the Project.
  - 2.1.3.3 The Contractor's patching shall match and blend with the existing or adjacent surface or surfaces. Any patching required because of Defective or ill-timed Work shall be done by and at the expense of the Contractor.
- 2.1.4 The Contractor shall not cut away any structure or dig under any foundation or into any wall, or other part of the Project, without the written approval of the Construction Agent and the Architect/Engineer.

- 2.1.4.1 The Contractor, prior to starting excavation or trenching, shall give notice at least 2 business days in advance to the owners of any underground utilities, registered with the Ohio Underground Utility Protection Services (OUPS) at [www.oups.org](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 48 hours of notice, excluding Saturdays, Sundays and legal holidays, to stake, mark, or otherwise designate the location of its utilities in the construction area together with approximate depth. If any underground utility owner fails to timely perform, the Contractor shall immediately notify the Construction Agent and contact the owner of the underground utility. The City has no liability for any damage to underground utilities caused by the Contractor.
- 2.1.4.2 In performing any excavation or trenching, the Contractor shall exercise caution and implement appropriate safety precautions to avoid property damage and personal injury.
- 2.1.5 The Contractor shall install all Work in accordance with the Contract Documents and any installation recommendations of the manufacturer, including required temperature and humidity for installation of the various materials.

## 2.2 CONSTRUCTION SUPERVISION

- 2.2.1 Unless waived by the Authorized Representative in writing, the Contractor shall provide continuous supervision at the Project by a competent superintendent (the "Superintendent") when any Work is being performed by the Contractor or the Contractor's Subcontractors or Material Suppliers.
- 2.2.2 The Superintendent shall have responsibility and authority to act on behalf of the Contractor and shall not be involved with any other work or project without the written consent of the Authorized Representative. All communications to the Contractor's 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 Construction Agent and the Architect/Engineer within 10 days of the Notice to Proceed.
  - 2.2.3.1 The City reserves the right to reject the Contractor's proposed Superintendent. Any such rejection shall be determined by the Authorized Representative. Failure of the Authorized Representative to notify the Contractor of such rejection within 30 days of receipt of the required information shall constitute notice that the City has no objection.
  - 2.2.3.2 If the City rejects the Contractor's proposed Superintendent, the Contractor shall replace the Superintendent with a Person acceptable to the City at no additional cost to the City.
- 2.2.4 The Contractor shall not change or terminate the Superintendent without written approval of the Authorized Representative.
  - 2.2.4.1 If the Contractor proposes to change or terminate the Superintendent, the Contractor shall submit to the Construction Agent and the Architect/Engineer a written justification for the change or termination, along with the name and qualifications of the individual whom the Contractor proposes to be the new Superintendent, 10 days prior to any change or termination.
  - 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 INDIVIDUALS AND SAFETY METHODS

- 2.3.1 The Contractor shall take reasonable, diligent precautions to assure, and shall be responsible for, the safety of individuals on or adjacent to the Project until Final Acceptance. The Contractor shall comply with all applicable provisions of federal, State and municipal safety laws, regulations, and building codes to prevent injury to individuals on or adjacent to the Project.
- 2.3.2 The Contractor shall comply with the rules, regulations and orders of the Occupational Safety and Health Administration (OSHA). The Contractor shall pay for any fine or cost incurred as a result of any violation or alleged violation.
- 2.3.3 The Contractor certifies that the Contractor and any of the Contractor's Subcontractors performing Work:
- 2.3.3.1 Have implemented a written safety program;
  - 2.3.3.2 Have caused each Person in its jobsite workforce to complete an OSHA 10 or 30 hour Construction Course; and
  - 2.3.3.3 Have caused at least one Project supervisor to complete an OSHA 30 hour Construction Course.
- 2.3.4 Prior to the start of any Work, the Contractor shall submit to the Construction Agent a copy of the Contractor's site-specific safety plan and safety manuals, and the Construction Agent shall meet with all applicable Contractors to coordinate the Contractors' methods and equipment for protecting the Project, other property and individuals from damage or injury, in accordance with applicable regulations. Construction Agent is not responsible for Contractor's safety operations, nor is the Construction Agent liable for Contractor's safety liabilities.
- 2.3.5 Methods and equipment for protecting the Project, other property and individuals shall be subject to inspection and approval of the appropriate authority having jurisdiction over the Site.
- 2.3.6 Work Stoppage Due to Hazardous Materials
- 2.3.6.1 The Contractor is responsible for the proper handling, storage and disposal of all Hazardous Materials to be used at the Project for the performance of the Work or brought or delivered to or stored at the Site by the Contractor or the Contractor's Subcontractors or Material Suppliers.
  - 2.3.6.2 If the Contractor, unless it is a licensed abatement contractor, encounters materials the Contractor reasonably believes to be or contain Hazardous Materials, which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and orally report the condition to the Authorized Representative, the Construction Agent and the Architect/Engineer, and within 1 business day deliver written notice of the condition to the Authorized Representative, the Construction Agent and the Architect/Engineer. A licensed abatement contractor shall report the condition to the Authorized Representative, and the Construction Agent and the Architect/Engineer in writing and shall remove the Hazardous Materials or render the Hazardous Materials harmless.
  - 2.3.6.3 The Contractor shall resume Work in the affected area upon written notice from the Construction Agent that the material (1) was evaluated and found not to be or contain Hazardous Materials or (2) has been removed or rendered harmless.
  - 2.3.6.4 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 laws or regulations.

2.3.7 Hazardous Materials to be used at the Project for the performance of the Work shall be identified by a Material Safety Data Sheet (MSDS). A notebook containing all applicable MSDS shall be prepared by the Contractor and submitted to the Construction Agent prior to a Hazardous Material being brought to the Site. The Construction Agent shall maintain all MSDS notebooks on the Site throughout the Project, and shall permit access to the MSDS notebooks by the Contractor, the Architect/Engineer and the Authorized Representative whenever Work is in preparation or progress.

## 2.4 PROTECTION OF THE PROJECT, OTHER PROPERTY, AND UTILITIES

2.4.1 The Contractor shall take reasonable, diligent precautions to assure, and shall be responsible for, the safety of the Project, including the Work and all materials, equipment, apparatus, fixtures and other items incorporated or to be incorporated in the Project, and existing or adjacent property and utilities until Final Acceptance. The Contractor shall maintain the Work and all such materials, equipment, apparatus, fixtures and other items, property and utilities free from injury or damage until Final Acceptance.

2.4.1.1 The Contract shall at all times cover or otherwise protect the Work and all such materials, equipment, apparatus, fixtures and other items, property and utilities from damage from weather or other cause.

2.4.1.2 The Contractor, at the Contractor's expense, shall remove any Work and all such materials, equipment, apparatus, fixtures, other items, property and utilities damaged as a result of the Contractor's failure to provide coverage or protection and replace the damaged Work with new Work.

2.4.1.3 The Contractor, at the Contractor's expense, shall repair or replace any adjacent property, including roads, walks, shrubbery, plants, trees or turf, damaged during the performance of the Work.

2.4.2 The Contractor shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night.

2.4.3 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. The Contractor shall not subject any part of the Project or existing or adjacent property to stress or pressure that will endanger the Project or property.

2.4.4 The Contractor shall provide all temporary bracing, shoring and other structural support required for safety of the Project and proper execution of the Work, including all necessary support and protection of the property of any utility.

2.4.5 The Contractor shall remove all snow and ice as may be required for access to and performance of the Work.

## 2.5 MATERIALS AND EQUIPMENT

2.5.1 The Contractor shall provide only new materials and equipment of good quality unless otherwise expressly required or permitted the Contract Documents. If required by the Architect/Engineer, through the Construction Agent, the Contractor shall furnish satisfactory evidence of the kind and quality of materials and equipment through the Construction Agent.

2.5.1.1 All manufactured articles, materials and equipment shall be applied, installed, connected, created, used, cleaned and conditioned as directed in the manufacturer's latest printed instructions.

- 2.5.1.2 No manufactured articles, materials or equipment shall be used for any purpose not recommended by the manufacturer.
- 2.5.1.3 Any discrepancies between specified use and manufacturer's recommendations shall be brought to the attention of the Architect/Engineer and the Construction Agent by the Contractor before installation.
- 2.5.2 Only the materials and equipment which are to be used directly in the Work shall be brought or delivered to or stored at the Site by the Contractor and the Contractor's Subcontractors and Material Suppliers.
  - 2.5.2.1 The Contractor shall properly store all materials and equipment brought or delivered to the Project by the Contractor and the Contractor's Subcontractors and Material Suppliers.
  - 2.5.2.2 The Contractor shall promptly remove from the Site any materials and equipment no longer required for the Work.
- 2.5.3 The Contractor shall not allow materials or equipment to damage the Project or adjacent property, nor to endanger any individual at, or near the Site.
- 2.5.4 Any injury to any individual or damage to the Project or property resulting from the Contractor's materials or equipment shall be the responsibility of the Contractor to the extent not covered by insurance.
- 2.6 LABOR
  - 2.6.1 The Contractor shall maintain a sufficient workforce and enforce good discipline and order among the Contractor's employees and the employees of the Contractor's Subcontractors and Material Suppliers. The Contractor shall not permit employment of individuals not skilled in tasks assigned to them.
  - 2.6.2 The Contractor shall provide sufficient qualified on-site engineering and clerical project staff, in addition to the Superintendent, to process the daily Work, including processing and coordinating Shop Drawings, correspondence, daily reports, As-Built Drawings and scheduling.
  - 2.6.3 The Contractor shall dismiss from the Project any individual employed by the Contractor or the Contractor's Subcontractors and Material Suppliers who is found by the Authorized Representative, pursuant to a recommendation from the Construction Agent or the Architect/Engineer, to be incompetent, guilty of misconduct, or detrimental to the Project.
  - 2.6.4 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.
- 2.7 CONSTRUCTION FACILITIES AND UTILITIES AND EQUIPMENT
  - 2.7.1 Facilities:
    - 2.7.1.1 The Contractor shall provide and maintain in a clean condition suitable temporary facilities, equipment, services, and enclosed storage for the Contractor's use at the Site.
    - 2.7.1.2 The Construction Agent shall provide and maintain in a clean condition:
      - 2.7.1.2.1 Suitable facilities, equipment, furnishings and services for use by the Construction Agent and the Architect/Engineer;

- 2.7.1.2.2 Adequate space, equipment, and furnishings to conduct progress and other meetings, and to store documents and permits; and
    - 2.7.1.2.3 Adequate sanitary facilities for use by all Persons at the Site.
  - 2.7.2 Environmental Controls:
    - 2.7.2.1 The Contractor shall protect the Contractor's Work, materials and equipment from weather and damage from heat, cold, and humidity.
  - 2.7.3 Water and Drainage:
    - 2.7.3.1 The Contractor shall provide water necessary for the Work until the permanent water system is available for use.
    - 2.7.3.2 The Contractor shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other items required to provide satisfactory working conditions and for the protection, execution, and completion of the Project.
    - 2.7.3.3 The Contractor responsible for the permanent plumbing system ("Plumbing Contractor") shall make arrangements and pay for installation and maintenance of temporary plumbing facilities until the permanent plumbing systems are available for use.
    - 2.7.3.4 When the permanent plumbing system is complete and available for use:
      - 2.7.3.4.1 The Plumbing Contractor shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing facilities; and
      - 2.7.3.4.2 The City shall pay the costs of water consumed and sewerage charges until Final Acceptance or Partial Occupancy, if applicable.
  - 2.7.4 Electric Service:
    - 2.7.4.1 The Contractor responsible for the permanent electric service ("Electrical Contractor") shall provide temporary light and power and pay the charges for temporary electric service installation and removal, if required.
      - 2.7.4.1.1 The Electrical Contractor shall not be responsible for electric service requirements of other Contractors related to temporary hoists, cranes, welding equipment or elevators.
      - 2.7.4.1.2 A Contractor requiring electric service for the items listed in subparagraph GC 2.7.4.1.1 shall subcontract with a licensed contractor for the service requirements and shall pay the costs of the services.
    - 2.7.4.2 If the Project consists entirely of new construction, the Contractor shall pay the charges for energy consumed until Final Acceptance of the Project or Partial Occupancy, if applicable.
    - 2.7.4.3 If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, the City shall pay the cost of energy consumed.

2.7.5 Hoisting Facilities:

- 2.7.5.1 Each Contractor shall erect and maintain any hoisting or elevator equipment required for the Contractor's Work in cooperation with the Construction Agent and the Electrical Contractor.
- 2.7.5.2 If the electric service requirements of the hoisting or elevator equipment differ from that available at the Site, the Contractor requiring use of the hoisting or elevator equipment shall provide and pay for all necessary connections.
- 2.7.5.3 A Contractor requiring use of hoisting or elevator equipment, after the Project is enclosed, shall transport Persons and materials required for its Work.
- 2.7.5.4 If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or transporting personnel during construction, the Contractor responsible for the elevator shall furnish an extended warranty and service contract in effect until the expiration of the period for correction described in paragraph 12.11.

2.8 BUILDING AND TRADE PERMITS AND LICENSES

2.8.1 Building Permits

- 2.8.1.1 The Architect/Engineer shall secure the required general building permits and plan approvals, including structural, plumbing, electrical and heating, ventilation and air conditioning permits and plan approvals from the Building Department.
- 2.8.1.2 The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work. The Contractor shall schedule the local fire authority, and any State Fire Marshal, life safety inspection for occupancy permits. The Contractor shall give the Construction Agent, the Architect/Engineer and the Authorized Representative reasonable notice of the date and time arranged for any inspection.

2.8.2 Trade Permits and Licenses:

- 2.8.2.1 The Contractor shall obtain, maintain and pay for any permit, license or registration applicable to the Contractor's particular trade.

2.8.2 Local Permits

- 2.8.2.1 Unless otherwise specified in the Contract Documents, the Contractor shall apply for, secure and pay for any permit, license, capacity charge or tap fee required by local authorities having jurisdiction over the Project. The Contractor shall give the Construction Agent, the Architect/Engineer and the Authorized Representative reasonable notice of the date and time arranged for any related inspection.

2.8.3 National Pollutant Discharge Elimination System ("NPDES") Storm Water General Permit

- 2.8.3.1 The Architect/Engineer shall secure the NPDES general permit by submitting a notice of intent application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction.
- 2.8.3.2 The Architect/Engineer shall prepare and certify a storm water pollution prevention plan to provide sediment and erosion controls at the Project.

2.8.3.3 The Architect/Engineer shall prepare and process the required notice of termination prior to Contract Completion.

2.8.3.4 The Contractor shall comply with all requirements and conditions of the National Pollutant Discharge Elimination System (NPDES) general permit, including implementing and maintaining the control measures specified in the storm water pollution prevention plan related to the Work, maintaining records of construction activities, removing materials no longer required and taking proper action if there is a reportable quantity spill.

2.8.4 The Contractor shall comply with all applicable federal, state and local laws and regulations relating to pollution of the environment.

## 2.9 TESTS AND INSPECTIONS

2.9.1 Unless otherwise specified in the Contract Documents, the Contractor shall apply, secure and pay for any inspection, testing or approval, including repeat inspection, testing or approval, required by the Contract Documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction over the Project; geotechnical analysis; environmental testing and analysis; concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, heating, ventilation and air conditioning systems and controls, plumbing and piping testing and air and water balancing and testing.

2.9.2 If the Construction Agent or the Architect/Engineer determines that any portion of the Work requires special inspection, testing or approval not otherwise required by the Contract Documents the Construction Agent or the Architect/Engineer may require the Contractor to order such special inspection, testing or approval in writing.

2.9.2.1 If such special inspection, testing or approval reveals Defective Work, the Contractor shall pay all associated costs. Those costs may include:

2.9.2.1.1 The cost of the special inspection, testing, or approval;

2.9.2.1.2 The cost of additional special inspections, testing, or approvals to evaluate remedial Work;

2.9.2.1.3 The cost of correcting the Defective Work; and

2.9.2.1.4 All related City-incurred fees and charges of engineers, architects, Construction Agents, attorneys, experts, consultants and other professionals.

2.9.2.2 The City may deduct the costs described in subparagraph 2.9.2.1 from payments then or thereafter due to the Contractor. If payments then are thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to the City upon demand.

2.9.2.3 If such special inspection, testing, or approval reveals that the Work complies with the Contract Documents, the Contractor may submit a Request for Change Order for all associated costs.

2.9.3 If the Contractor is aware of a need for inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid interference, hindrance, disruption, impact or delay, then the Contractor shall timely communicate such information to the Construction Agent and the Architect/Engineer in writing.

- 2.9.4 The Contractor shall coordinate with and give the Construction Agent, the Architect/Engineer and the Authorized Representative reasonable notice of the dates and times arranged for all inspections, testing, or approvals.
- 2.9.5 Within 5 days after completion of an inspection, testing, or approval, the Contractor shall provide an original report or certificate of the inspection, testing, or approval to the Architect/Engineer, through the Construction Agent, for review and approval.
- 2.9.6 Neither any observations of the Construction Agent or the Architect/Engineer nor any inspections, tests or approvals by Persons other than the Contractor shall relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.
- 2.10 PROGRESS CLEANING
- 2.10.1 The Contractor shall remove all waste, excess materials and rubbish attributable to the Work to an appropriate disposal site designated by the Construction Agent.
- 2.10.2 If the Contractor fails to clean up during the progress of the Work, the provisions of paragraph GC 6.2 may be invoked.
- 2.11 SUBSTITUTES FOR STANDARDS OR APPROVED EQUALS AFTER BID OPENING
- 2.11.1 Requests for substitutes for Standards or Approved Equals shall not be considered after the bid opening unless listed on the Substitution Sheet or the Contractor can conclusively demonstrate to the Architect/Engineer one of the following conditions:
- 2.11.1.1 All applicable Standards or Approved Equals are not available through no fault of the Contractor, and the Contractor's Subcontractors and Material Suppliers;
- 2.11.1.2 All Standards or Approved Equals will not perform as designed or intended.
- 2.11.2 Any incorporation of unapproved substitutes by the Contractor, or the Contractor's Subcontractors or Material Suppliers is Defective Work for which the Contractor is responsible.
- 2.12 EXPLOSIVES AND BLASTING
- 2.12.1 The Contractor shall not conduct any blasting, or bring or keep explosives, on the Site, without the prior written approval of the Authorized Representative and any other authorities having jurisdiction.
- 2.12.2 The Contractor shall perform all blasting and all purchasing, storing and handling of explosives as required in any applicable federal, state or local statutes, ordinances or regulations.
- 2.12.3 The Contractor shall carry appropriate liability insurance for, and shall be responsible for any injuries to individuals or damages to property resulting from, the Contractor's blasting and explosives handling and storage operations. The Contractor shall provide a copy of the policy of such insurance to the Construction Agent prior to bringing any explosives to the Site and to the Authorized Representative upon request.
- 2.12.4 The Contractor shall take all necessary precautions to protect the Project, existing or adjacent property, water lines, and other utilities and underground structures from blasting. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel, rope mats or other protection.
- 2.12.5 The Contractor shall notify all owners of adjacent or utility property which may be affected of any intention to use explosives at least 8 hours before blasting is commenced. Any inspection of use of explosives by the Construction Agent, the Architect/Engineer or any other Person does not in

any way relieve the Contractor from the responsibility of the Contractor or its Surety for damages that may be caused by such use.

## 2.13 EMERGENCY

- 2.13.1 If an emergency affecting the safety of the Project, other property or individuals occurs or is threatened, the Contractor, without special instruction or authorization, shall act to prevent any threatened damage, injury or loss.
- 2.13.2 The Contractor shall promptly submit a Request for Change Order 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 UNCOVERING THE WORK

- 2.14.1 If the Contractor covers any Work contrary to the requirements of the Contract Documents or to the written request of the Construction Agent or the Architect/Engineer, the Contractor shall, if required by the Construction Agent or the Architect/Engineer in writing, uncover that Work for observation, correct or replace the Work if it is Defective Work, and recover the Work at the Contractor's expense and without adjustment of the Contract Time.
- 2.14.2 If the Contractor covers any Work in accordance with the Contract Documents and not contrary to a request from the Construction Agent or the Architect/Engineer for an opportunity to observe that Work prior to covering, the Construction Agent or the Architect/Engineer may require that such Work be uncovered in writing.
  - 2.14.2.1 If the uncovered Work is Defective Work, the Contractor shall pay all costs of uncovering, correcting, replacing and recovering the Work and shall not be entitled to an adjustment of the Contract Time, unless the City, in its sole discretion, finds that the Defective Work was caused by another Person.
  - 2.14.2.2 If uncovered Work is found to be in conformity with the Contract Documents, the Contractor may submit a Request for Change Order.

## 2.15 CORRECTION OF THE WORK BEFORE CONTRACT COMPLETION

- 2.15.1 The Construction Agent or the Architect/Engineer shall notify the Contractor in writing if any Work is found by the Construction Agent or the Architect/Engineer to be Defective, when observed before Contract Completion whether or not fabricated, installed or completed. Defective Work observed after Contract Completion shall be addressed in accordance with paragraph GC 12.11. The Construction Agent or the Architect/Engineer shall specify in the written notice the time within which the Contractor shall correct the Defective Work.
- 2.15.2 The Contractor shall promptly correct any Defective Work or the City may correct the Defective Work. The Contractor shall pay all costs and damages associated with correcting Defective Work, including the cost of any related fees and charges of architects, engineers, Construction Agents, experts, consultants, attorneys and other professionals, the cost of correcting or replacing adjacent work and any consequential damages. The City may deduct any such costs or damages from payments then or thereafter due to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover those costs and damages, the Contractor shall immediately pay the amount of the insufficiency to the City upon demand.

## 2.16 INTERRUPTION OF EXISTING SERVICES

- 2.16.1 Whenever it becomes necessary to interrupt existing services in use by the City or its tenants, such as sewer, water, gas and steam lines, electric or telephone and cable service, the Contractor shall

continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or such alternate time required by the Authorized Representative.

- 2.16.2 Before beginning that Work, the Contractor shall apply in writing, through the Construction Agent, to and receive approval in writing from the Authorized Representative and any Person with jurisdiction over the Project, to establish a time when interruption of the service will cause a minimum of interference with the activities of the City, its tenants and the public.

## 2.17 ROYALTIES AND PATENTS

- 2.17.1 The Contractor shall pay all royalties and license fees and shall 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, intellectual property rights or copyrights held by other Persons.

- 2.17.2 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, intellectual property rights or copyrights of a Person other than the Contractor or its Subcontractors or Material Suppliers calling for the payment of any royalty or license fee to others, the Architect/Engineer shall disclose the existence of such rights in the Contract Documents.

- 2.17.2.1 If the Contractor has reason to believe that use of the specified item is subject to patent, intellectual property rights or copyright protection, the Contractor shall immediately notify the Construction Agent and the Architect/Engineer.

## 2.18 ASSIGNMENT OF ANTITRUST CLAIMS

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

## 2.19 NON-DISCLOSURE BY CONTRACTOR

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

# **ARTICLE 3 - THE ARCHITECT/ENGINEER AND CONSTRUCTION AGENT**

## 3.1 ARCHITECT/ENGINEER

- 3.1.1 The Architect/Engineer shall notify, advise and consult with the Construction Agent, the Owner's Representative and the Authorized Representative and shall protect the City against Defective Work on the Project.

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

- 3.1.1.2 The Architect/Engineer shall have the Architect/Engineer's consultants attend the Project at intervals required by any applicable agreement between the Architect/Engineer and the City for the Project or the Contract Documents or as may be deemed necessary by the Authorized Representative to review the Work in order to achieve the results intended by the Contract Documents.
- 3.1.2 The Architect/Engineer shall have the authority to disapprove or reject any item of 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 Authorized Representative any time the Architect/Engineer disapproves or rejects an item of work.
- 3.1.3 The Architect/Engineer shall attend all progress meetings, and any coordination meetings as requested by the Construction Agent. The Architect/Engineer shall assist the Construction Agent to prepare an agenda and a written report of each progress meeting and coordination meeting the Architect/Engineer attends.
- 3.1.4 The Architect/Engineer, through the Construction Agent, may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Price or Contract Time. The Architect/Engineer has no authority to authorize the Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Price or the Contract Time.
- 3.1.5 The Architect/Engineer shall review and approve, or recommend approval of, all forms required under the Contract Documents.
- 3.1.6 The Architect/Engineer, through the Construction Agent, shall make recommendations to the City in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Authorized Representative, through the Construction Agent, for enforcement of the Contract as necessary.
- 3.1.7 The Architect/Engineer is the initial interpreter of all requirements of the Contract Documents. All decisions of the Architect/Engineer are subject to final determination by the City.
- 3.1.8 Based upon the Architect/Engineer's on-site observations and evaluation of the Contractor's Contractor Payment Requests, the Architect/Engineer, with the assistance of the Construction Agent, shall review and certify the amounts due the Contractor. The Architect/Engineer may recommend to the City that payment be withheld from, or Liquidated Damages be assessed against, a Contractor's Payment Request, stating the reasons for such recommendation. The Architect/Engineer's certification for payment shall constitute a representation to the City that the Work has progressed to the point indicated and that, to the responsible 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.
- 3.1.9 The Architect/Engineer, with the assistance of the Construction Agent, 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.
- 3.1.10 The Architect/Engineer, with the assistance of the Construction Agent, shall prepare all Bulletins and Change Orders, including supporting documentation and data.
- 3.1.11 The Architect/Engineer, with the assistance of the Construction Agent, shall conduct inspections to determine the date of Contract Completion and shall receive, review and forward to the appropriate Person all Project record submittals required by the Contract Documents.

- 3.1.12 The Architect/Engineer, with the assistance of the Construction Agent, 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 City and shall provide information or services to the City until final disposition of all claims.
- 3.1.13 The Architect/Engineer shall assist the Construction Agent to develop the Project Schedule in accordance with Paragraph GC 4.2, to monitor the progress of the Work for conformance with the Project Schedule, to initiate revisions of the Project Schedule as required by the Contract Documents and to prepare and keep current a schedule of submittals which is coordinated with the Project Schedule.
- 3.1.14 In the event of default by any Contractor, the Architect/Engineer shall cooperate with the Construction Agent and the City and the defaulting Contractor's Surety to Contract Completion.
- 3.1.15 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 Architect/Engineer's duties are solely for the benefit of the City and the Contractor may not rely upon any act or failure to act of the Architect/Engineer; nor shall any act or failure to act by the Architect/Engineer relieve the Contractor from the Contractor's obligation to perform the Work in conformity with the Contract Documents.

## 3.2 CONSTRUCTION AGENT

- 3.2.1 The Construction Agent shall maintain a staff on the Site and, with the assistance of the Architect/Engineer, shall provide administration of the Contracts for the Project as provided in the Contract Documents, including the performance of the functions hereinafter described.
  - 3.2.1.1 The Construction Agent shall conduct and attend any and all progress and coordination meetings. The Construction Agent, with the assistance of the Architect/Engineer, shall prepare an agenda and a written report of each progress and coordination meeting and distribute the report to the Authorized Representative, the Architect/Engineer and the Contractors within 3 business days after the meeting. The Construction Agent shall not delegate the duty to prepare the agenda and written report of any progress or coordination meeting.
  - 3.2.1.2 The Construction Agent may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Price or Contract Time, or both. The Construction Agent has no authority to authorize the Contractor to perform additional or extra work for which the Contractor may seek adjustment of the Contract Price or the Contract Time, or both.
  - 3.2.1.3 The Construction Agent shall make recommendations to the City in connection with the Contractor's responsibilities under the Contract Documents, and submit recommendations to the Authorized Representative for enforcement of the Contract as necessary.
- 3.2.4 Based upon the Construction Agent's on-site observations and evaluation of the Contractor's Contractor Payment Requests, the Construction Agent shall assist the Architect/Engineer to review and certify the amounts due the Contractor. The Construction Agent may recommend to the City that payment be withheld from, or Liquidated Damages be assessed against, a Contractor's Payment Request, stating the reasons for such recommendation. The Construction Agent's certification for payment shall constitute a representation to the City that the Work has progressed to the point indicated and that, to the responsible of the Construction Agent'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 Construction Agent shall assist the Architect/Engineer to 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 Construction Agent shall assist the Architect/Engineer to prepare all Bulletins and Change Orders, including supporting documentation and data. The Construction Agent shall prepare a cost estimate and verify with the Authorized Representative that funds are available for any change to the Work for each Bulletin.
- 3.2.7 The Construction Agent shall assist the Architect/Engineer to conduct inspections to determine the date of Contract Completion and shall receive, review and forward to the appropriate Person all Project record submittals required by the Contract Documents.
- 3.2.8 The Construction Agent shall assist the Architect/Engineer to render written analyses recommendations or decisions, within the time specified, on all claims, disputes or other matters in question between the Contractor and the City and shall provide information or services to the City until final disposition of all claims.
- 3.2.9 The Construction Agent shall consult with the Authorized Representative and the Owner's Representative to obtain full knowledge of all City rules, regulations or requirements affecting the Project. The Construction Agent shall establish the regular working hours with the Contractors, subject to approval of the City.
- 3.2.10 The Construction Agent shall develop the Project Schedule as provided in Paragraph GC 4.2 and coordinate the Work of all Contractors with each other and with the activities and responsibilities of the Construction Agent, the Architect/Engineer and the City to complete the Project in accordance with the Contract Documents and the Project Schedule.
- 3.2.11 The Construction Agent, with assistance of the Architect/Engineer, shall prepare and keep current a schedule of submittals which is coordinated with the Project Schedule.
- 3.2.12 The Construction Agent, with the assistance of the Architect/Engineer, shall monitor the progress of the Work for conformance with the Project Schedule and shall initiate revisions of the Project Schedule as required by the Contract Documents.
- 3.2.13 In the event of default by any Contractor, the Construction Agent shall cooperate with the Architect/Engineer and the City and the defaulting Contractor's Surety to Contract Completion.
- 3.2.14 The Construction Agent shall keep a daily log containing a record of weather, number of workers on site for each Contractor including the Contractor's Subcontractors, identification of equipment, Work accomplished, problems encountered and other similar relevant data.

#### **ARTICLE 4 - CONSTRUCTION PHASE COORDINATION**

##### **4.1 RESPONSIBILITY OF CONTRACTOR**

- 4.1.1 The Contractor shall afford other Contractors and such Contractors', Subcontractors and Material Suppliers reasonable opportunity for the introduction and storage of materials and equipment and execution of their Work and shall properly connect and coordinate the Contractor's Work with the Work of other Contractors or Persons on the Project. The Contractor shall complete portions of the Work in the sequence and time as provided in the current Project Schedule.
- 4.1.2 The Contractor shall perform the Work so as not to interfere with, disrupt, hinder, impact or delay the Work of other Contractors and such other Contractors' Subcontractors and Material Suppliers. The sole remedy which may be provided by the City for any injury, damage or expense resulting from interference, hindrance, disruption, impact or delay caused by or between Contractors or

their Subcontractors, Material Suppliers or employees shall be an extension of the Contract Time in accordance with the Contract Documents . This provision is intended to give effect to Section 4113.62, ORC, but to permit the City to exercise any rights not precluded by Section 4113.62, ORC, to the fullest extent permitted.

- 4.1.2.1 If the Contractor, or any of the Contractor's Subcontractors or Material Suppliers, damages or injures the property or Work of any other Contractor, or by failure to perform the Work with due diligence, delays, interferes with, hinders, impacts or disrupts any other Contractor, who suffers damage, injury or expense thereby, the Contractor shall be responsible to the other Contractor for such damage, injury or expense.
- 4.1.2.2 The intent of subparagraph GC 4.1.2.1 is to benefit all Contractors on the Project and to bind the Contractor to each other Contractor who performs Work on the Project as an intended third party beneficiary of the Contract for such purposes.
- 4.1.2.3 The Contractor shall not delay completion of the Work on account of claims, disputes or actions between the Contractor and other Contractors concerning such damages, injury or expense. Work shall be continued by the parties to any such dispute, action or claim.
- 4.1.3 If any part of the Contractor's Work is preceded by the Work of another Contractor or Person, the Contractor shall inspect such preceding Work before commencing any of the Contractor's Work, and immediately report in writing to the Architect/Engineer, through the Construction Agent, any defects which render the preceding Work unsuitable for the Contractor's Work.
  - 4.1.3.1 Failure of the Contractor to make such inspection and report, as required by subparagraph GC 4.1.3 shall constitute an acceptance of the preceding Work as fit and proper for the reception of the Contractor's Work, except for latent defects which a reasonable inspection would not disclose.
- 4.1.4 The Contractor shall supervise the Work in cooperation with any guidance of the Construction Agent, the Architect/Engineer, and the Authorized Representative, as provided in the Contract Documents.
- 4.1.5 The Contractor shall give reasonable notice to the Construction Agent when the Architect/Engineer's presence is required for special consultations, inspections, testing, approval, recommendations or decisions.
- 4.1.6 The Contractor shall consult with the Construction Agent to obtain full knowledge of all rules, regulations or requirements affecting the Project. The Contractor shall establish the regular working hours, subject to approval by the Construction Agent and the City.
- 4.1.7 The Contractor shall cooperate with the Construction Agent, the Architect/Engineer and any other Contractors and Persons involved with the Project to coordinate the Contractor's Work with the Work of such other Contractors and Persons and with the activities and responsibilities of the Construction Agent, the Architect/Engineer, the Owner's Representative and the City to complete the Project in accordance with the Contract Documents.
  - 4.1.7.1 The Construction Agent shall coordinate the Work of the Contractors to seek adherence to the Project Schedule.
  - 4.1.7.2 In the event the Contractor fails to prosecute the Work in accordance with the Project Schedule, the Construction Agent may recommend that the provisions of Paragraph GC 6.2 be invoked.

- 4.1.7.3 Coordination of the Work of the Contractors by the Construction Agent shall not relieve the Contractor from the Contractor's duty to supervise, direct and perform the Contractor's Work in accordance with the Contract Documents.
- 4.1.8 The Contractor shall cooperate with the Construction Agent, the Owner's Representative, the Architect/Engineer and the Authorized Representative so as not to interfere with, disturb, hinder, impact or delay the Work of other Contractors or the responsibilities of the Construction Agent, the Architect/Engineer and the City.
- 4.1.9 The Construction Agent and the Owner's Representative shall not be responsible for construction means, methods, techniques, sequences, procedures, safety precautions or programs in connection with the Work. The services provided by the Construction Agent or the Owner's Representative and the existence of schedules or services prepared or performed by the Construction Agent or the Owner's Representative shall in no way relieve the Contractor from responsibility for complying with all the requirements of the Contract Documents.

## 4.2 PROJECT SCHEDULE

- 4.2.1 Based upon information from all of the Contractors, the Construction Agent shall prepare the Project Schedule for the Project, with the assistance of the Architect/Engineer. Critical path scheduling methods shall be used. The Project Schedule shall be used to plan, organize and execute the Work, record and report actual performance and progress and show how the Construction Agent and the Contractors plan to coordinate all Work to Contract Completion. The Project Schedule shall be used as a tool for scheduling and reporting sequenced progress of the Work using early start dates and early finish dates. Free float and total float are resources of the Project and the use of float associated with an activity is not permitted without the concurrence of the Construction Agent, the City and the other Contractors. The Contractor shall cooperate with the Construction Agent to prepare a Project Schedule incorporating the Contractor's Construction Schedule within 30 days of the Notice to Proceed or such longer period as mutually agreed by the Construction Agent and the Authorized Representative upon timely written request of the Contractor as follows:
  - 4.2.1.1 The Construction Agent, with the assistance of the Architect/Engineer, shall furnish to each Contractor and the Owner's Representative a preliminary Project Schedule for the prosecution of Work on the Project in both paper and electronic executable form within 7 days of the date of the Notice to Proceed.
  - 4.2.1.2 Each Contractor shall, within 7 days of receipt of the Construction Agent's preliminary Project Schedule, submit to the Construction Agent, on a form required by the Construction Agent, the Contractor's comments on the preliminary Project Schedule and the Contractor's proposed Construction Schedule to coordinate the Work with all other Contractors, together with all information requested and required by the Construction Agent to prepare the Project Schedule.
  - 4.2.1.3 The Construction Agent, with the assistance of the Architect/Engineer and the Owner's Representative, shall provide comments to the Contractor on the Contractor's proposed Construction Schedule within 7 days of receipt. The Contractor shall revise the proposed Construction Schedule to incorporate those comments and submit 4 copies of the revised Construction Schedule to the Construction Agent within 7 days of receipt of the comments.
  - 4.2.1.4 The Construction Schedule shall not exceed the time limits specified in the Notice to Proceed, shall provide for reasonable, efficient and economical execution of the Work, as determined by the Construction Agent, and shall be coordinated with the Work of all other Persons on the entire Project to the extent required by the Contract Documents.

- 4.2.1.5 Within 30 days of the date of the Notice to Proceed, the Construction Agent shall issue the baseline Project Schedule to the Contractor, the Architect/Engineer, the Owner's Representative and the Authorized Representative in both paper form and electronic executable files.
  - 4.2.1.6 In the interim period between the Notice to Proceed and the issuing of the baseline Project Schedule, the Contractor shall conform to any guideline or weekly schedules produced by the Construction Agent. Such conformance shall be the same as the Contractor's obligation to perform in accordance with the Project Schedule under the Contract Documents.
- 4.2.2 The Contractor shall timely provide information necessary for the preparation of the Project Schedule to the Construction Agent including the following:
- 4.2.2.1 Verification that the Contractor's activities listed in the preliminary Project Schedule is a full and complete listing of necessary activities to allow the Contractor to economically perform the Work and coordinate Contractor's Work with the Work of all the Persons on the entire Project.
  - 4.2.2.2 Verification that the activity listing of the other Contractors in the preliminary Project Schedule is satisfactory to allow the Contractor to coordinate with the Work of the other Contractors.
  - 4.2.2.3 Any proposed new activities that will allow the Contractor to make the verification required by subparagraphs GC 4.2.2.1 and 4.2.2.2. For any such proposed new activities, the Contractor shall propose logical relationships and coordination with other activities.
  - 4.2.2.4 Verification that the proposed durations, logic, total float, and free float are acceptable for each listed and proposed activity, including verification that the Contractor can perform the Work in accordance with such activity listing and schedule should the total and free float listed not be available.
  - 4.2.2.5 The labor and material resources (in units determined by the Construction Agent) for each of the Contractor's listed and proposed new activities. Failure to provide this information fully shall be deemed to be acceptance of the Construction Agent's preliminary Project Schedule and shall cause denial of any request by the Contractor for adjustment to the Contract Time or Contract Price, or any other demand based upon a contention that the Contractor's planned Construction Schedule and resources differed from the Construction Agent's preliminary Project Schedule.
  - 4.2.2.6 A graphic presentation of the sequence of the Work for the Project which includes the Contractor's resource loading curve in the media and format required by the Construction Agent;
  - 4.2.2.7 Identification of each phase of the Work and any Milestone completion dates;
  - 4.2.2.8 Identification of activities and durations for review and approval of Shop Drawings and other submittals, fabrication and review of mock-up Work, product review and procurement, fabrication, shop inspection and delivery including lead time, coordination drawing delivery, Punch List, Punch List corrections, Project close-out requirements, Contract Completion and occupancy or utilization requirements;
  - 4.2.2.9 Identification of disruptions and shutdowns due to other operations, facilities and functions, if any;
  - 4.2.2.10 Identification of the critical path of the Work;

- 4.2.2.11 Identification of crew size and total resources hours for each activity in the Construction Schedule;
- 4.2.2.12 The Contractor's signature and date thereof on the baseline Project Schedule indicating approval.

Any of the foregoing information may be waived by the Authorized Representative in writing upon the written recommendation of the Construction Agent. Within 5 days of receipt of any baseline or updated Project Schedule. The Contractor shall review and acknowledge in writing the Contractor's concurrence within it. This review and acknowledgement shall constitute the Contractor's signature and date thereof under subparagraphs GC 4.2.2.12 and 4.2.7. Failure to review and acknowledge any baseline or updated Project Schedule shall require the Contractor to adhere to the requirements of that Project Schedule and shall cause denial of any Request for Change Order or claim by the Contractor for adjustment of the Contract Price or Contract Time based upon the contention that the Contractor did not acknowledge that Project Schedule or that the Contractor's planned schedule or resources differed from that Project Schedule. In such written acknowledgement, the Contractor shall also acknowledge the resources necessary for the Contractor to accomplish the early start and finish dates of the Contractor's activities. Failure to acknowledge shall be deemed to be acceptance by Contractor. Such acknowledgement may include the Contractor's observations on the baseline or updated Project Schedule, which the Construction Agent may consider in preparing subsequent updates to the Project Schedule, but such observations shall not, in any manner, relieve the Contractor from performing in accordance with the current Project Schedule.

- 4.2.3 The Construction Agent, with the assistance of the Architect/Engineer and the Owner's Representative shall provide complete specifications for the paper and electronic formats of the Construction Schedule. The Contractor shall develop the Construction Schedule using commercially available personal computer software acceptable to the Construction Agent, in graphic and tabular form. Final copies shall be provided in color and in such size as is appropriate for the level of detail and in order to clearly and legibly show all relevant information. All baseline and updated schedules shall be submitted electronically to the Construction Agent, in graphic and tabular form. The Contractor shall provide clear graphics, legends and other necessary data, including without limitation, Milestones, constraints and items required by the Project and the Construction Agent.
- 4.2.4 On a form required by the Construction Agent, the Contractor shall provide monthly updates to the Construction Schedule signed by the Contractor to the Construction Agent, the Owner's Representative and Authorized Representative for incorporation by the Construction Agent, with the assistance of the Architect/Engineer, into the Project Schedule. Each update shall show the Project Name and Contract and contain lines for signature of the Contractor and the date thereof. Each update shall provide activity identification and a description for each activity broken down to a maximum 15-day duration, responsibility for each applicable Contractor, the Contractor's resources and crew size for each activity, early start dates, early finish dates, late start dates, late finish dates. Each update shall show predecessor and successor activities for each activity, free float, total float and percentage completion and identify the appropriate predecessors and successors for all related activities. Each update shall identify the logic relationship between all activities and shall show all submittal dates, coordination drawing preparation, Shop Drawing submittals and mock-up review and approval durations. Together with each update, the Contractor shall provide, on a form required by the Construction Agent:
  - 4.2.4.1 The actual start date of any Construction Schedule activity that started since the last update to the Construction Schedule.
  - 4.2.4.2 The actual start date of any activity not identified on the current Construction Schedule that started since the last update to the Construction Schedule.

- 4.2.4.3 The actual completion dates of previously identified Construction Schedule activities or additional activities that finished since the last update to the Construction Schedule
- 4.2.4.4 Any suspensions, disruptions, or interruptions in any previously identified Construction Schedule activities or additional activities upon which the Contractor had previously started.
- 4.2.4.5 The percentage completion of the activities identified in subparagraphs GC 4.2.4.1 to 4.2.4.4.
- 4.2.4.6 The estimated remaining duration for the activities identified in subparagraphs GC 4.2.4.1, 4.2.4.2 and 4.2.4.4, based upon continuous Work from the date of the Construction Schedule update, including the size of the workforce and the Work calendar (if different than the typical Project calendar).
- 4.2.4.7 The estimated date of re-commencement of any activity identified in subparagraph GC 4.2.4.4 which is suspended or interrupted as of the date of the Construction Schedule update, or if such date is unknown, identify the factors which prevent the identification of such a date.
- 4.2.4.8 Whether the Contractor is able to identify the re-commencement date or not, the estimated remaining duration for any activities identified in subparagraph GC 4.2.4.7, based upon continuous Work from the date of the Construction Schedule update, including the size of the workforce and the Work calendar (if different than the typical Project calendar).
- 4.2.4.2 The actual start date of any activity not identified on the current Construction Schedule that started since the last update to the Construction Schedule.
- 4.2.5 If the Contractor fails to timely provide a monthly update, fails to provide all required information or provides, in the Construction Agent's sole opinion, inaccurate information, the Construction Agent shall estimate all required information to update the Project Schedule and may recommend that the City withhold payment from the Contractor.
- 4.2.6 If the Construction Agent estimates required information to update the Project Schedule in accordance with subparagraph GC 4.2.5, the Contractor shall:
  - 4.2.6.1 Maintain its obligation to perform in accordance with the Project Schedule.
  - 4.2.6.2 Be deemed to have accepted the estimated information provided by the Construction Agent.
  - 4.2.6.3 Be denied any Request for Change Order or claim by the Contractor based upon a contention that the Contractor was impacted in any manner by the estimated information provided by the Construction Agent.
- 4.2.7 Based on the updates provided under subparagraph GC 4.2.4 or the estimates provided under subparagraph GC 4.2.5 and the reports provided under subparagraph GC 4.2.9 from all of the Contractors, the Construction Agent, with the assistance of the Architect/Engineer and the Owner's Representative, shall update the Project Schedule and the schedule of submittals on a monthly basis and upon approval of a time recovery plan in accordance with subparagraph GC 4.2.10.3 and shall furnish to each Contractor a copy of each updated Project Schedule. The Contractor shall review and sign each updated Project Schedule within 2 days of receipt. The Contractor's signature of any base line or updated Project Schedule shall serve as an affirmation of the Contractor's approval of and agreement to the Project Schedule and a representation that the Contractor can meet the requirements of the Project Schedule without additional compensation.

- 4.2.8 Immediately after all Contractors have signed the Project Schedule, the Construction Agent shall submit it and a schedule of submittals to the Owner's Representative and the Authorized Representative, together with a list of all changes to previously signed baseline Project Schedule or update, or return them to the Contractor with recommendations for revision. No payment will be made without a current Project Schedule approved by all the Contractors and accepted by the Authorized Representative. Alternatively, in the City's discretion, failure to timely sign any Project Schedule may result in a back-charge to the Contractor in accordance with Paragraph GC 6.2, scheduling responsibility being reassigned and suspension or termination of the Contract in accordance with Article GC 14.
- 4.2.9 On a weekly basis the Contractor shall prepare and submit to the Construction Agent a written report describing activities begun or finished during the preceding week, activities in progress and expected completion, activities to be started or finished in the upcoming 2 weeks, including the Contractor's workforce crew size, estimated remaining or total duration for the period for such Work, total resource hours associated with those activities and any other information requested by the Construction Agent. This report shall be attached to minutes of a progress meeting by the Construction Agent on a timely basis.
- 4.2.10 The Construction Agent, with the assistance of the Architect/Engineer, shall provide monthly progress reports to the Owner's Representative and the Authorized Representative, which shall include recommendations for adjusting the Project Schedule to meet Milestone completion dates and Contract Completion dates.
- 4.2.10.1 If it is apparent to the Construction Agent that the Contractor may be unable to meet critical path activities, Milestone completion dates, or the Contract Completion date, the Construction Agent shall notify the Contractor to provide a time recovery plan to avoid or minimize any delay, hindrance, disruption, interference or impact and to assure that applicable completion dates shall be met within 3 days of receipt of the notice. If the Contractor fails or refuses to submit a time recovery plan within such period, the Construction Agent shall submit a time recovery plan to the Contractor shall cause denial of any Request for Change Order or a claim by the Contractor for any related adjustment to the Contract Time or Contract Price.
- 4.2.10.2 A time recovery plan may include increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work, increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof, rescheduling of activities to achieve maximum practical concurrency of Work efforts and, if appropriate, time extensions.
- 4.2.10.3 If all of the Contractors approve the time recovery plan within 10 days of receipt, the Construction Agent shall prepare a revised Project Schedule that shall be signed and approved by the Contractors in accordance with subparagraphs GC 4.2.7 and 4.2.8. If any Contractor fails to approve the plan within 5 days of receipt, such Contractor shall immediately provide an alternate time recovery plan to the Construction Agent in writing for review and approval by the Contractors in accordance with subparagraphs 4.2.7 and 4.2.8.

### 4.3 PARTNERING

- 4.3.1 The formation of a cohesive, mutually beneficial partnering arrangement among all Contractors, the Construction Agent, the Architect/Engineer and the City will accomplish the construction of the Project most effectively and efficiently. Such an arrangement draws on the strengths, skills, and knowledge of each of those Persons to achieve a Project of the intended quality, within budget, and on schedule. To achieve those objectives, participation in a partnering session requires the following Persons:

- 4.3.1.1 City - Authorized Representative
- 4.3.1.2 Construction Agent- Project manager or project engineer, if applicable, field representative, schedule manager, if applicable, and estimator, if applicable.
- 4.3.1.2 Architect/Engineer - Principal-in-charge, project manager, field representative, major consultants
- 4.3.1.4 Contractor - Principal-in-charge, project manager and superintendent
- 4.3.1.5 Major Subcontractors (e.g., masonry, fire protection) - Principal-in-charge project manager or superintendent
- 4.3.2 The purpose of the partnering arrangement is to build cooperative relationships between such Persons, avoid or minimize disputes and to nurture a more collaborative ethic characterized by trust, cooperation and teamwork. This arrangement is intended to be a voluntary, non-binding, but formally structured agreement among such Persons, leading to an attitude that fosters risk sharing.
- 4.3.3 To create and implement the partnering arrangement, all such Persons shall meet prior to the construction of the Project for development of a partnering agreement. The agreement shall be comprehensive and focus on all issues necessary for successful completion of the Project and shall identify common goals and objectives, develop a problem solution and dispute resolution strategy, and an implementation plan for the partnering arrangement.
- 4.3.4 Formal contractual relations, responsibilities and liabilities shall not be affected by any partnering agreement. Any cost associated with establishing partnering or the partnering agreement shall be agreed to among such Persons and will be shared equally among them with no change in Contract Price. The Contractor shall include in its Base Bid the resources necessary to participate in the partnering meeting.
- 4.3.5 Partnering services may extend over the entire Contract Time and may include intervention or project realignment services to be utilized if serious disputes arise. The Persons involved should agree, during the initial partnering meeting, to the types of situations and circumstances in which intervention or realignment services shall be utilized. If realignment or intervention services are utilized, partnering facilitators shall not be called as witnesses in any litigation, arbitration, mediation, or quasi-judicial proceeding.

#### 4.4 PROGRESS MEETINGS

- 4.4.1 The Construction Agent shall schedule and attend a weekly progress meeting for all Contractors and other Persons involved in the Project. The Architect/Engineer shall attend any progress meeting as requested by the Construction Agent. The Owner's Representative may attend any progress meeting. The purpose of the progress meetings may include review of progress in the Work and the Project during the previous week, discussion of anticipated progress during the following week and review and discussion of critical operations, existing and potential problems and safety matters.
- 4.4.2 The Contractor shall be represented at every progress meeting by a Person authorized with signature authority to make decisions regarding possible modification of the Contract Documents or Project Schedule.
  - 4.4.2.1 The Construction Agent shall notify the Contractor and other applicable Persons of the time and place of the progress meeting which shall thereafter be the same day and hour of the week for the duration of the Project, unless the Construction Agent notifies the Contractor and other Persons involved in the Project of a different day and hour at least 2 days in advance.

- 4.4.2.2 The Contractor shall have any of the Contractor's Subcontractors and Material Suppliers attend the progress meeting as deemed advisable by the Contractor or as requested by the Construction Agent.
    - 4.4.3 The Construction Agent, with the assistance of the Architect/Engineer for progress meetings the Architect/Engineer attends, shall prepare a written report of each progress meeting and distribute the report to the Authorized Representative, the Owner's Representative, the Contractor and any other Person who was in attendance within 3 business days of the progress meeting. The Construction Agent shall not delegate the duty to prepare a written report of each progress meeting.
      - 4.4.3.1 If any Person in attendance objects to anything in a report of a progress meeting, the Person shall notify the Construction Agent and any other affected Person in writing explaining the objection within 2 business days of receipt of the report or at the next progress meeting, whichever is earlier.
      - 4.4.3.2 The report of each progress meeting shall reflect any objection made to the report of the previous progress meeting and any response thereto.
- 4.5 COORDINATION MEETINGS
  - 4.5.1 The Construction Agent shall schedule and conduct coordination meetings for all Contractors and appropriate Subcontractors and Material Suppliers (the "Coordination Participants"). The Architect/Engineer shall attend any coordination meeting as requested by the Construction Agent. The Owner's Representative may attend any coordination meeting.
    - 4.5.1.1 The purpose of the coordination meeting is to establish the exact location of each piece of equipment, pipe, duct, conduit and any other component of the Project; to discuss the sequence of construction and its relationship with the Project Schedule; and to coordinate the appropriate shared use of available construction and storage space, especially interstitial spaces, chases and mechanical rooms.
    - 4.5.1.2 Each Coordination Participant shall be knowledgeable about the Project and the scope of the Coordination Participant's Work. Each Coordination Participant shall designate an individual who has authority to make decisions regarding the coordination process and drawings and possible modification of Contract Documents and the Project Schedule. Each Coordination Participant shall have any of its Subcontractors or Material Suppliers attend a coordination meeting as the Coordination Participant deems advisable and as requested by the Construction Agent
    - 4.5.1.3 Each Coordination Participant shall attend the coordination meetings prepared to demonstrate and furnish documentation that it has anticipated the Work of other Persons, and planned the installation of the Coordination Participant's Work. Each Coordination Participant shall coordinate the installation of the Coordination Participant's Work with the Work of other Persons.
    - 4.5.1.4 Each Coordination Participant shall utilize documentation and information provided by other Coordination Participants to verify that the utility requirements, physical size and characteristics of planned equipment are compatible with related or connected equipment, existing or planned building components and existing or planned utilities.
    - 4.5.1.5 The Coordination Participants shall utilize the documentation and information provided by each of them in determining the actual placement and positioning of equipment and devices to avoid interference with the Work of other Persons, building finishes and architectural details.

- 4.5.1.6 The Coordination Participants shall utilize the documentation and information provided by each of them to coordinate space requirements and installation considerations to maximize accessibility to equipment and devices for purposes of maintenance, repairs and replacement.
  - 4.5.1.7 The Construction Agent, with the assistance of the Architect/Engineer for coordination meetings the Architect/Engineer attends, shall prepare a written report of each coordination meeting and distribute the report to the Authorized Representative, the Owner's Representative, the Architect/Engineer, the Contractor and the other Coordination Participants within 3 business days of the coordination meeting. The Construction Agent shall not delegate the duty to prepare a written report of each coordination meeting.
  - 4.5.1.8 If any Person in attendance objects to anything in a report of a coordination meeting, the Person shall notify the Construction Agent and any other affected Person in writing explaining the objection within 2 business days of receipt of the report or at the next coordination meeting, whichever is earlier.
  - 4.5.1.9 The report of each coordination meeting shall reflect any objection made to the report of the previous coordination meeting and any response thereto.
- 4.5.2 Within 45 days of the Notice to Proceed or such other period mutually agreed upon by the HVAC Contractor and the Construction Agent, the HVAC Contractor shall prepare Preliminary Coordination Drawings as described below after the Coordination Participants (1) determine the sequence of the Project, (2) complete the informational activities in accordance with subparagraphs GC 4.5.1.2 to GC 4.5.1.6, (3) identified the areas requiring special attention (the "Coordination Areas") and (4) determine the need for a coordination drawing for any Coordination Area. The HVAC Contractor shall prepare the Preliminary Coordination Drawings at one-fourth inch equals one foot scale drawings with CAD or BIM software acceptable to the Construction Agent and the Architect/Engineer. The Preliminary Coordination Drawings shall show, either on the same or separate drawings, all sheet metal work with plan and elevation dimensions, which specifically locate all HVAC ductwork, HVAC equipment and HVAC piping for each Coordination Area based upon the information, discussion and resulting consensus of the Coordination Participants during the coordination meetings.
- 4.5.2.1 The HVAC Contractor shall provide the Preliminary Coordination Drawings to all Coordination Participants. Each Coordination Participant shall use the Preliminary Coordination Drawings as a baseline to develop drawings of its Work within each applicable Coordination Area to specifically locate equipment, devices, piping, conduits and other Work as discussed and agreed at the coordination meetings.
  - 4.5.2.2 Each Coordination Participant with Work within a Coordination Area shall return its drawings to the HVAC Contractor marked to show the location of the Coordination Participant's equipment, devices, piping, conduits and other Work for the preparation of detailed coordination drawings (the "Coordination Drawings") by the HVAC Contractor.
  - 4.5.2.3 Any Coordination Participant with no Work within any Coordination Area shall return the applicable Preliminary Coordination Drawings to the HVAC Contractor with a statement on the Drawings signed by an authorized representative of the Coordination Participant certifying that it has no Work within that Coordination Area.
  - 4.5.2.4 After the HVAC Contractor completes the Coordination Drawings, the HVAC Contractor shall forward a copy of the Coordination Drawings to the Construction Agent, the Architect/Engineer, the Authorized Representative, the Contractors

and other Coordination Participants with Work within the limits of a Coordination Area. The Contractor shall report discrepancies in the Coordination Drawings, in writing, to the HVAC Contractor within 7 days of receipt of the drawings.

4.5.2.5 The Construction Agent and the Architect/Engineer shall review the Coordination Drawings to determine whether the Coordination Participants achieved the goals listed in paragraph GC 4.5.1. The Construction Agent and the Architect/Engineer shall report any concerns in writing, to the Coordination Participants within 14 days of receipt of the Coordination Drawings.

4.5.3 If Work performed by the Contractor causes or contributes to interference with subsequent Work of any other Person, the Authorized Representative upon recommendation of the Construction Agent and the Architect/Engineer shall determine the needed modifications to the Contractor's Work to accommodate the subsequent Work. The Authorized Representative's decision shall be final, but subject to the provisions of Article GC 10 and the cost of the modifications shall be paid by the Contractor immediately upon demand by the City.

## ARTICLE 5 - SHOP DRAWINGS AND OTHER SUBMITTALS

### 5.1 DESCRIPTION

- 5.1.1 Shop Drawings, Product Data, Samples and other submittals for the Architect/Engineer's review and action shall be provided by the Contractor for any item required by the Contract Documents but not fully described in the Drawings and Specifications, unless waived by the Architect/Engineer, and include:
- 5.1.1.1 Construction of the various parts, method of joinery, type of materials, grade, quality and thickness of materials, alloy of materials, profiles of all sections, reinforcement, method of hanging doors or installing windows, anchorage, type and grade of finish.
  - 5.1.1.2 Capacities, types of materials and performance charts that are pertinent to the materials and performance charts that are pertinent to equipment or the Work.
  - 5.1.1.3 Wiring diagrams, control diagrams, schematic diagrams, working and erection dimensions, arrangement and specifications.
  - 5.1.1.4 If the Project is designed and constructed under the LEED ("Leadership in Energy and Environmental Design") Rating System developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable design rating system criteria for verification by a third party.
- 5.1.2 Submittals are not Contract Documents. In the event of conflicts between submittals and the Contract Documents, the Contract Documents take precedence and govern the Work.

### 5.2 FORM OF SUBMITTALS

- 5.2.1 The Contractor shall provide a transmittal letter, review and stamp it "approved" to show that the Contractor has reviewed and approved the Shop Drawings or other submittal and deliver the transmittal letter and the submittal to the Construction Agent in accordance with a schedule established by the Construction Agent, the Architect/Engineer and the Contractor. The Construction Agent shall review the submittal for completeness and forward it to the Architect/Engineer or return it to the Contractor noting deficiencies. If it is apparent to the Construction Agent or to the Architect/Engineer that the submittal is incomplete, the Contractor has not reviewed a submittal or has incompletely reviewed a submittal, the Construction Agent or the Architect/Engineer shall reject the submittal.
- 5.2.1.1 The Contractor shall submit a minimum of 6 copies of Shop Drawings and any other submittal. Only 1 copy of Shop Drawings will be returned to the Contractor. If the Contractor requires more than 1 copy, additional copies must be provided to the Construction Agent at the time of the original submission. The Construction Agent and the Architect/Engineer will not produce copies of the Shop Drawings.
  - 5.2.1.2 The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to communicate to the Architect/Engineer the materials and equipment which the Contractor proposes to provide.
  - 5.2.1.3 Each Sample shall be identified clearly as to materials, supplier, pertinent data such as catalog numbers, the intended use and other uses as the Architect/Engineer may require enabling the Architect/Engineer to intelligently review the submittal.
  - 5.2.1.4 All Shop Drawings shall indicate the applicable Plan sheet and Specifications.

### 5.3 VARIATION FROM CONTRACT DOCUMENTS

5.3.1 If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specifically and clearly identify the variations in the Contractor's transmittal letter.

5.3.1.1 If the variation is acceptable to the Architect/Engineer, the Architect/Engineer shall recommend acceptance of the variation to the Construction Agent and the Authorized Representative in writing. Upon written approval of the Authorized Representative, the variation may be incorporated into the Work by Change Order.

5.3.1.2 The Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Construction Agent's review or the Architect/Engineer's review or approval of Shop Drawings or other submittals.

### 5.4 CONTRACTOR'S SUBMITTAL REVIEW

5.4.1 By approving and transmitting a Shop Drawing or other submittal the Contractor represents that the Contractor has determined and verified, materials, field measurements and field construction criteria associated with related Work, or shall do so before incorporation of the Work into the Project, and has checked and coordinated the information contained within the submittal with the requirements of the Work and the Contract Documents.

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

5.4.3 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 design professional.

### 5.5 ARCHITECT/ENGINEER'S SUBMITTAL REVIEW

5.5.1 The Architect/Engineer, with the assistance of the Construction Agent, shall review Shop Drawings and other submittals for conformity with design intent and approve or disapprove Shop Drawings and other submittals within 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.

5.5.1.1 The Contractor shall make any corrections required by the Architect/Engineer and resubmit the required number of corrected copies of Shop Drawings or other submittals until approved, which re-submission shall be acted upon by the Architect/Engineer, with the assistance of the Construction Agent, within 15 days of receipt or such other period of time as is mutually agreed by the Architect/Engineer and the Contractor.

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

5.5.1.3 The Contractor shall pay all reasonable costs of the Construction Agent, the Architect/Engineer, other Contractors and the City including costs for delay, interference, hindrance, disruption or impact, due to the failure of the initial submittal to substantially meet the requirements of the Contract Documents, or due to excessive re-submittals without the fault of the Construction Agent, the Architect/Engineer, other Contractors or the City, respectively. Re-submittals in excess of 2 without the fault of the Construction Agent, the Architect/Engineer, other Contractors or the City may be deemed excessive by the City.

- 5.5.1.4 The Architect/Engineer may hold Samples and other submittals used to coordinate finishes, colors, patterns, textures, or other characteristics until submittals for adjacent materials are available. The Architect/Engineer shall issue a written notice to the Contractor stating that the submittal is being held, within 7 days of receipt.
- 5.5.1.5 If coordinating submittals are not received within the period required for action on submittals that are held in accordance with subparagraph GC 5.5.1.4, the time for review of the previously received submittals shall be extended.
- 5.5.2 The Architect/Engineer's review and approval of Shop Drawings and other submittals is to determine if the items covered by the submittals will, after installation and incorporation into the Work, conform to the Contract Documents and be compatible with the design concept of the Project as a functioning whole.
  - 5.5.2.1 The Architect/Engineer's review and approval shall not extend to means, methods, manners, techniques, sequences, procedures of construction or to safety precautions or programs incident thereto.
  - 5.5.2.2 The Architect/Engineer's review and approval of a separate item will not indicate approval of the assembly in which the item functions.
- 5.6 RISK OF NONPAYMENT
  - 5.6.1 The Contractor shall not commence any portion of the Work requiring a Shop Drawing or other submittal until the submittal has been reviewed and approved by the Architect/Engineer. If the Contractor commences Work before the Architect/Engineer's final approval of the submittal the Contractor does so at its own risk that payment shall not be approved or made by the City for the related Work.
- 5.8 EQUIPMENT STATEMENT
  - 5.8.1 Shop Drawings on all equipment shall include the following written statement from the manufacturer of the equipment:
    - 5.8.1.1 "This equipment submitted for approval shall perform as specified when installed by the Contractor in the arrangement shown on this drawing and in the Contract Documents and in conjunction with all other accessories such as flues, breachings, piping, controls and equipment not furnished by this manufacturer but required as an accessory or supplement to this equipment, providing that the accessory or supplementary items perform as specified and are installed as shown in the Contract Documents.

## **ARTICLE 6 - CITY'S RIGHTS AND RESPONSIBILITIES**

- 6.1 THE CITY
  - 6.1.1 Information and services required of the City shall be furnished through the Construction Agent, the Architect/Engineer or the Authorized Representative in a timely manner.
  - 6.1.2 The City and the City's officials, officers, employees, consultants, agents and representatives shall at all times have access to the Work whenever the Project is in preparation or progress.
  - 6.1.3 Upon the issuance of the Notice to Proceed or at a reasonable time thereafter, the City shall provide the Contractor access to the Site in such condition to permit the Contractor to perform the Work.

- 6.1.4 The City reserves the right to furnish at any time such materials and labor and to prosecute such work in addition to the Work of the Contractor as the City may desire.
- 6.1.5 If the Contractor fails to perform the Work in conformity with the requirements of the Contract Documents, the City shall have the right to consider such failure as just cause to find that the Contractor is not lowest and best for future contract awards.
- 6.1.6 The City has engaged the Owner's Representative to monitor the Work on the Project solely for the City's benefit. The Owner's Representative shall not have authority to authorize the Contractor to perform additional or extra work, to grant the Contractor any extension of time or to bind the City for any costs or expenses.
- 6.1.7 The foregoing are in addition to other rights and responsibilities of the City enumerated herein and especially those in respect to the City's right to prosecute the Work, approve payments and accept the Project.

## 6.2 THE CITY'S RIGHT TO PERFORM WORK AND BACKCHARGE CONTRACTOR

- 6.2.1 If the Contractor provides Defective Work or fails or neglects to perform the Work with the necessary diligence in accordance with the Project Schedule and 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, the Construction Agent may issue a written notice to the Contractor of such Defective Work or failure or neglect and to begin to correct the same or to recover schedule deficiencies as set forth in subparagraph GC 6.2.2 within 5 days of the date of the notice.
- 6.2.2 If the Contractor fails or refuses to commence and continue to correct the Defective Work or the failure or neglect or to recover the schedule deficiencies with diligence and promptness within 15 days after receipt of the written notice, the Construction Agent and the Architect/Engineer may recommend enforcement of the Contract to the City pursuant to subparagraphs GC 3.1.2 and 3.2.1.3. Without prejudice to any other remedy the City may have, the City may take any action the City deems appropriate to correct the Defective Work or failure to neglect or to recover the schedule deficiencies, including exercising the City's termination rights under Article GC 14.
  - 6.2.2.1 In such case, the Contractor shall pay all resulting costs and damages, including Liquidated Damages, the costs of correcting the Defective Work or failure or neglect or recovering the schedule deficiencies and the related fees and charges of engineers, architects, Construction Agents, attorneys, experts, consultants and other professionals.
  - 6.2.2.2 If the payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor and the Contractor's Surety shall immediately pay the amount of the insufficiency to the City upon demand.
  - 6.2.2.3 The decision of the City to backcharge the Contractor shall be final, subject to proceedings in accordance with Article GC 10.

## 6.3 THE CITY'S RIGHT TO PARTIAL OCCUPANCY OR USE

- 6.3.1 The City may occupy or use a portion of the Project prior to Contract Completion, if the Building Department issues a temporary occupancy permit for the area in question and the insurers providing builders risk or other property insurance for the Project have been provided written notice of the Partial Occupancy or use.
- 6.3.2 If Partial Occupancy or use is approved by the City, the Architect/Engineer, through the Construction Agent, shall process a Certificate of Partial Occupancy or Use for the applicable portion of the Project listing the incomplete or Defective Work under the Contract for approval by the City.

- 6.3.3 From the date of execution of the Certificate of Partial Occupancy or Use by the Authorized Representative, the Contractor shall be relieved of the obligation set forth in subparagraph GC 2.4.1 to maintain the accepted portion of the Work, but shall remain obligated to complete and correct the Work, including, without limitation any Punch List items then uncorrected, and to carry the insurance during performance of any such Work.
- 6.3.4 Partial Occupancy or use of the Project by the City shall not constitute acceptance of any Work not in conformity with the Contract Documents. Partial Occupancy or use shall not relieve the Contractor of liability for any express or implied warranties or from liability for Defective Work.

#### 6.4 BOND REDUCTION

- 6.4.1 Upon notice and consent of the Contractor's Surety, the City may reduce the Bond by 25% of the total amount of the Bond after at least 50% of the Work has been completed, and by 50% after at least 75% of the Work has been completed, provided that all of the following conditions are met:
  - 6.4.1.1 The City determines that the percentage of Work 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 shall be completed;
  - 6.4.1.2 The City determines that no disputed claim caused by the Contractor exists or remains unresolved; and
  - 6.4.1.3 The bid upon which the Contract is based was not more than 10% below the next lowest bid or not more than 10% below the cost estimate for the Work as published in the Notice to Bidders.

#### 6.5 EXAMINATION

- 6.5.1 The City shall have the right to examine all books, records, documents and other data of the Contractor and of the Contractor's Subcontractors and Material Suppliers related to the bidding, pricing or performance of the Work, including for the purpose of evaluating any Proposal, Request for Change Order or claim.
- 6.5.2 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 7 years after the date of Final Acceptance of the Project by the City. To the extent that the Contractor, Subcontractor or Material Supplier, as applicable, informs the City in writing that any documents copied by the City are trade secrets, the City shall treat such documents as trade secrets of the Contractor, Subcontractor or Material Supplier, as applicable. In the event, any dispute arises with any other Person about whether such other Person should be given access to the documents, the Contractor, Subcontractor or Material Supplier, as applicable, shall indemnify the City against all costs, expenses and damages, including attorneys' fees, incurred or paid by reason of such dispute.
- 6.5.3 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.

### **ARTICLE 7 - SUBCONTRACTORS AND MATERIAL SUPPLIERS**

#### 7.1 CITY'S APPROVAL

- 7.1.1 Within 10 days after the Notice to Proceed, the Contractor shall submit to the Construction Agent, on forms approved by the Construction Agent, lists of the Contractor's proposed Subcontractors and Material Suppliers, and adequate proof that each Subcontractor is enrolled in the Ohio Bureau

of Workers' Compensation Drug-Free Workplace Program or a similar program approved by the Bureau of Workers' Compensation and in good standing in the drug-free workplace program. The Bureau of Workers' Compensation Drug Free Workplace Program includes and requires a written substance abuse policy, drug/alcohol educational awareness, substance testing, assistance for all employees, and training for all supervisors of the Subcontractors. Such program must be sponsored or approved by the Bureau of Workers' Compensation. This policy shall apply to all support employees, staff, management, craft persons, estimators, supervisors, owners, delivery personnel, and all those employed by the Subcontractor.

7.1.2 Within 14 days after receiving the Contractor's lists of proposed Subcontractor and Material Suppliers, the Construction Agent shall verify that the lists are complete and review them with the Architect/Engineer and the Authorized Representative. If the Construction Agent finds the lists are incomplete, the Construction Agent shall return them to the Contractor and identify corrective action the Contractor shall perform prior to resubmitting the lists. If the Construction Agent returns such incomplete lists to the Contractor, the Contractor, within 7 days of receipt, shall resubmit the lists with revisions complying with the corrective action identified by the Construction Agent.

7.1.2.1 The City reserves the right to reject any Subcontractor or Material Supplier. Failure of the Construction Agent to notify the Contractor of rejection within 14 days of receipt of the complete lists shall constitute notice that the City has no objection.

7.1.2.2 If the City rejects any Subcontractor or Material Supplier, the Contractor shall replace the Subcontractor or Material Supplier, within 10 days of receipt of the rejection, at no additional cost to the City.

## 7.2 REPLACEMENT

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

7.2.1.1 The Contractor shall submit to the Construction Agent an amended list of Subcontractors and Material Suppliers and a written justification for additions to or changes in the Contractor's lists of Subcontractors and Material Suppliers.

7.2.1.2 The Contractor shall submit an amended list to the Construction Agent whenever any listed information changes for the Contractor's Subcontractors or Material Suppliers.

7.2.1.3 Upon submission of an amended list, the Contractor, the Construction Agent, the Architect/Engineer and the Authorized Representative shall follow the procedures described in paragraph GC 7.1.

### 7.3 CONTRACTOR'S RESPONSIBILITY

- 7.3.1 The Contractor is fully responsible for all acts and omissions of the Contractor's Subcontractors and Material Suppliers and for scheduling and coordinating the Work of the Contractor's Subcontractors and Material Suppliers.
  - 7.3.1.1 The Contractor is fully responsible for any Defective Work and any delay, interference, disruption, hindrance or impact attributable to the Contractor's Subcontractors or Material Suppliers.
  - 7.3.1.2 The Contractor shall require that each of the Contractor's Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.
  - 7.3.1.3 The Contractor shall bind the Contractor's Subcontractor and Material Supplier to the terms of the Contract Documents, so far as applicable to the Work of such Subcontractor or Material Supplier, and shall not agree to any provisions which seek to bind the City to terms inconsistent with or at variance from the terms of the Contract Documents.

### 7.4 WARRANTY, GUARANTEE AND ASSIGNMENT

- 7.4.1 The Contractor shall require each of the Contractor's Subcontractors and Material Suppliers to fully warrant and guarantee, for the benefit of the City, the good and workmanlike nature of any Work performed by, and the effectiveness, fitness for the purpose intended, quality and merchantability of any item provided or installed by such Subcontractor or Material Supplier.
- 7.4.2 The Contractor hereby assigns its agreement with each of the Contractor's Subcontractors and Material Suppliers to the City; provided, however, that the assignment is effective only after termination of the Contract by the City and only for those agreements which the City accepts by notifying the Contractor and applicable Subcontractor or Material Supplier in writing. The City's obligations under any agreement assigned to the City shall commence upon the City acceptance of the agreement, and the City shall have no liability for any obligations of the Contractor under the agreement prior to the City's acceptance.

### 7.5 PROMPT PAYMENT

- 7.5.1 If a Subcontractor or Material Supplier requests payment in time to allow the Contractor to include the request in the Contractor's Contractor Payment Request, the Contractor shall pay within 10 days after receipt of payment from the City:
  - 7.5.1.1 To a Subcontractor an amount equal to percent of completion allowed by the City for the Subcontractor's Work,
  - 7.5.1.2 To a Material Supplier an amount equal to all or a portion of the Material Supplier's request for materials furnished.
- 7.5.2 The Contractor may reduce the amount to be paid to a Subcontractor or Material Supplier pursuant to subparagraph GC 7.5.1 by the amount of any retainage withheld from the Contractor and may withhold amounts necessary to resolve disputed liens or claims involving the Work of the Subcontractor or Material Supplier on the Project.
- 7.5.3 If the Contractor fails to comply with the provisions of paragraph GC 7.5, the Contractor shall pay to the applicable Subcontractor or Material Supplier 18% interest on any unpaid amount beginning on the 11th day after receipt of payment from the City.

### 7.6 CLAIM AFFIDAVIT

- 7.6.1 In order to establish lien rights under Sections 1311.25 to 1311.32, ORC, 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 Work on the Project, in accordance with Section 1311.26, ORC.
- 7.6.1.1 The notice of furnishing must be served upon the Contractor within 21 days of performing the Work or furnishing the materials.
- 7.6.1.2 Subcontractors and Material Suppliers not in privity of contract with the Contractor must, at the time of filing a Claim Affidavit with the Authorized Representative, provide a copy of the notice of furnishing and proof that it was received by the Contractor.
- 7.6.2 In order to establish lien rights, a claimant must serve a Claim Affidavit with the Authorized Representative within 120 days from the date of the last Work or furnishing of materials in accordance with Section 1311.26, ORC. Service is to be made in accordance with Section 1311.19, ORC.
- 7.6.2.1 In order to receive priority over similar claims, the claimant must file a copy of the claim with the Cuyahoga County Recorder's office within 30 days of serving the Authorized Representative.
- 7.6.2.2 All claimants who serve the Authorized Representative, and file with the Cuyahoga County Recorder within 30 days, have no priority among themselves and share in the funds pro rata.
- 7.6.2.3 Claimants who serve the Authorized Representative, but do not file with the Cuyahoga County Recorder, are paid only if there are sufficient funds left after paying those claimants who serve the Authorized Representative and file with the Cuyahoga County Recorder.
- 7.6.3 The Authorized Representative shall notify the Contractor of the receipt of the claim within 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.
- 7.6.3.1 The Contractor shall have 20 days to dispute the claim.
- 7.6.3.2 If the Contractor does not notify the Authorized Representative in writing of an intention to dispute the claim within 20 days after receipt of the Claim Affidavit, the Contractor is deemed to have assented to its correctness.
- 7.6.4 The City shall detain the amount stated in the Claim Affidavit from subsequent Applications for Payment and deposit said amount in an escrow account in accordance with an escrow agreement between the City and a bank.
- 7.6.4.1 The escrow agent shall hold the deposit and any interest earned thereon until receipt of notice from the Authorized Representative specifying an amount to be released and the Person to whom the amount is to be released.
- 7.6.4.2 The City reserves the right to pay or dispute, in the City's sole discretion, a Claim Affidavit which is not timely disputed by the Contractor.

## 7.7 CLAIMS AGAINST CONTRACT BOND

- 7.7.1 In accordance with Section 153.56, ORC, 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 90 days after Contract Completion and Final Acceptance of the Project, by the City, furnish the Surety a statement of the amount due.
- 7.7.2 After furnishing the statement, laborers, Subcontractors or Material Suppliers must wait 60 days to bring a suit for the amount due. If the Surety has not paid the claim at the expiration of those 60 days, laborers, Subcontractors or Material Suppliers may bring suit for amounts not paid, but must bring the suit within 1 year of Final Acceptance of the Project by the City.
- 7.7.3 A Subcontractor or a Material Supplier supplying labor or materials that cost more than \$30,000, who is not in direct privity of contract with the Contractor, shall serve a notice of furnishing upon the Contractor in the form provided in Section 1311.261, ORC.

## ARTICLE 8 - TIME

### 8.1 COMPUTING TIME

- 8.1.1 When any period of time is referred to in the Contract Documents by a number of days, the period shall be computed to exclude the first and include the last day of such period. If the last day of the period falls on a Saturday, Sunday or a legal holiday, that day will be omitted from the computation and the period shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.
- 8.1.2 Except as excluded under subparagraph GC 8.1.1, the Contract Time and all other time periods referred to in the Contract Documents includes Saturdays, Sundays and all legal holidays.

### 8.2 TIME OF ESSENCE

- 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract and all obligations under the Contract Documents. By executing the Contract Form, the Contractor acknowledges that the Contract Time is reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project. By signing or acknowledging the Project Schedule, the Contractor acknowledges that the Milestone completion dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.
  - 8.2.1.1 The Notice to Proceed shall establish the date for commencement of the Work.
  - 8.2.1.2 The City has entered into, or may enter into, agreements for occupancy or use of all or part of the Project based upon the Contractor achieving Contract Completion within the Contract Time.
  - 8.2.1.3 The Contractor shall perform Work in a reasonable, efficient and economical sequence, in cooperation with the other Contractors, the Construction Agent and the Architect/Engineer and in the order and time as provided in the current Project Schedule.

### 8.3 LIQUIDATED DAMAGES

- 8.3.1 All Work to be performed under the Contract shall be completed within the established Contract Time, and each applicable portion of the Work shall be completed upon the respective Milestone completion date unless the Contractor timely requests and the City grants an extension of time in accordance with the Contract Documents.

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

**LIQUIDATED DAMAGES**

<u>Contract Amount</u>	<u>Milestone Completion</u>	<u>Contract Completion</u>
\$0 to \$50,000	\$100	\$150
more than \$50,000 to \$150,000	\$200	\$250
more than \$150,000 to \$500,000	\$300	\$500
more than \$500,000 to \$2,000,000	\$700	\$1,000
more than \$2,000,000 to \$5,000,000	\$1,500	\$2,000
more than \$5,000,000 to \$10,000,000	\$2,000	\$2,500
more than \$10,000,000	\$2,500	\$3,000

If the Contractor fails to meet two or more Milestone Completion dates, the City shall be entitled to recover the sum of the associated amounts. The amount of Liquidated Damages is agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of ascertaining the actual amount of damage the City, its taxpayers and the public would sustain from such a failure.

8.3.3 Notwithstanding any other provision of the Contract Documents to the contrary, if a court of competent jurisdiction determines that the Liquidated Damages or their application are void or unenforceable, the City shall be entitled to recover the actual damages that it incurs on account of the Contractor's failure to complete all Work within the Contract Time, or failure to complete the applicable portion of the Work upon the applicable Milestone completion date.

8.3.4 The City's right to recover Liquidated Damages contained in this paragraph 8.3 shall not preclude the City's recovery from the Contractor of actual damages for breaches other than delay.

**ARTICLE 9 - CHANGES IN THE WORK, TIME AND CONTRACT**

**9.1 CHANGE ORDER**

9.1.1 The Council or the Authorized Representative may order changes in the Contract Documents and the Work consisting of additions, deletions or other revisions, including revisions to the Contract Time, without invalidating the Contract. To the extent the Contract Time or the Contract Price is affected, the Contract may be adjusted only by Change Order in accordance with this Article. The City reserves the right to cancel or modify any Change Order authorization.

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

9.1.1.2 If notice of any change affecting the Contract is required by the provisions of any Contract or Maintenance Bond, the giving of the notice is the Contractor's responsibility and the amount of each applicable Bond shall be adjusted accordingly.

9.1.2 The Contractor may request the City to issue a Change Order by submitting a Request for Change Order to the Construction Agent not more than 10 days after the initial occurrence of any condition which, in the Contractor's opinion, is the basis for a Change Order. Failure of the Contractor to timely provide such notice shall cause a denial of any related claim by the

Contractor for compensation, time extension, damages or mitigation of Liquidated Damages to the fullest extent permitted by law. Any Request for Change Order shall estimate all pricing and schedule impacts and must contain sufficient detail for intelligent review including the following information:

- 9.1.2.1 Description of the change and impact to the Work and estimated cost of the change, including all amounts for interference, disruption, hindrance, delay and impact, which amounts shall be calculated in accordance with the Pricing Criteria set forth in paragraph GC 9.3, 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;
  - 9.1.2.2 Identification of reasons for the change, including Persons, circumstances, and events responsible for causing the change;
  - 9.1.2.3 Identification of activities on the Project Schedule which will or may be affected by the change, including the date (or anticipated date) of the commencement of any interference, disruption, hindrance, delay or impact, or new activities which will or may be created and the relationship with existing activities;
  - 9.1.2.4 Description of revisions the change will require in the Contract Documents and the Project Schedule including anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay and any remobilization period, including the specific number of days of extension requested and specific number of days of remobilization requested; and
  - 9.1.2.5 Description of recommended action to avoid or minimize any interference, disruption, hindrance, delay or impact.
- 9.1.3 Within 10 days of receipt of the Contractor's Request for Change Order, the Construction Agent, with the assistance of the Architect/Engineer and the Owner's Representative, shall evaluate the facts and extent of any interference, disruption, hindrance, delay or impact to the Work related to any requested time extension, consult with the Authorized Representative about the request for time extension and provide a preliminary response in writing to the Contractor. If, based upon the evaluation, the Authorized Representative determines that the Contractor was interfered with, disrupted, hindered, delayed or impacted at any time in the progress of the Work by any of the following causes, the Contract Time shall be extended by Change Order for such reasonable time which the Authorized Representative determines, in consultation with the Construction Agent and the Architect/Engineer, is necessary as a result of the interference, disruption, hindrance, impact or delay in the Work:
- 9.1.3.1 Due to suspension of the Work for which the Contractor is not responsible; unusually severe weather conditions not normally prevailing in the particular season; labor dispute, excluding informational pickets; fire; or flood;
  - 9.1.3.2 Due to an act or omission of any other Contractor; or
  - 9.1.3.3 Due to any unforeseeable cause beyond the control and without fault or negligence of the Contractor.
- 9.1.4 If the Contractor fails to timely provide the information required by subparagraphs GC 9.1.2.1 to 9.1.2.5, the Authorized Representative shall have discretion to reject the request for time extension. If a request for time extension is so rejected, the Contractor shall be denied any claim for compensation, extension of time, damages or mitigation of Liquidated Damages, to the fullest extent permitted by law. If an extension is granted, the Construction Agent shall make any necessary change in the Project Schedule in accordance with the Contract Documents.

- 9.1.5 The Contractor shall not proceed with any change in the Work without the required written authorization. If the Contractor believes that any item is not Work required by the Contract Documents, the Contractor shall obtain a Change Order before proceeding with such item. In either event, failure to obtain such a Change Order shall cause denial of any adjustment to the Contract Price and Contract Time, damages or mitigation of Liquidated Damages for such event.
- 9.1.6 In no event shall the Contractor reserve any rights or take any similar action with respect to a Change Order. By signing a Change Order the Contractor agrees that the Change Order is final, includes all direct and indirect costs, and is without reservation of any rights including any right to seek further adjustment of the Work, Contract Price, Contract Time or Contract Documents at a later date for the cumulative impact of the change in combination with one or more other changes. If the Contractor does not sign a Change Order, the Contractor shall perform any Work related to the Change Order as required by the Authorized Representative in writing; provided, however, the Contractor may seek compensation and time extension in accordance with paragraphs GC 9.3 and 9.4, respectively, and Article GC 10 for any such Work performed.
- 9.1.7 The Contractor shall perform all changes in the Work in accordance with the Contract Documents, and the Contractor shall proceed promptly with the changes unless otherwise provided in the Change Order.
- 9.1.8 Paperwork Consolidation
- 9.1.8.1 Related changes affecting a Contractor and occurring at or about the same time may be consolidated into the same Change Order.
- 9.1.8.2 Add and deduct items may be included on the same Change Order.
- 9.1.8.3 Changes resulting from errors or omission of the Architect/Engineer shall not be combined with other changes.
- 9.1.9 Change Order Numbering System
- 9.1.9.1 Except for minor changes or alterations in accordance with subparagraph GC 3.2.1.2, the Construction Agent, with the assistance of the Architect/Engineer shall assign a number to each change which shall be stated on the Bulletin, starting with number 001. The Construction Agent will establish and maintain a Change Order log to track all activities related to Change Order processing and shall not duplicate or reuse any number throughout the Project or reuse assigned numbers for Bulletins that are initiated but cancelled. The Change Order Log shall include the following information:
- 9.1.9.1.1 Number of the change;
- 9.1.9.1.2 Brief description of the change;
- 9.1.9.1.3 Affected trades;
- 9.1.9.1.4 Cost of the change; and
- 9.1.9.1.5 Dates documents were sent to, and received from, the Contractor, the Construction Agent, the Architect/Engineer and the City.
- 9.1.9.2 The number for each Change Order shall be coordinated with the related Bulletin.
- 9.1.9.3 If a change involves multiple trades, the same sequence of numbers may be utilized for multiple Contractors.

9.1.10 Reconciliation of Unit Price Items:

- 9.1.10.1 The City may increase, decrease, or delete entirely the scheduled quantities of Work to be performed and materials to be furnished by Change Order.
- 9.1.10.2 The City shall issue a Change Order to reconcile the difference when the actual quantity of Work performed or materials furnished is less than the scheduled quantity.
- 9.1.10.3 The Contractor must obtain a Change Order prior to performing Work or furnishing materials in excess of the scheduled quantity in order to be paid for the excess.

9.2 CHANGE ORDER PROCEDURE

9.2.1 Change Order Process:

- 9.2.1.1 The Contractor may seek an adjustment in the Work, Contract Price, Contract Time or Contract Documents by submitting a Request for Change Order sufficiently detailed for intelligent review to the Construction Agent. When a change to the Work, the Contract Price, the Contract Time or the Contract Documents is timely requested by the Contractor and the City authorizes a related Bulletin or such a change is proposed by the City, the Construction Agent shall prepare an estimate of the cost and time involved and verify with the Authorized Representative that funds and time are available in the amounts of the estimate for the change. The Architect/Engineer, with the assistance of the Construction Agent, shall prepare a Bulletin containing a detailed scope of work, including any necessary drawings and submit the Bulletin to the Owner's Representative for review and to the Authorized Representative for approval, along with a justification letter indicating the reason for the change.
- 9.2.1.2 Upon receipt of approval of the Bulletin by the Authorized Representative, the Construction Agent shall promptly transmit the Bulletin to the Contractor with a date specified for the Contractor to return a Proposal. If the Contractor fails to respond to the Construction Agent within the time specified, or as otherwise agreed to in writing by the Contractor and the Construction Agent, the Contractor shall be responsible for any additional costs incurred by Contractors, the Construction Agent, the Architect/Engineer and the City resulting from any attendant delay and the City may proceed with the change by other means and deny the Contractor any adjustment in the Contract Price and Contract Time due to the change.
- 9.2.1.3 The Contractor shall timely respond by submitting a Proposal to the Construction Agent in sufficient detail for intelligent review with all pricing and schedule impacts, including those of all affected Subcontractors and Material Suppliers, in accordance with paragraphs GC 9.3 and 9.4 or Unit Prices, if applicable, and by negotiating the terms of the Change Order, if requested. The Contractor's costs of preparing and providing Proposals are included in the Contract Price. The Construction Agent shall provide a copy of the Proposal to the Architect/Engineer and the Owner's Representative.
- 9.2.1.4 The Contractor shall hold the Proposal valid and open for acceptance for at least 45 days. The acceptance period may be adjusted by mutual written consent of the Contractor and the Construction Agent.
- 9.2.1.5 A Proposal may be accepted by the City only through a Change Order. A Bulletin does not authorize the Contractor to proceed with a change.
- 9.2.1.6 The Construction Agent and the Architect/Engineer shall review the Contractor's Proposal, verifying that pricing complies with paragraph GC 9.3 or Unit Prices, as

applicable, and that scheduling complies with paragraph GC 9.4 and negotiate the terms of the Change Order if required to obtain terms acceptable to the City. Within 7 days of receipt of the Contractor's Proposal, the Construction Agent shall inform the Contractor whether the Proposal is acceptable in form or advise the Contractor in writing of the reasons for disapproval. If negotiation of the terms of the Change Order is necessary, any failure of the Contractor to respond appropriately and within the time specified, or as otherwise agreed to in writing by the Contractor and the Construction Agent, shall cause the Contractor to be responsible for any additional costs incurred by the Contractors, the Architect/Engineer and the City resulting from any attendant delay, and the City may proceed with the change by other means and deny the Contractor any adjustment in the Contract Price and Contract Time due to the change.

9.2.1.7 If the Proposal is acceptable in form and upon completion of any negotiation, the Contractor shall revise the Proposal, if necessary, and the Construction Agent, with the assistance of the Architect/Engineer, shall submit the Proposal to the Owner's Representative for review and to the Authorized Representative for approval by the Council along with the written recommendation of approval or disapproval of the Proposal by the Construction Agent and the Architect/Engineer.

9.2.1.8 Upon receipt of approval by the Council, the Construction Agent and the Architect/Engineer shall complete, sign and obtain the signatures of the Owner's Representative and the Contractor on the Change Order, prepare a package consisting of the Change Order, indication of the Council's approval of the Change Order and indication of the Authorized Representative's approval of the Bulletin, deliver multiple copies of the signed Change Order package to the Authorized Representative for signing and any necessary fund certification. Upon signing by the Authorized Representative, the Authorized Representative shall return copies of the executed Change Order to the Contractor, the Construction Agent and the Architect/Engineer. **The Contractor may bill for Work covered by the Change Order only after this final step. The City reserves the right to cancel or modify any Change Order or written authorization for a change.**

### 9.3 CHANGE ORDER COST OR CREDIT DETERMINATION

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

9.3.1.1 Proposals which do not set forth all information required by this Article GC 9 will not be considered or accepted under any circumstances.

9.3.1.2 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 schedule quantities on the Bid Form.

9.3.1.3 The amounts allowed for overhead and profit are all-inclusive and include all Contractor project costs relating to field and home office operations. No additional or other amounts for overhead or profit shall be allowed.

9.3.1.4 The maximum cost or credit includes all compensation for impact costs. No additional or other amounts for impact costs shall be allowed.

9.3.2 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.

9.3.3 If no agreement can be reached between the Contractor and the City as to the cost or credit resulting from a change in the Work, any related time extension or other term of the Change Order

or if the Contractor fails or refuses to sign a Change Order, the cost or credit, time extension or other terms shall be determined by the Authorized Representative.

- 9.3.3.1 The Contractor shall proceed with the Change Order Work when so required by the Authorized Representative in writing.
- 9.3.3.2 The Contractor may dispute the Authorized Representative's determination by filing a claim in accordance with Article GC 10.
- 9.3.4 The City may require notarized invoices for material costs and may audit the records of the Contractor and the Contractor's Subcontractors and Material Suppliers.
- 9.3.5 For each change, the Contractor shall furnish a detailed, written Proposal itemized according to subparagraphs GC 9.3.5 to 9.3.18 (the "Pricing Criteria") and paragraph GC 9.4 (the "Extension Criteria"). Any Subcontractor or Material Supplier pricing or scheduling shall also be itemized in accordance with the Pricing Criteria and Extension Criteria. Where Unit Prices were included in the Bid Form and the Contract Price, the Architect/Engineer may also require incorporation of such Unit Prices or preparation of an alternate Proposal incorporating such Unit Prices. These requirements are intended to establish the maximum amount which the City will pay and maximum extension of time the City will provide for any Change Order, including all amounts for interference with, delay, hindrance, disruption, interference or impact of the Work. A Change Order may provide that the City may pay less than the amount or provide less of an extension than established by the Pricing Criteria and Extension Criteria if such amount or extension is negotiated by the Construction Agent in accordance with subparagraph GC 9.2.1.6 or is determined in accordance with Article GC 10. As provided in subparagraph GC 11.1.2 the Schedule of Values may be used by the City to determine any cost or credit. The Pricing and Extension Criteria shall also be used to establish pricing and time extensions for deduct Change Orders and for claims of the Contractor in accordance with Article GC 10, in litigation or in any alternative dispute resolution process. In order to expedite the review and approval process, all Proposals shall be prepared in the categories and in the order listed below.
- 9.3.6 **LABOR** - All field labor shall be priced at the current base rate, excluding fringe benefits, of the prevailing wage in the Project locality in accordance with Sections 4115.03 to 4115.21 of the Ohio Revised Code or the Davis-Bacon Act, as applicable. The Proposal and documentation shall include the number of hours and rate of pay for each classification of worker. If the Contractor pays an employee a base rate exceeding the applicable prevailing wage, the Contractor shall submit certified payroll records that substantiate that rate. Any Contractor performing time and material or cost-plus basis Work shall submit certified payroll records for all employees performing that Work.
- 9.3.7 **FRINGES** - All established payroll taxes, assessments and fringe benefits on the labor in subparagraph GC 9.3.6. This may include, without limitation, FICA, Federal and State Unemployment, Health and Welfare, Pension Funds, Workers' Compensation and Apprentice Fund. Each of the fringes shall be a separate line item. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe for each worker classification.
- 9.3.8 **EQUIPMENT RENTALS** - All charges for certain non-owned heavy or specialized equipment at up to 100% of the documented rental cost. No rental charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays shall not be allowed. The Contractor shall submit copies of actual paid invoices to substantiate rental costs.
- 9.3.9 **OWNED EQUIPMENT** - All charges for certain Contractor-owned, heavy or specialized equipment at up to 100% of the cost listed by the current edition of the Associated Equipment Dealers Green Book rental rates and specifications for construction equipment. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that

the equipment is to be required for the Work shall be the basis for the pricing. Downtime due to repairs, maintenance and weather delays shall not be allowed.

- 9.3.10 TRUCKING - A reasonable delivery charge or per-mile trucking charge for delivery of required materials or equipment. Charges for use of a pick-up truck shall not be allowed.
- 9.3.11 OVERHEAD - Overhead on items in subparagraphs GC 9.3.6, 9.3.7, 9.3.8, 9.3.9, and 9.3.10 up to 5%, which shall include all costs required to schedule the Work and coordinate with the Contractors.
  - 9.3.11.1 Overhead includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (1 level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor (management, supervision, engineering), all other home office expense, legal services, travel and parking expenses.
  - 9.3.11.2 An exception from subparagraph GC 9.3.11.1 is allowed for shop or engineering labor, if not subject to prevailing wage rates under RC Sections 4115.03 to 4115.21 or the Davis-Bacon Act, as applicable., for steel fabricators, sheet metal fabricators and sprinkler system fabricators performing work off-site. Recovery for such matters will be allowed under subparagraphs GC 9.3.6 and 9.3.7.
  - 9.3.11.3 If the Contract Price is adjusted on account of an adjustment of Contract Time only (i.e., the adjustment of the Contract Price does not include any of the items described under subparagraphs GC 9.3.6 through 9.3.10 or subparagraph GC 9.3.12), the adjustment shall be based upon actual "Project Site" costs incurred or a reasonable estimate of the "Project Site" costs actually avoided. In no event shall the Contract Price adjustment per day of Contract Time adjustment exceed an amount equal to the sum of the "Project Site" line items in the Contractor's first approved Schedule of Values divided by the total number of days of original contract Time. "Project Site" costs means costs by the Contractor incurred on or related to the Site and include on-Site telephone, telephone charges, facsimile, postage, photos, photocopying, job trailer and supervisory and clerical personnel.
- 9.3.12 MATERIALS
  - 9.3.12.1 All materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or Unit Prices of all items, as appropriate. Reimbursement of material costs shall only be allowed in the amount of the Contractor's actual cost, including any and all discounts, rebates or related credits.
  - 9.3.12.2 Up to 33% of the cost of reusable materials for each use (e.g. form lumber, shoring or temporary enclosures).
- 9.3.13 PROFIT - Profit on items subparagraphs GC 9.3.6, 9.3.7, 9.3.8, 9.3.9, 9.3.10, 9.3.11 and 9.3.12 up to 5%.
- 9.3.14 SUBCONTRACTOR - The reasonable cost of all labor and material provided by a Subcontractor whose pricing is included and which complies with these Pricing Criteria.
- 9.3.15 CONTRACTOR MARK-UP ON SUBCONTRACTOR - Mark-up on items in subparagraph GC 9.3.14 up to 10 %.
- 9.3.16 MISCELLANEOUS - The following items are allowable at the cost of the Work, with **no overhead or profit**.

- 9.3.16.1 The cost of extending the Bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance.
- 9.3.16.2 Fees for permits, licenses, inspections, tests, etc.
- 9.3.16.3 When requested by the Contractor and approved in writing by the Authorized Representative due to special circumstances, reimbursement shall be paid for overnight lodging, travel and food in an amount not to exceed the City's travel guidelines, if any.
- 9.3.17 Costs which will not be reimbursed for Change Order Work include the following:
  - 9.3.17.1 Employee Profit Sharing Plans - regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed.
  - 9.3.17.2 Voluntary Employee Deductions - examples are United Way and U.S. Savings Bonds, etc.
- 9.3.18 State sales tax shall be allowed on items as defined by subparagraph GC 1.2.5.
- 9.4 EXTENSION CRITERIA
  - 9.4.1 Notwithstanding any other provision of the Contract Documents, time extensions will depend upon the extent to which the Work on the critical path of the Project Schedule is affected.
  - 9.4.2 The Contractor shall provide or update the information required by subparagraphs GC 9.1.2.1 to 9.1.2.5, as applicable, provide a revised Construction Schedule and comply with the applicable requirements of GC paragraph 4.2 to update the Project Schedule.
  - 9.4.3 If extending the Contract Time is not possible, the Contractor shall price, and separately state, all costs of accelerated performance in the Contractor's Proposal.
  - 9.4.4 Notwithstanding any other provisions of the Contract Documents, the Contractor shall not be entitled to an extension of the Contract Time or an increase in the Contract Price, or both:
    - 9.4.4.1 On account of the delay of any Work not on the critical path of the Project Schedule;
    - 9.4.4.2 To the extent that a delay occurs concurrently with a delay attributable to the Contractor; or
    - 9.4.4.3 On account of the impact of any normal adverse weather on any of the Work and on account of the impact of any abnormal adverse weather on Work not on the critical path of the Project Schedule.
  - 9.4.5 A Change Order granting a time extension may provide that the Contract Time will be extended for only those specific elements actually interfered with, disrupted, hindered, delayed or impacted and related remobilization and that remaining Milestone completion dates will not be altered and may further provide for adjustment of Liquidated Damages.
- 9.5 SOLE REMEDY
  - 9.5.1 Except when the cause for a delay is the proximate result of the City's act or failure to act as required by Section 4113.62, ORC, any extension of time granted pursuant to this Article GC 9 shall be the sole remedy which may be provided by the City, and the Contractor shall not be entitled to additional compensation from the City or mitigation of Liquidated Damages for any delay, interference, hindrance, impact 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.

9.5.2 It is within the contemplation of the parties that the Contractor may accelerate its performance to meet the Project Schedule and that such acceleration is solely within the discretion of the Contractor.

9.5.3 The provisions of this paragraph GC 9.5 are intended to give effect to Section 4113.62, ORC, but to permit the City to exercise any rights not precluded by Section 4113.62, ORC, to the fullest extent permitted by law.

## 9.6 DIFFERING SITE CONDITIONS

9.6.1 Unless otherwise specified in the Contract Documents, borings, rock soundings, test excavations and other subsurface information or information about concealed physical conditions, if any, are provided solely to share any information available to the City 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.

9.6.2 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 Documents, the Contractor shall notify the Construction Agent in writing of such conditions, before they are disturbed.

9.6.3 The Architect/Engineer and the Construction Agent will promptly investigate the conditions and if the Architect and the Construction Agent, with the assistance of the Owner's Representative, find that such conditions do materially differ from those upon which the Contract Documents permit the Contractor to rely or differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract, causing an increase or decrease in the cost of the Contract, the Architect/Engineer and the Construction Agent shall recommend to the City that an appropriate Change Order be processed.

9.6.3.1 The Contractor shall only proceed with proper authorization, in writing, as provided by the Contract Documents.

9.6.3.2 No request for additional compensation under subparagraph GC 9.6.3 shall be allowed unless the Contractor provided the notice required in subparagraph GC 9.6.2.

## **ARTICLE 10 - DISPUTE RESOLUTION PROCEDURE**

### 10.1 FILING OF NOTICE AND CLAIM

10.1.1 Whenever the Contractor intends to seek additional time or compensation or mitigation of Liquidated Damages, whether due to delay, extra work, additional time or work, breach of Contract, or other causes arising out of or related to the Contract or the Project, the Contractor shall follow the procedures set forth in this Article GC 10. To the fullest extent permitted by law, failure by the Contractor to follow the procedures in this Article GC 10 shall cause a denial of any claim by the Contractor for additional time or compensation or for mitigation of Liquidated Damages.

10.1.1.1 Notwithstanding any other provision of the Contract Documents, the Contractor shall not be entitled to an increase in the Contract Price or any type of damages on

account of a delay in the commencement or progress of Work on the critical path unless the delay is caused by an act or failure to act by the City.

- 10.1.1.2 Notwithstanding any other provisions of the Contract Documents, the Contractor shall not be entitled to an increase in the Contract Price or any type of damages arising from a delay in the commencement or progress of any of the Work caused by the occurrence or non-occurrence of an event beyond the City's control such as acts of nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, acts or neglects of the Contractor or a Person for whom the Contractor is legally responsible, or acts or neglects of another Contractor or a Person for whom another Contractor is legally responsible.
- 10.1.1.3 Notwithstanding any other provision of the Contract Documents, the Contractor is an intended beneficiary of the Contract of each other Contractor for the Project and solely responsible for prosecuting against another Contractor any claim, suit, or appeal necessary to recover from the other Contractor damages the Contractor suffers on account of the acts or neglects of the other Contractor or a Person for whom the other Contractor is legally responsible.
- 10.1.1.4 If the Contractor files a claim seeking a remedy other than an extension of the Contract Time from the Owner on account of the acts or neglects of another Contractor or a Person for whom another Contractor is legally responsible, the City may pursue the claims against the other Contractor in the joint interest of the City and the Contractor. The City is not obligated to prosecute any such claim, suit, or appeal.
- 10.1.2 The Contractor shall file notice of any claim with the Construction Agent, in writing, not more than 10 days after the initial occurrence of the facts which are the basis of the claim. To the fullest extent permitted by law, failure of the Contractor to timely provide such notice shall cause a denial of any claim by the Contractor for additional time or compensation or for mitigation of Liquidated Damages. Every such written notice shall provide the information necessary to permit timely and appropriate evaluation of the claim, determination of responsibility and opportunity for mitigation, including all relevant information required for a Request for Change Order under subparagraph GC 9.1.2. If a Request for Change Order contains all necessary information, it may serve as the notice of a claim.
- 10.1.3 The Contractor shall file 4 copies of its claim with the Construction Agent not more than 30 days after the notice required by subparagraph GC 10.1.2 or before Contract Completion, whichever is earlier. The Contractor's claim shall detail the amounts claimed and provide the following information to permit timely and appropriate evaluation of the claim, determination of responsibility and any remaining opportunity for mitigation. If the Contractor is unable to calculate any amount claimed in detail, the Contractor shall use its best efforts to provide a reasonable estimate of such amount. Prejudgment interest shall be calculated at the applicable statutory rate and, if there is no such rate, in accordance with subparagraph GC 11.2.2.
  - 10.1.3.1 A narrative of the circumstances and impact which gave rise to the claim, including the start date of the event or events involved and the actual, or anticipated, finish date;
  - 10.1.3.2 Detailed identification of the Work (e.g., activity codes from the Project Schedule) affected or impacted by the circumstances which gave rise to the claims;
  - 10.1.3.3 Detailed calculation of the amount of the claim in accordance with the Pricing Criteria;

- 10.1.3.4 A time impact analysis, consistent with standard critical path methodology for scheduling and the Extension Criteria, demonstrating the impact to the Contractor's scheduled activities and the actual delay to the critical path of the Project Schedule;
  - 10.1.3.5 Copies of the Contractor's daily log for each day of impact;
  - 10.1.3.6 Copies of relevant correspondence and other information regarding or supporting Contractor entitlement;
  - 10.1.3.7 Copies of Contractor payroll records for labor impacts claimed by Contractor and any Subcontractor affected by the event of events.
  - 10.1.3.8 Copies of invoices for material impacts claimed by the Contractor and any Subcontractor affected by the event or events;
  - 10.1.3.9 Copies of equipment records, or rental invoices, for any equipment impacts claimed by the Contractor and any Subcontractor affected by the event or events;
  - 10.1.3.10 Copies of the Contractor's most recent job cost reports itemized by activity codes, including segregated general and administrative expenses for the most recent reporting period, and, if available, for the period of the Contract and similar information for any Subcontractor claim included;
  - 10.1.3.11 A notarized statement, signed by an authorized representative of the Contractor, certifying that the claim is made in good faith, the supporting data is accurate and complete to the best of the Contractor's knowledge and belief and the amount, time or other matter requested accurately reflects the entire remedy for the claim and is a fair, reasonable and necessary adjustment for which the Contractor believes the City is liable in accordance with the Contract Documents, in particular the Pricing Criteria and Extension Criteria.
- 10.1.4 In addition to the requirements of subparagraph 10.1.3, if adverse weather conditions are the basis for a claim, the Contractor shall provide data substantiating that weather conditions were abnormal for the applicable period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of the Project Schedule. The support for and evaluation of all adverse weather Claims shall be based upon average weather conditions during the 10 years immediately preceding the date at issue in the claim as those weather conditions were recorded at the government-controlled weather-recording facility nearest to the Site.

## 10.2 CLAIM RESPONSE

- 10.2.1 Immediately upon receipt of any claim submitted by the Contractor in accordance with Subparagraphs 10.1.3 and 10.1.4, the Construction Agent shall deliver copies to the Architect/Engineer, the Owner's Representative and the Authorized Representative and promptly thereafter shall convene a meeting with the Architect/Engineer and the Contractor and any applicable Subcontractors and Material Suppliers to review and discuss the claim. The Construction Agent, with the assistance of the Architect/Engineer and the Owner's Representative, shall review the Contractor's claim with all in attendance 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 Construction Agent, the Architect/Engineer and the Owner's Representative will commence review in accordance with subparagraph GC 10.3.1. The Construction Agent shall document the timeliness of notice provided under paragraph GC 10.1.2 and of the claim provided under paragraph GC 10.1.3 and the actual date of corrected submission of the claim.

## 10.3 REVIEW AND DECISION

- 10.3.1 Upon corrected submission of the claim by the Contractor, the Construction Agent and the Architect/Engineer shall review the claim and prepare a written analysis of its content. The analysis shall include, as applicable, a narrative of the Construction Agent's and Architect/Engineer's examination of the facts giving rise to the claim, identification of relevant Contract Documents and language therein, an analysis of whether the Contractor complied with the requirements of the Contract Documents pertaining to filing of notice and the claim, including the issues of entitlement to, and calculation of, adjustments to the Contract Price, Contract Time or both, an analysis of claimed additional labor, materials and equipment for the scope of the Work items described and an analysis of any time extension for any interference, disruption, hindrance, impact or delay claimed (including the calculation of any concurrent delays affecting entitlement) and a concluding recommendation regarding Contractor entitlement to, and the appropriateness and reasonableness of, all or any part of, the claim. The Construction Agent and the Architect/Engineer shall include an appendix containing copies of contemporaneous documentation supporting the recommendation.
- 10.3.2 The Construction Agent shall transmit 2 copies of the claim analysis to the Authorized Representative and one copy to the Contractor within 30 days of the corrected submission of the claim, or such later date as the Construction Agent and the Authorized Representative agree in writing.
- 10.3.3 The Authorized Representative shall examine the Contractor's claim, and the analysis of the claim prepared by the Construction Agent and the Architect/Engineer. The Authorized Representative shall approve or deny all, or any part of, the Contractor's claim and transmit a written decision to the Contractor, the Construction Agent and the Architect/Engineer within 30 days after receipt of the claim analysis.
- 10.3.4 If the Contractor agrees with the Authorized Representative's decision, the decision shall be incorporated into a Change Order as the full, final and total settlement of the claim.

#### 10.4 APPEAL TO COUNCIL

10.4.1 The Contractor may appeal the decision of the Authorized Representative to the Council by written notice delivered to the Authorized Representative not more than 30 days after date of the Authorized Representative's decision. The Authorized Representative shall arrange an opportunity for the Contractor to present the claim at the Council's next meeting. If the Authorized Representative receives the notice less than 10 days prior to the Council's next meeting, the Contractor shall be provided the opportunity to present the claim at the next succeeding meeting of the Council.

10.4.1.1 The Council shall render a decision on the claim within 30 days of the meeting unless a mutual agreement is made between the Contractor and the City to extend the time for decision.

10.4.1.2 The Authorized Representative shall promptly inform the Contractor of the Council's decision in writing and the decision of the Council shall be final and conclusive, subject to litigation in a court of competent jurisdiction.

10.4.2 If the Contractor agrees to the Council's decision, the decision shall be incorporated into a Change Order as the full and final settlement of the claim.

#### 10.5 DELEGATION

10.5.1 No provision of this Article shall prevent the City or the Authorized Representative from delegating the duties or authorities of the City or the Authorized Representative under this Article GC 10 to any third Person selected at the discretion of the City or Authorized Representative, as applicable.

#### 10.6 ALTERNATIVE DISPUTE RESOLUTION

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

#### 10.7 AUDITING OF CLAIMS

10.7.1 All claims by the Contractor shall be subject to audit at any time following the filing of such claim, whether or not such claim is part of a lawsuit. The audit may be performed by employees of the City or by a consultant engaged by the City. The audit may begin on 10 days' notice to the affected 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 provide sufficient records to allow the City to audit and verify the claim shall cause denial of the claim or the portion of the claim that cannot be completely audited.

Upon request the Authorized Representative, the Contractor shall make available to the City all Contractor, Subcontractor and Material Supplier documents related to the claim including the following:

10.7.1.1 Daily time sheets and Superintendent's daily reports.

10.7.1.2 Union agreements, if any and employer agreements.

10.7.1.3 Insurance, welfare, fringes and benefits records.

- 10.7.1.4 Payroll register.
- 10.7.1.5 Earnings records.
- 10.7.1.6 Payroll tax returns.
- 10.7.1.7 Material invoices, purchase orders, Subcontractor contracts and all material and supply acquisition contracts.
- 10.7.1.8 Material cost distribution worksheets.
- 10.7.1.9 Equipment records (list of Contractor equipment, rates, etc.).
- 10.7.1.10 Vendor rental agreements and Subcontractor invoices.
- 10.7.1.11 Subcontractor payment certificates.
- 10.7.1.12 Canceled checks (payroll and vendors).
- 10.7.1.13 Job cost reports.
- 10.7.1.14 Job payroll ledger.
- 10.7.1.15 General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.
- 10.7.1.16 Cash disbursements journal.
- 10.7.1.17 Financial statements for all years reflecting operations on the Project.
- 10.7.1.18 Income tax returns for all years reflecting operations on the Project.
- 10.7.1.19 Depreciation records on all equipment utilized whether such records are maintained by the Contractor involved, its accountant, or others.
- 10.7.1.20 If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- 10.7.1.21 All documents which reflect the Contractor's actual profit and overhead during the years the Project was being performed;
- 10.7.1.22 All documents related to the preparation of the Contractor's bid, including the final calculations on which the bid was based.
- 10.7.1.23 All documents which relate to the claim, together with all documents which support or negate the amount of damages as to the claim.
- 10.7.1.24 Worksheets used to prepare the claim establishing the cost components for items of the claim including 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.
- 10.7.1.25 All other documents required by the City to intelligently review the claim.

10.8 FALSE CERTIFICATION OF CLAIMS

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

10.8.2 If any Contractor is found to have falsely certified all or any part of any claim, that fact may be used to support a finding that the Contractor is not responsible in future bids for the award of any City Contract.

10.9 PERFORMANCE AND PAYMENT

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

10.9.2 If the Contractor accepts the decision of the Authorized Representative or the Council and foregoes litigation of the claim, any payment to be made, credit to be provided or extension of time to be granted pursuant to the decision shall be evidenced by a Change Order package consisting of a completed Change Order Form signed by the Contractor, the Construction Agent, the Architect/Engineer, the Owner's Representative and the Authorized Representative, a copy of the approval of the Council and any necessary supporting documentation and any payment shall be made pursuant to a Contractor Payment Request in accordance with paragraph GC 11.2 or 11.7, as applicable.

**ARTICLE 11 - CONTRACTOR PAYMENT**

11.1 SCHEDULE OF VALUES

11.1.1 Within 10 days of receipt of the Notice to Proceed, the Contractor shall submit to the Architect/Engineer, through the Construction Agent, a full, accurate and detailed estimate (the "Schedule of Values") of the various kinds of labor to be performed and material to be furnished, with separate amounts shown for labor and materials for each branch of Work, following the numbers and titles of the Construction Specifications Institute's Master Format for individual work results or Uniform for assemblies in place. The Architect shall provide a copy of the Schedule of Values to the Owner's Representative.

11.1.2 The grand total shown on the Schedule of Values must equal the total Contract Price. The City may use the approved Schedule of Values to determine the cost or credit to the City resulting from any change in the Work.

11.1.2.1 The first items shall be actual aggregate cost of Contract Bond, insurance, permits and tests required for the Project.

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

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

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

- 11.1.2.5 When more than 1 major structure is included in the Contract, the Contractor shall subdivide the Schedule of Values accordingly, if requested by the Architect/Engineer, with cost details for each structure shown separately.
- 11.1.2.6 Line items shall be coordinated with activities in the Project Schedule, which may require division of items of Work by area of the Project, by floor, phone or other appropriate area.
- 11.1.2.7 Mechanical and electrical Contractors shall include separate line items for all major pieces of equipment and group smaller equipment items by type.
- 11.1.2.8 Line items shall be included for regular clean-up and final cleaning, commissioning, Punch List Work, Project Record Document Submittals, delivery of attic stock, specified demonstrations and training, progress and coordination meetings, Project closeout and each Allowance.
- 11.1.3 The Architect/Engineer, through the Construction Agent, may return a Schedule of Values to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work.
- 11.1.4 No payment will be made without an approved Schedule of Values.

## 11.2 CONTRACTOR PAYMENT REQUEST

- 11.2.1 The Contractor shall submit a Contractor Payment Request for Work performed, based upon the Schedule of Values, to the Construction Agent each month on a form satisfactory to the Authorized Representative.
  - 11.2.1.1 The Contractor shall support each Contractor Payment Request with documentation substantiating the Contractor's right to payment. The Contractor shall supply such additional documentation as the Construction Agent, the Architect/Engineer or the Owner's Representative may request in connection with each Contractor Payment Request.
  - 11.2.1.2 The City may require proof of the renewal of required insurance as a condition precedent to payment.
  - 11.2.1.3 The Contractor shall attach certified payroll reports complying with subparagraph GC 1.2.3.7 for the relevant period to 1 copy of every Contractor Payment Request.
  - 11.2.1.4 The Contractor shall list on the Contractor Payment Request any Change Orders approved and performed prior to submission of the Contractor Payment Request.
- 11.2.2 Subject to paragraph GC 11.6, payment of an approved Contractor Payment Request shall be made within 30 days from the date of approval by the Architect/Engineer. Payments due and not paid to the Contractor within such 30 day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rates established at the commercial banks in the city of over 100,000 population that is nearest to the Project.

## 11.3 LABOR AND MATERIAL PAYMENTS

- 11.3.1 Based upon Contractor Payment Requests provided by the Construction Agent, the Issuer shall cause approximate estimates to be made monthly by the Issuer's Engineer of the amount which, in the opinion of the Issuer's Engineer, represents the Work done, or acceptable materials properly delivered, as specified under the constructor's contract. Within five days after such estimate has been duly approved, but in any event not later than the fifteenth day of the following calendar

month, the Issuer will make a partial payment to the applicable contractor of ninety percent of such estimate less prior payments; provided, however, that such payment shall be conditioned upon receipt by the Issuer of lien waivers for all applicable subcontractors and material suppliers and other documentation required by the Issuer. The Issuer will retain ten percent of the amount of the monthly estimates until Final Completion and acceptance of all Work or delivery of all materials required by the construction contracts. Such amounts will be retained by the Issuer as a guarantee that the contractors will faithfully and completely fulfill and execute all the obligations and conditions imposed by any applicable construction contract and to indemnify the Issuer for any damage caused to the Issuer by reason of any failure or breach on the part of a contractor to fulfill such conditions and obligations. The making of estimates as described in this Section shall not be construed to be an acceptance by the Issuer of any such Work so estimated. The acceptance of or payment for any Work performed or materials furnished under any construction contract, or any possession by the Issuer, shall not in any way be construed to be a waiver by the Issuer of any rights under the construction contract or of any right or power therein reserved to the Issuer, nor shall any waiver of any breach of any part or of the whole of any such construction contract be construed as a waiver of any other part thereof or of a subsequent breach thereof.

- 11.3.2 Any and all payments due or to become due the Construction Agent, or the contractors, subcontractors, or material suppliers and all rights of the Construction Agent to demand and receive such payments, shall be subject to all provisions of law relating to affidavits of claims of subcontractors, materials suppliers, laborers or mechanics, including Sections 1311.25 to 1311.32 of the Ohio Revised Code. The Construction Agent or the contractors and subcontractors, as applicable, shall well and truly pay or satisfy the just and equitable claims of all persons who or which have performed labor or furnished materials or equipment for the Construction Agent or the contractors and subcontractors, as applicable. The Construction Agent or the contractors and subcontractors, as applicable, shall also pay or satisfy the just and equitable claims of all persons who or which have previously filed an affidavit of any such claims with the Issuer's Director of Finance and all bills, costs or claims of any kind which might become a liability, lien or charge against the Issuer. If affidavits of claims are filed with the Issuer, the Issuer may retain out of the moneys due or to become due the applicable contractor or contractors sums sufficient to pay all such claimants. If such claims are not paid or adjusted to the satisfaction of the Issuer, the Issuer may retain all payments to the applicable contractor or contractors pursuant to applicable law. One month after the completion of the Work or delivery of materials, the Issuer will cause the Issuer's Engineer to make a final estimate of all Work done and material delivered and, subject to the provisions relating to the one-year guarantee set forth below, the full amount of the estimate less any amounts paid on monthly estimates, less any amount retained to complete the Work or delivery according to the provisions of the construction contract, to pay any or all damages or to reimburse the Issuer for any moneys paid by the Issuer by reason of the contractor having failed to carry out faithfully and completely all the obligations and requirements thereof, will be paid within five days after the approval thereof, but in any event not later than the fifteenth day of the following calendar month. All prior estimates shall be subject to correction at the time of the final estimate and final payment.

#### 11.4 FINAL ESTIMATE

- 11.4.1 The final estimate shall include all Work of every description done and all materials furnished by the Construction Agent and all contractors under the construction contracts. All questions as to estimates, measurements, or the determination of the quantity or quality of work, shall be left to the discretion of the Issuer's Engineer. If the Construction Agent fails to comply with the terms or specifications of this Agreement, or fails to comply with such requirements of the Issuer's Engineer as are provided for in or pursuant to this Agreement, the Issuer may withhold any estimates that may be due until the terms, specifications, orders or directions are complied with to the satisfaction of the Issuer's Engineer.
- 11.4.2 Before the final estimate is paid, the Construction Agent must furnish, or cause to be furnished, a one-year guarantee secured by a separate approval bond from a compensated, responsible surety company in an amount equal to ten percent of the total cost of the Work done as shown by the final

estimate. The condition of such bond shall be that if any such improvement, Work done or material furnished requires repairs or replacements during a period of two years following final acceptance by the Issuer, the Construction Agent or the applicable contractor will make such repairs or replacements at the Construction Agent's or the contractor's expense, respectively, and within a reasonable time after notification by the Issuer or the Issuer's Engineer. If the Construction Agent or the applicable contractor fails to undertake such repairs or replacements within five days after receiving notice in writing to do so, the Issuer may have such Work done at the expense of the Construction Agent or the contractor, as applicable, and shall have a right of action for the full amount thereof against the applicable surety company.

## 11.5 RETAINAGE

- 11.5.1 All funds retained for the faithful performance of the Work shall be deposited in an escrow account with a bank in the State in accordance with the terms and conditions provided in an escrow agreement executed by the Contractor, the Authorized Representative and the applicable bank.
- 11.5.2 When the major portion of the Work is occupied or in use, and there exists no other reason to withhold retainage, including compliance with Article GC 12 upon request of the Contractor, the retainage shall be released from escrow and paid to the Contractor, withholding only that amount necessary to assure completion of the Work, in the discretion of the Authorized Representative.
  - 11.5.2.1 Any reduction or release of retainage, or portion thereof, shall not be a waiver of the City's right to retainage in connection with other payments to the Contractor, or any other right or remedy the City has under the Contract Documents at law or in equity.
  - 11.5.2.2 Funds in the escrow account not previously paid shall be released to the Contractor within 30 days of approval of a final Contractor Payment Request by the City and execution of the certificate of Contract Completion by the City.
- 11.5.3 Upon consent by the Contractor's Surety, the City may reduce the amount of funds retained for the faithful performance of Work by 50% of the amount of funds required to be retained, provided the Contractor's Surety remains responsible for all damages that may be caused due to default by the Contractor, including the following:
  - 11.5.3.1 Completion of the Work;
  - 11.5.3.2 All interference, disruption, hindrance, delay and impact claims;
  - 11.5.3.3 All Liquidated Damages; and
  - 11.5.3.4 All additional expenses incurred by the City

## 11.6 PAYMENTS WITHHELD

- 11.6.1 The Construction Agent and the Architect/Engineer shall have the authority to recommend to the City that payments be withheld from, or Liquidated Damages be assessed against and withheld from, a Contractor Payment Request, stating the reasons for such recommendation. The Authorized Representative may withhold payments from a Contractor Payment Request, including for Liquidated Damages.
- 11.6.2 The City may decline to approve any Contractor Payment Request or part thereof, or nullify any previous Contractor Payment Request, in whole or in part, to the extent necessary in the Authorized Representative's opinion to protect the City from loss because of:
  - 11.6.2.1 The Contractor's failure to comply with the Contract Documents, including Defective Work not remedied;

- 11.6.2.2 Damage caused by the Contractor;
  - 11.6.2.3 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
  - 11.6.2.4 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance will not be adequate to cover damages under the Contract Documents for the anticipated delay;
  - 11.6.2.5 Failure to comply with applicable law including, but not limited to, the requirements of Sections 4115.03 to 4115.21, ORC; or
  - 11.6.2.6 Liquidated Damages, or other amounts permitted under the Contract Documents.
- 11.6.3 If the Contractor remedies the basis for withholding payment under subparagraph GC 11.6.2 to the Authorized Representative's satisfaction, the City shall pay the amounts withheld because of the basis.
- 11.6.4 Whenever the City receives a Claim Affidavit, the Authorized Representative 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.
- 11.6.4.1 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.
  - 11.6.4.2 If the City detains an amount as set forth above, such action shall not be construed as conferring any right on such Subcontractor or Material Supplier, nor as enlarging or altering the application or effect of the existing lien law.

## 11.7 FINAL CONTRACTOR PAYMENT REQUEST

- 11.7.1 The Contractor, as a condition precedent to execution of the certificate of Contract Completion and to final payment, shall complete all requirements of the Contract Documents including to subparagraph GC 12.7.1.
- 11.7.1.1 The Contractor shall execute an affidavit to certify that the Contractor has complied with all requirements of Sections 4115.03 to 4115.21, ORC, and to certify that all Subcontractors and Material Suppliers have been paid in full for all Work performed or materials furnished for the Project.
  - 11.7.1.2 The Contractor shall provide affidavits from each Subcontractor to certify that the Subcontractor has complied with all requirements of Sections 4115.03 to 4115.21 ORC.
- 11.7.2 The City shall pay the final Contractor Payment Request within 30 days from the date of approval by the Authorized Representative.
- 11.7.2.1 The inability of a Contractor to complete Project close-out requirements within the time specified by the Construction Agent and the Architect/Engineer shall not be grounds for withholding final payment to another Contractor.
  - 11.7.2.2 Payments due and not paid to the Contractor within such 30-day period shall bear interest from the date payment is due under the Contract Documents at the average of the prime rates established at the commercial banks in the city of over 100,000 population that is nearest to the Project.

- 11.7.3 The making of final payment by the City shall constitute a release of all claims by the City except those relating to unresolved claims against the Contractor and those arising after Contract Completion including the following:
- 11.7.3.1 Defective Work;
  - 11.7.3.2 Outstanding Claim Affidavits;
  - 11.7.3.3 Failure of the Contractor to comply with any Warranties or Guarantees required by the Contract Documents.
- 11.7.4 The acceptance of final payment by the Contractor, a Subcontractor or a Material Supplier constitutes the payee's release of all of the payee's claims against the City except those that the Contractor has previously made in writing in accordance with Article GC 10 and which remain unresolved at the time of final payment.

## **ARTICLE 12 - CONTRACT COMPLETION**

### **12.1 FINAL CLEANING**

- 12.1.1 Before requesting the Architect/Engineer's Punch List review, the Contractor shall clean the Site, remove waste, excess materials and rubbish attributable to the Work, and restore the property to its original condition so that upon Contract Completion, the premises are ready for occupancy by the City.
- 12.1.2 If the Contractor performs any Work after final cleaning, the Contractor shall clean the affected area as provided above so that upon Contract Completion, the premises are ready for occupancy by the City.
- 12.1.3 Final cleaning shall be done to the satisfaction of the Construction Agent, the Architect/Engineer and the Authorized Representative.
- 12.1.3.1 If the Contractor fails to clean up at completion of the Work, the provision of paragraph GC 6.2 may be invoked.
  - 12.1.3.2 If a dispute arises among Contractors as to responsibility for final cleaning, the Construction Agent may authorize another Contractor, employ City employees or engage a qualified cleaning company, to perform the clean up and deduct the cost from amounts due to those Contractors responsible as the Construction Agent recommends and the Authorized Representative determines to be appropriate.
  - 12.1.3.3 If the Construction Agent cannot determine the responsible Contractor, the costs shall be shared by the Contractors actively working on the Project as determined in the sole discretion of the Authorized Representative. The decision of the Authorized Representative shall be final.

### **12.2 CONTRACTOR'S PUNCH LIST**

- 12.2.1 When the Contractor considers the Work, or a designated portion thereof, nearly complete, the Contractor shall inspect the Work, or designated portion, and prepare a list of all defective, incomplete or unacceptable Work (the "Contractor's Punch List"). The Contractor shall list all items of Work not in compliance with the Contract Documents, including items the Contractor is requesting to be deferred.

- 12.2.1.1 The Contractor shall proceed to correct all items listed on the Contractor's Punch List and certify that the items have been corrected by signing said Punch List except items the Contractor specifically requests be deferred in writing.
- 12.2.1.2 The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
- 12.2.1.3 The Contractor shall submit the signed Contractor's Punch List to the Construction Agent together with a written request for an inspection of the Work. The Construction Agent shall provide copies to the Owner's Representative and the Architect/Engineer.

### 12.3 ARCHITECT/ENGINEER'S PUNCH LIST

- 12.3.1 Within 7 days of receipt of the request for inspection, the Construction Agent and the Architect/Engineer shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.
  - 12.3.1.1 Within 7 days of acceptance of the Contractor's request, the Construction Agent and the Architect/Engineer shall conduct the inspection to determine whether the Work, or the designated portion thereof, is in conformity with the Contract Documents. The Construction Agent shall notify the Contractor, the Architect/Engineer, the Owner's Representative and the Authorized Representative of the scheduled time of the inspection.
  - 12.3.1.2 Within 3 business days of the inspection, the Construction Agent shall transmit to the Contractor a list of defective, incomplete or unacceptable Work (the "Architect/Engineer's Punch List") prepared by the Architect/Engineer with the assistance of the Construction Agent.

### 12.4 CORRECTION OF PUNCH LIST ITEMS

- 12.4.1 Within 30 days of receipt of the Architect/Engineer's Punch List or before Contract Completion, whichever is earlier, the Contractor shall complete and correct all items on the Architect/Engineer's Punch List and submit a request for Final Inspection of the Work to the Construction Agent
  - 12.4.1.1 If the Contractor does not complete the items on the Architect/Engineer's Punch List within 30 days of receipt of the Architect/Engineer's Punch List, the provisions of paragraph GC 6.2 may be invoked.
  - 12.4.1.2 If Work on the Architect/Engineer's Punch List cannot be timely completed, the Contractor shall justify in writing to the reasonable satisfaction of the Construction Agent and the Architect/Engineer the reasons the items cannot be completed, and the Contractor shall propose, for approval by the Construction Agent and the Architect/Engineer, a time when the Contractor will complete those items.
  - 12.4.1.3 Within 3 business days of receipt of the Contractor's request for Final Inspection, the Architect/Engineer and the Construction Agent shall complete a Final Inspection of the Work for compliance with the Contract Documents. The Construction Agent shall notify the Contractor, the Architect/Engineer and the Authorized Representative of the scheduled time for the Final Inspection.
  - 12.4.1.4 Failure of the Construction Agent or 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.

- 12.4.1.5 If multiple inspections of items on the Architect/Engineer's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the Contractors, the Construction Agent, the Architect/Engineer and the City resulting from any attendant delay. The City may deduct those costs from payments then and thereafter due the Contractor. If such payments are not sufficient to cover those amounts, the Contractor shall immediately pay those amounts of the insufficiency to the City upon request.

## 12.5 DEFERRED ITEMS

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

## 12.6 PROJECT RECORD DOCUMENT SUBMITTALS

- 12.6.1 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 Construction Agent for review for conformity with the requirements of the Contract Documents and transmittal to the Architect/Engineer for approval, which may include:
- 12.6.1.1 Certificate of Occupancy issued by the Building Department;
  - 12.6.1.2 Inspection Certificates required issued by the Building Department or the Ohio Department of Commerce as applicable, such as Pressure Piping, Elevator, Boiler, Electrical, Plumbing or Piping Purification, etc.;
  - 12.6.1.3 Letter of Approval from local fire authority or State Fire Marshal fire suppression City, as applicable;
  - 12.6.1.4 Operating and maintenance manuals, 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;
  - 12.6.1.5 Neatly and accurately marked sets of As-Built Drawings and other Contract Documents reflecting the actual construction of the Project;
  - 12.6.1.6 Producibile, detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems and components;
  - 12.6.1.7 Assignment to the City of all Warranties and Guaranties, including the most recent address, electronic mail address and telephone number of any Subcontractors, Material Suppliers, or manufacturers;
  - 12.6.1.8 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;
  - 12.6.1.9 Final certified payroll reports;
  - 12.6.1.10 Affidavits to certify that the Contractor and all Subcontractors have complied with all requirements of Sections 4115.03 to 4115.21, ORC.

## 12.7 AS-BUILT AND RECORD DRAWINGS

- 12.7.1 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 completeness, correctness and accuracy of the As-Built Drawings by signature thereon and deliver the As-Built Drawings to the Construction Agent. The Construction Agent shall review the As-Built Drawings, verify that to the responsible of the Construction Agent's knowledge based upon the Construction Agent's observations during the progress of the Work, the As-Built Drawings detail the actual construction of the Project and transmit the As-Built Drawings to the Architect/Engineer.
- 12.7.2 The Architect/Engineer shall revise the original Contract Documents and related electronic files with the information contained on the As-Built Drawings provided by the Contractor. The Architect/Engineer shall label the revised original Contract Documents and related electronic files as "Record Drawings" and reflect the date of the Architect/Engineer's incorporation of the As-Built Drawings.
- 12.7.3 The City may thereafter use the Record Documents for any purpose relating to the Project including, alteration, maintenance and repair of, additions to or completion of the Project.

## 12.8 DEMONSTRATION AND TRAINING; OPERATING APPURTENANCES

- 12.8.1 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion, release of retainage, and final payment, shall perform demonstration and training of the City's maintenance personnel as specified in the Contract Documents.
- 12.8.2 The Contractor, as a condition precedent to execution of the Certificate of Contract Completion, release of retainage, and final payment, shall organize and submit operating appurtenances and loose items related to the operation and maintenance of the completed Project including:
- 12.8.2.1 Keys to door and window hardware, panels, and other devices not directly provided to the City from the manufacturer;
  - 12.8.2.2 Operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and
  - 12.8.2.3 Extra materials (e.g., attic stock).

## 12.9 CERTIFICATION OF CONTRACT COMPLETION

- 12.9.1 When all items on the Architect/Engineer's Punch List have been completed to the satisfaction of the Authorized Representative, all requirements of the Contract Documents have been completed, and the provisions of paragraphs 12.1 through 12.8 have been fulfilled, the Construction Agent, with the assistance of the Architect/Engineer, shall prepare and recommend execution of a Certificate of Contract Completion by the Authorized Representative. Execution of a Certificate of Contract Completion shall be done in the City's sole discretion.
- 12.9.2 The date that the Authorized Representative executes the Certificate of Contract Completion is the date that the Work of the Contract is accepted ("Final Acceptance"), the date that the Warranty and Guarantee periods commence and the date that retainage may be released.

## 12.10 GUARANTEE AND WARRANTY

- 12.10.1 In addition to the Contractor's other obligations under the Contract Documents, the Contractor shall provide a Guarantee to the City that the Contractor will repair, replace and correct all Defective Work for a period of 1 year or such longer period as specified in the Contract Documents after the date of Final Acceptance promptly upon receipt of written notice from the

Authorized Representative. The Contract Bond shall remain in effect until the expiration of that period, unless the Contractor shall provide a Maintenance Bond in form and substance and from a Surety satisfactory to the City.

- 12.10.1.1 The Guarantee time period shall commence on the date of approval of the certificate of Contract Completion by the Authorized Representative, unless otherwise provided in writing.
- 12.10.1.2 The Guarantee time period for any Work that is incomplete or uncorrected at the time of Partial Occupancy, if any, shall commence with date of approval of the applicable Change Order or certificate of Partial Occupancy or Use by the Authorized Representative in accordance with paragraph GC 6.3, unless otherwise provided in writing.
- 12.10.2 Prior to installing material or equipment which is subject to a Warranty, the Contractor shall provide a copy of the Warranty to the Construction Agent and the Architect/Engineer for review and approval.
- 12.10.3 If defects in material or equipment become apparent within the Warranty period, the Authorized Representative shall promptly notify the Contractor in writing.
- 12.10.4 Within 10 days of receipt of notice under subparagraph 12.10.1 or 12.10.3, the Contractor shall visit the Project in the company of a representative of the City to determine the extent of all Defective Work and defects in materials or equipment and shall promptly repair or replace the Defective Work and all defective material or equipment, as applicable, including all adjacent property damaged as a result of such defects or as a result of remedying the defects, whether or not such adjacent property was originally Work provided by the Contractor.
  - 12.10.4.1 If the Defective Work is, or the defects in material or equipment are, considered by the Authorized Representative to be an emergency, the Authorized Representative may require the Contractor to visit the Project within 1 day of receipt of the notice.
  - 12.10.4.2 The Contractor shall be fully responsible for the cost of temporary materials or equipment required during the repair, replacement or correction of the Defective Work or the defective material or equipment.
- 12.10.5 If the Contractor does not promptly repair, replace or correct the Defective Work or the defective material or equipment, the City may repair, replace or correct such Defective Work or such defective material or equipment and charge all cost and damages associated with the repair, replacement and correction to the Contractor or the Contractor's Surety. The City may deduct the costs and damages from payments then or thereafter due the Contractor. If the payments then and thereafter due the Contractor are not sufficient to pay those amounts, the Contractor shall immediately pay the amount of the insufficiency to the City upon request.
- 12.10.6 Work which is repaired, replaced or corrected by the Contractor shall be inspected and accepted by a representative of the City and shall be guaranteed in accordance with this paragraph GC 12.10 by the Contractor for 1 year from the date of acceptance of the corrective Work by the City or the remainder of the original Guarantee time period, whichever is longer.
- 12.10.7 Any Guaranty or Warranty provided in accordance with this paragraph GC 12.10 shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy available to the City by law, equity or the Contract Documents. Any period for correction of Defective Work or defects in materials or equipment:
  - 12.10.7.1 Relates only to the Contractor's specific obligation to correct the Work;

- 12.10.7.2 Does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;
- 12.10.7.3 Has no relationship to the time within which the City may seek to enforce the Contract; and
- 12.10.7.4 Does not establish a period of limitation with respect to the commencement of litigation to establish the Contractor's liability under the Contract Documents or otherwise.
- 12.10.8 One month prior to the end of the Guarantee period, the Contractor shall attend a walk-through of the Project scheduled by the Authorized Representative.
  - 12.10.8.1 Following the walk-through, the Authorized Representative, shall submit written notice to the Contractor of any Defective Work. Such Defective Work shall be remedied in accordance with this paragraph GC 12.10, without jeopardizing any other remedy the City may have.

**ARTICLE 13 - INSURANCE AND INDEMNIFICATION**

**13.1 CONTRACTOR'S LIABILITY INSURANCE**

- 13.1.1 The Contractor shall purchase, pay for and maintain in full force and effect liability and other insurance as will protect the Contractor from claims described below which may arise out of or result from the Contractor's performance or obligations under the Contract Documents, whether due to action or inaction by the Contractor, the Contractor's Subcontractors and Material Suppliers or any other Person for whom the Contractor is responsible.
  - 13.1.1.1 Claims under workers' compensation, occupational sickness or disease, disability benefit and other similar employee benefit acts;
  - 13.1.1.2 Claims for damages because of bodily injury, disease, illness, death or personal injury, and other claims usually covered by bodily injury liability insurance;
  - 13.1.1.3 Claims for damages because of injury to or destruction of property and other claims usually covered by property damage liability insurance.
- 13.1.2 The Contractor shall purchase, pay for and maintain a Commercial General Liability policy covering all operations by or on behalf of the Contractor and a Business Automobile Liability policy covering liability arising out of any automobile (including owned, hired and non-owned) to provide insurance, limits and coverages as described below. An Umbrella or Excess Liability policy may be used to meet such limits:
  - 13.1.2.1 Policy Limits - Commercial General Liability
    - (1) \$2,000,000 General Aggregate (minimum - see below)
    - (2) \$2,000,000 Products/Completed Operations Aggregate
    - (3) \$1,000,000 Occurrence Limit (minimum - see below)
    - (4) \$1,000,000 Personal and Advertising Injury Limit
  - 13.1.2.2 Coverages - Commercial General Liability
    - (1) (1986 or later) ISO commercial general liability form (occurrence form)
    - (2) Products and completed operations coverage
    - (3) Blanket contractual liability (included in 1986 ISO form)
    - (4) Broad form property damage (included in 1986 ISO form)
    - (5) Severability of interest (included in 1986 ISO form)

- (6) Underground explosion and collapse coverage (included in 1993 ISO form)
- (7) Personal Injury
- (8) Incidental medical malpractice (included in 1986 ISO form)
- (9) Specific waiver of subrogation
- (10) Joint venture as named insured
- (11) Additional insured endorsement

13.1.2.3 Policy Limits - Business Automobile

\$1,000,000 Combined Single Limit

13.1.2.4 Coverages - Business Automobile

- (1) Additional insured or designated insured endorsement
- (2) Specific waiver of subrogation
- (3) Contractual liability

13.1.2.5 Contracts in the amount of \$100,000 or less require coverage in the amount of not less than \$2 million general aggregate and \$1 million per occurrence.

13.1.2.6 Contracts in excess of \$100,000 but not more than \$5 million require coverage in the amount of not less than \$3 million general aggregate and \$3 million per occurrence.

13.1.2.7 Contracts exceeding the amount of \$5 million require coverage in an amount to be determined by the Authorized Representative in writing but in no case less than \$5 million general aggregate and \$5 million per occurrence.

13.1.2.8 Such policies shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured Contractor's projects.

13.1.3 The Contractor shall purchase, pay for and maintain workers' compensation and employer's liability insurance to provide the insurance, limits and coverages as described below:

13.1.3.1 Statutory workers' compensation

13.1.3.2 Employer's liability

- (1) \$1,000,000 bodily injury each accident
- (2) \$1,000,000 bodily injury by disease for each employee
- (3) \$1,000,000 bodily injury disease aggregate

13.1.4 By requiring insurance the City does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance procured or effected by the Contractor shall not reduce or limit the Contractor's obligation to indemnify and hold harmless the City as required by the Contract Documents.

13.1.5 If applicable, the Contractor's Commercial General Liability policy must be endorsed to reflect the fact that the City and the City's tenants will continue to operate at the Site during the performance of the Work and that no property used in connection with such operations will be considered as being in the care, custody or control of the Contractor.

13.1.6 For any demolition, blasting, excavating, tunneling, shoring or similar operations, the Contractor shall provide and maintain Property Damage Liability insurance with a limit of liability equal to such limit as specified in the applicable sections of subparagraph GC 13.1.2.

13.2 BUILDER'S RISK - NEW CONSTRUCTION

13.2.1 Unless otherwise specified in the Contract Documents, the Contractor shall purchase, pay for and maintain, during the progress of the Work and until the execution of the Certificate of Contract Completion by the Authorized Representative, a Builder's Risk insurance policy to cover all risk of physical loss to the Project in the course of construction including falsework, temporary buildings and structures and materials used in the construction process, stored on or off site, or while in transit. The amount of coverage shall equal at least 100% of the Contract Price, including landscaping, paving and other Work. This insurance shall be on a special cause of loss form, which provides coverage on an open perils basis insuring against the direct physical loss of or damage to the covered property including theft, vandalism, malicious mischief, earthquake, tornado, lightning, explosion, breakage of glass, flood, collapse, water damage, and hot and cold testing, and shall also include debris removal and demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the City's services and expenses required to limit further loss.

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

13.2.1.2 Coverage shall include "soft cost endorsement" including, but not limited to, the reasonable extra costs of the Architect/Engineer and reasonable Contractor extension or acceleration costs.

13.2.1.3 Coverage shall include materials in transit or stored off-site and identified for the Project.

13.2.1.4 Coverage shall waive rights between the City and the Contractor for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

13.2.1.5 Coverage shall include appropriate sub-limits for installation coverage.

13.2.1.6 Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.

13.2.1.7 Coverage shall include temporary structures and scaffolding, along with collapse coverage.

13.2.1.8 Coverage shall be primary to all other applicable insurance.

13.2.1.9 The Builder's Risk policy shall specifically permit and allow for Partial Occupancy by the City prior to execution of the certificate of Contract Completion by the Authorized Representative and coverage shall remain in effect until all punch list items are completed.

13.2.1.10 The Contractor experiencing any loss claimed under the Builder's Risk policy shall be responsible for that loss up to the amount of the deductible.

### 13.3 BUILDER'S RISK - RENOVATIONS

13.3.1 If the Contractor is involved solely in the installation of material and equipment and not in new building construction, the Contractor shall purchase and maintain a Builder's Risk, Builder's Risk-Renovations, or Installation Floater insurance policy. Such policy shall comply with the provisions of paragraph GC 13.2.

## 13.4 INSURANCE POLICY REQUIREMENTS

- 13.4.1 All insurance to be furnished by the Contractor shall be provided by companies authorized to do business by the State Department of Insurance. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverages of the Insurance Services Office (“ISO”) policies, forms and endorsements. Each policy of insurance required to be purchased, paid for and maintained by the Contractor, except for professional liability and workers’ compensation, shall name the City, the Construction Agent and the Architect/Engineer, their respective members, officials, officers, consultants, agents, representatives and employees as additional insureds or loss payees, as applicable, on a primary basis for the Work; provided, however, that this designation shall not cause any claim between the Contractor and the City to be waived, except as set forth in subparagraph GC 13.5.1. The form of the additional insured endorsement shall be ISO CG 20 10 13 85 or its equivalent. If a later edition of the endorsement is used (including 10/93, 03/97 or 07/04), then endorsement ISO CG 20 37 07 04 or its equivalent shall also be attached to the policy for products/completed operations coverage. If the additional insured has other insurance applicable to a loss, that insurance will be on an excess or contingent basis. The amount of the Contractor’s insurance shall not be reduced by the existence of other insurance.
- 13.4.2 Each policy and the respective certificate of insurance to be furnished by the Contractor shall expressly provide that the coverages will not be canceled, non-renewed or materially changed by endorsement or through issuance of any other policy or policies of insurance without not less than 30 days prior written notice being given to the City.
- 13.4.3 The Contractor shall furnish the City, when requested, a certified copy of any insurance policy, any additional insured or loss payee endorsement or other endorsement evidencing coverage the Contractor is required to purchase or maintain by the Contract Documents, within 10 days of the request. In no event shall failure of the City to demand any certificate of insurance or certified copy of any required insurance policy or endorsement or the failure of the City to identify any deficiency therein be construed as a waiver of the obligation of the Contractor to obtain the required insurance.
- 13.4.4 The acceptance of delivery by the City of any certificate of insurance evidencing the required coverages and limits shall not constitute approval or agreement by the City that the insurance requirements contained in the Contract Documents have been met or that the insurance policies shown by the certificates of insurance are in compliance with the requirements.
- 13.4.5 The City has the right, but not the obligation, to prohibit the Contractor or any of the Contractor’s Subcontractors from entering the Site until such certificates or other evidence that insurance has been obtained in compliance with the insurance requirements contained in the Contract Documents is received by the City.
- 13.4.6 If the Contractor fails to maintain the insurance required by this Article GC 13, the City shall have the right, but not the obligation, to purchase such insurance at the Contractor’s expense. The City may retain the cost of any such insurance purchased from amounts then or thereafter due to the Contractor. If the amounts then and thereafter due to the Contractor are insufficient to cover the cost, the Contractor shall immediately pay the insufficiency to the City upon request.
- 13.4.7 If any insurance the Contractor is required to furnish by this Article GC 13 is issued or renewed on a claims-made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the Date of Commencement of the Contract and the form shall state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least 36 months.
- 13.4.8 The Contractor shall maintain insurance in the required amounts, without interruption, from the date of the execution of the Contract Form throughout the Contract Time and the period established by Section 2305.131, ORC, for the Project. Failure to maintain the required insurance

during the Contract Time shall be cause for termination of the Contract. An additional certificate of insurance evidencing coverage for the period established by Section 2305.131, ORC, for the Project shall be submitted with the final Contractor's Payment Request.

- 13.4.9 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.
- 13.4.10 The prompt repair or reconstruction of the Work resulting from an insured loss or damage is the Contractor's responsibility and shall be accomplished at no additional cost to the City.
- 13.4.11 All insurance required of the Contractor by the Contract Documents shall be primary over any insurance or self-insurance carried by the City, the Construction Agent or the Architect/Engineer.

### 13.5 WAIVERS OF SUBROGATION

- 13.5.1 With the consent of all applicable insurers, the City and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Article GC 13 or other insurance applicable to the Work.

### 13.6 INDEMNIFICATION FOR INJURY OR DAMAGE

- 13.6.1 To the fullest extent permitted by law, including Section 2305.31, ORC, the Contractor shall indemnify and hold harmless the City, the Owner's Representative, the Construction Agent and the Architect/Engineer, their respective members, officials, officers, consultants, agents, representatives and employees, in both individual and official capacities (individually "Indemnified Party" and collectively "Indemnified Parties"), from and against all claims, damages, losses, liens causes of action, suits, judgments and expenses (including the fees and charges of engineers, architects Construction Agents, experts, consultants, attorneys and other professionals), whether direct, indirect or consequential arising out of or relating to the Work or the Project for damage to or loss of tangible personal property or injury, including death, to individuals, but only if they are caused by the negligent acts, errors or omissions of the Contractor, the Contractor's Subcontractors or Material Suppliers or any Person for whom the Contractor is legally liable.

- 13.6.1.1 In the event of any such injury, including death, or loss or damage, or related claims, the Contractor shall give prompt written notice thereof to the Construction Agent, the Architect/Engineer and the Authorized Representative.

- 13.6.2 The obligations of the Contractor under subparagraph GC 13.6.1 shall not extend to the liability of the Architect/Engineer, the Architect/Engineer's members, officials, officers, consultants, agents, representatives or employees for negligent preparation or approval of Drawings, Specification, Change Orders, opinions, and any other responsibility of the Architect/Engineer, except to the extent covered by the Contractor's insurance.
- 13.6.3 The obligations of the Contractor under subparagraph GC 13.6.1 shall not negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist to an Indemnified Party.
- 13.6.3 The obligations of the Contractor under subparagraph GC 13.6.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under worker compensation acts, disability benefit acts or any insurance policy provided or required in connection with the Project.

### 13.7 INDEMNIFICATION FOR PATENT OR COPYRIGHT USE

13.7.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including the fees and charges of engineers, architects, Construction Agents, experts, consultants, attorneys and other professionals), whether direct, indirect or consequential arising out of or relating to the Contractor's infringement of patent rights, other intellectual property rights or copyrights.

#### 13.8 INDEMNIFICATION FOR USE OF ELECTRONIC FILES

13.8.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Indemnified Parties from an against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including the fees and charges of engineers, architects, Construction Agents, experts, consultants, attorneys and other professionals) arising out of, or related to, the use of electronic files, including Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively, "Electronic Files") by the Contractor, the Contractor's Subcontractors or Material Suppliers or any other Person for whom the Contractor is legally liable.

13.8.1.1 The Electronic Files are provided solely for the Contractor's convenience and use related to the Project. Any use of the Electronic Files shall be at the sole risk of the Contractor.

13.8.1.2 The City alone owns the Electronic Files and every right, title and interest therein from the moment of creation.

13.8.1.3 The Electronic Files are not products.

13.8.1.4 The Contractor shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, Coordination Drawings, Record Drawings or fabrication data for components, systems, and assemblies intended solely for use on the Project.

13.8.1.5 The City, the Construction Agent and the Architect/Engineer make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose.

13.8.1.6 The Contractor acknowledges that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the City, the Construction Agent or the Architect/Engineer.

13.8.1.7 The City, the Construction Agent and the Architect/Engineer make no representations about the compatibility, usability or readability of the Electronic Files resulting from the use of software, application packages, operating systems or computer hardware differing from those used to create the Electronic Files.

13.8.1.8 In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over and govern the Electronic Files.

13.8.1.9 The Contractor alone is responsible to check, verify and otherwise confirm the accuracy of data on the Electronic Files.

13.8.2 The Contractor shall not make any claims and waives, to the fullest extent permitted by law, any claims, damages, losses, liens, causes of action, suits and judgments of any nature against the Indemnified Parties, which may arise out of, or be related to, the use of the Electronic Files.

#### **ARTICLE 14 - CONTRACT SUSPENSION AND TERMINATION**

## 14.1 SUSPENSION OF THE WORK

- 14.1.1 The City, without cause and without prejudice to any other right or remedy the City may have, may require the Contractor in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such specified period of time as set forth in the writing. The Contractor shall promptly provide notice of any suspension to the Contractor's Surety.
- 14.1.1.1 If the City suspends the Work under this subparagraph GC 14.1.1, the Contractor may seek adjustment of the Contract Price and Contract Time for increases in the cost and time caused by the suspension, delay, or interruption. Any adjustment of the Contract Price, however, shall not include profit.
- 14.1.1.2 Notwithstanding the foregoing, no adjustment shall be made to the Contract Price or Contract Time to the extent that:
1. Performance was, or could have been, suspended, delayed, or interrupted by a cause for which the City is not responsible; or
  2. An adjustment is made or denied under another provision of the Contract Documents.
- 14.1.2 The Authorized Representative, without prejudice to any other right or remedy the City may have, may require the Contractor in writing to suspend, delay or interrupt the performance of Work temporarily, in whole or in part, for such period of time as the Authorized Representative may determine for any of the following reasons: (1) Defective Work; (2) the Contractor is causing undue risk of damage to or injury in any part of the Project or adjacent area; (3) the Contractor fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or (4) any other cause the Authorized Representative reasonably believes justifies a suspension.
- 14.1.2.1 The City's exercise of its right to suspend the Work under this subparagraph GC 14.1.2 shall not entitle the Contractor to any adjustment of the Contract Price or the Contract Time.
- 14.1.2.2 If the City is adjudged to have improperly suspended the Work under this subparagraph GC 14.1.2, the suspension shall be deemed to have been a suspension under subparagraph GC 14.1.1.
- 14.1.3 Upon receipt of notice of suspension under this paragraph GC 14.1, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize costs with respect thereto. The Contractor shall furnish a report to the Construction Agent, within 5 days of receipt of the notice of suspension, describing the status of the Work, including results accomplished, conclusions resulting therefrom, and such other information as the Construction Agent may require.
- 14.1.4 If the City suspends the Work under this paragraph GC 14.1 and the Contractor submits a proper Contractor Payment Request, the Contractor is to be paid for Work performed prior to receipt of notice of suspension, based upon the Schedule of Values, subject to all other provisions of the Contract Documents
- 14.1.5 The City's right to suspend the Work shall not give rise to any duty to exercise the right for the benefit of the Contractor or any other Person, and the City's exercise or failure to exercise the right shall not prejudice any of the City's other rights or remedies.

## 14.2 TERMINATION FOR CONVENIENCE

- 14.2.1 The City may terminate the Contract in whole or in part for the City's convenience and without cause at any time upon 10 days written notice to the Contractor.
- 14.2.2 Upon receipt of the notice of termination for convenience, the Contractor shall immediately proceed with performance of the following duties in accordance with the requirements of the Authorized Representative.
  - 14.2.2.1 Cease operation as specified in the notice;
  - 14.2.2.2 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;
  - 14.2.2.3 Terminate all subcontracts and orders to the extent they relate to the Work terminated;
  - 14.2.2.4 Proceed with Work not terminated;
  - 14.2.2.5 Take actions that may be necessary, or that the Authorized Representative may require, for the protection and preservation of the terminated Work.
- 14.2.3 Upon such termination, the City is to pay Contractor in accordance with the Schedule of Values for Work completed, including any retainage, and the value of materials ordered and delivered, less any salvage credit the Contractor may receive for them, subject to all other provisions of the Contract Documents. In no event shall the Contractor be paid (1) overhead or profit on Work not performed or (2) compensation in excess of the Contract Price.
  - 14.2.3.1 All materials, equipment, facilities and supplies at the Site, or stored off-site for which the Contractor has received payment shall become property of the City.
  - 14.2.3.2 The Contractor shall submit a proper Contract Payment Request and may submit evidence of any reasonable expenses solely attributable to the termination of the Work for consideration by the City.
- 14.2.4 If the City terminates the Work under this paragraph GC 14.2, the termination shall not affect the rights or remedies of the City against the Contractor then existing or which may thereafter accrue.
- 14.3 TERMINATION FOR CAUSE
  - 14.3.1 The City may terminate all or a portion of the Contract if the Contractor:
    - 14.3.1.1 Fails to prosecute the Work with the necessary force or in a timely manner;
    - 14.3.1.2 Fails or refuses to remedy Defective Work;
    - 14.3.1.3 Fails to supply enough properly skilled workers or proper materials;
    - 14.3.1.4 Fails to properly make payment to Subcontractors or Material Suppliers;
    - 14.3.1.5 Fails to comply with laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project; or
    - 14.3.1.6 Fails to comply with any material requirement of the Contract Documents.
  - 14.3.2 The Authorized Representative shall give the Contractor and the Contractor's Surety written notice of the grounds for termination and to begin to cure the same within 5 days of the date of the notice.

- 14.3.3 If the Contractor fails to cure the failure or refusal within 15 days of receipt of the written notice, the City may, without jeopardizing any other remedy the City may have, declare the Contractor in default, terminate the Contract and employ upon the Work the additional force or supply the additional materials or such part of either as is appropriate, and remove Defective Work.
- 14.3.4 If the Contractor is so terminated, the Contractor's Surety may perform the Contract. If the Contractor's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, the City may, without jeopardizing any other remedy the City may have, complete the Work by means the Authorized Representative deems appropriate. The City may take possession of and use all materials, facilities and equipment at the Site or stored offsite for which the City has paid.
- 14.3.5 If the Contractor is so terminated, the Contractor shall not be entitled to any further payment. If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including compensation for all direct and consequential damages incurred by the Contractors, the fees and charges the Construction Agent, the Architect/Engineer, other architects and engineers, experts, consultants, attorneys and other professionals, court costs and damages incurred by the City, the Contractor or the Contractor's Surety shall immediately pay the amount of the insufficiency to the City upon request. This obligation shall survive the termination of the Contractor. Such payment shall be in addition to any other remedy available to the City by law, equity or the Contract Documents and shall not relieve the Contractor from responsibility to perform the Work in accordance with the Contract Documents.
- 14.3.6 If the Contractor's Surety performs the Work, the provisions of the Contract Documents shall govern the Surety's performance, with the Surety in place of the Contractor in all provisions including provisions for payment for the Work and provisions about the right of the City to complete the Work.
- 14.3.7 If the City terminates the Work under this paragraph GC 14.3, the termination shall not affect any rights or remedies of the City against the Contractor or the Contractor's Surety then existing or which may thereafter accrue. The City's retention or payment of funds due the Contractor shall not release the Contractor or the Contractor's Surety from liability for performance of the Work in accordance with the requirements of the Contract Documents.
- 14.3.8 Upon a final determination, by a court of competent jurisdiction, that the termination pursuant to this paragraph GC 14.3 was improper, the termination shall be deemed a termination for convenience to paragraph GC 14.2.

#### 14.4 CONTRACTOR INSOLVENCY

- 14.4.1 If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, as the debtor-in-possession, or the trustee of the Contractor's bankruptcy estate shall file a motion to assume or reject the Contract under Bankruptcy Code Section 365 (11 U.S.C. Section 365), within 20 days after the filing of the voluntary or involuntary petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the voluntary or involuntary petition. The failure to file and prosecute that motion within the time frames provided by this subparagraph GC 14.4.1 shall constitute a material breach of the Contract as time is of the essence with respect to Contractor's performance of all terms of the Contract. The Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, 11 U.S.C. Section 365(a), to permit the City to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of the termination of the Contract and to take any and all other action necessary to terminate the Contract.
- 14.4.2 If the Contractor makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of the Contractor's business or property, the Authorized

Representative shall serve written notice on the Contractor and the Contractor's Surety stating that any failure of the Contractor to provide adequate assurances of continued performance will be considered a rejection of the Contract, which shall result in termination of the Contract for cause. Such termination of the Contract need not be evidenced by an order of any court.

- 14.4.3 Upon a final determination, by a court having jurisdiction, that the termination pursuant to paragraph GC 14.4 was improper, the termination will be deemed to be a termination for convenience pursuant to paragraph GC 14.2.

#### 14.5 RECORDS

- 14.5.1 The Contractor's records relating to the Work shall be made available to the City for a period of 7 years from the date of any applicable final settlement or payment, as applicable.
- 14.5.2 The Contractor's records which relate to disputes, litigation, or settlement of claims arising out of or related to the Work shall be made available to the City until the end of the period discussed in subparagraph GC 14.5.1 or until such dispute, litigation or settlement has been finally decided or settled, whichever is longer.

**EXHIBIT B**

CONSTRUCTION BUDGET

**EXHIBIT C**  
**WORK SCHEDULE**

## EXHIBIT D

### DISBURSEMENT REQUEST FORM

#### FORM OF REQUEST FOR DISBURSEMENT UNDER CONSTRUCTION AGENCY AGREEMENT BETWEEN THE CITY OF NORTH ROYALTON AND THE YMCA OF GREATER CLEVELAND

Pursuant to the captioned Construction Agency Agreement (the "Agreement"), the undersigned officer of The YMCA of Greater Cleveland (the "Construction Agent") hereby requests the City to pay to or for the benefit of the Company the sum of \$\_\_\_\_\_, which sum constitutes \_\_\_\_% of the Allowable Costs (as defined in the Agreement) of the items and to the persons listed in the accompanying Disbursement Schedule and does not exceed the amount of funds available from the City (the "Available Funds"). Except as otherwise provided, all terms used herein shall have the meanings attributed thereto in the Agreement.

In connection with the foregoing request, the undersigned hereby certifies and agrees as follows:

1. Each item for which this disbursement is sought constitutes an Allowable Cost, and none of the costs for which disbursement is herein requested has formed the basis of any past disbursement of Available Funds.
2. The Allowable Costs as set forth in the applicable Schedule of Values given the City under the Agreement have not changed or, if changed, are as set forth on the schedule attached hereto.
3. As of the date hereof, no representation or warranty of the Construction Agent contained in or made pursuant to the Agreement or any other Operative Document or any document related to the Bonds is materially incorrect or inaccurate.
4. As of the date hereof, there exists no breach, default or event of default, nor any event which by notice, passage of time or both would constitute an event of default, under the terms of any of the Operative Documents or the Bonds.
5. This Request for Disbursement and all exhibits and attachments hereto shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the City for any action taken pursuant hereto.
6. Included in the exhibits and attachments hereto are certified documents demonstrating compliance with all applicable requirements of prevailing wage laws.
7. All other conditions precedent to the making of a disbursement as set forth in the Agreement have been satisfied.

8. This Request for Disbursement constitutes the approval of the Construction Agent of each item for which disbursement is hereby requested.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

YMCA OF GREATER CLEVELAND

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED for conformity with the Cost  
Budget this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RICHARD L. BOWEN + ASSOCIATES INC.  
(Owner's Representative)

By: \_\_\_\_\_

Title: \_\_\_\_\_