

PART 5 – SPECIFICATIONS - GENERAL PROVISIONS

ODOT’S 2016 CONSTRUCTION AND MATERIAL SPECIFICATIONS (CM&S) – 100 GENERAL PROVISIONS

Where applicable, the Contractor shall replace the terms “Ohio Department of Transportation”, “ODOT”, “the Department”, “the Engineer”, “the Director”, and “the DCA” with the term “the Local Public Agency (LPA).”, which refers to the City of Fairview Park, Ohio and all of its duly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. Furthermore, nothing in this document is intended to alter the LPA’s adherence to Ohio Revised Code, local ordinance or other local requirements.

101 – DEFINITIONS AND TERMS

101.03 Definitions. The following terms or pronouns, when used in the Contract Documents, are defined as follows:

Advertisement. The public announcement, as required by law, inviting Bids for Work to be performed or materials to be furnished.

Award. The written acceptance by the Director of a Bid.

Bid. The offer of a Bidder, on the prescribed form properly signed and guaranteed, to perform the Work and to furnish the labor and materials at the prices quoted.

Bid Documents. The Bid Documents include the Invitation for Bids, Addenda, Proposal, Expedite file, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to Contractor, and any other document designated by the Department as a Bid Document, all of which constitute one instrument.

Bidder. An individual, firm, or corporation submitting a Bid for the advertised Work, acting directly or through the duly authorized representative, and qualified as provided in ORC 5525.02 to 5525.09.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, a highway, or a railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of 10 feet (3.048 m) or more between undercopings of abutments or extreme limits of openings for multiple boxes.

A. Length. The length of a bridge structure is the over-all length measured along the centerline of the roadway surface.

B. Roadway Width. The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of 1 foot (0.3 m) or less, the roadway width is measured between parapets or railings.

Calendar Day or Day. Every day shown on the calendar.

Change Order. A written order issued by the Director to the Contractor, covering changes to the terms and conditions, plans and/or quantities, within or beyond the scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Claims. Disputes that are not settled through Steps 1 and 2 of the Dispute Resolution and Administrative Claim Process. The Dispute becomes a Claim when the Contractor submits a Notice of Intent to File a Claim.

Completion Date. The date, as shown in the Contract Documents, on which the Work contemplated shall be completed.

Construction Limits. These limits must encompass all Work. This includes removals, room for construction equipment to complete work, site access, etc.

Contract. The written agreement between the Department and the Contractor setting forth the obligations of the parties, including, but not limited to, the performance of the Work and the basis of payment.

Contract Bond. The approved forms of security, executed by the Contractor and its Sureties, guaranteeing complete execution of the Work as required by the Contract Documents and the payment of all legal debts pertaining to the construction of the Project which security shall comply with and be subject to ORC 5525.16 and 5525.13, and related provisions.

Contract Documents. The Contract Documents include the Invitation for Bids, Addenda, Proposal, contract form and required bonds, Specifications, Supplemental Specifications, Special Provisions, general and detailed plans, Plan notes, standard construction drawings identified in the Plans, notice to Contractor, Change Orders, Supplemental Agreements, Extra Work Contracts, and any other document designated by the Department as a Contract Document, all of which constitute one instrument.

Contract Item (Pay Item). A specifically described unit of Work for which a price is provided in the Contract.

Contract Price. The amount of compensation bid by the Contractor for a Contract Item in the Proposal or the amount of compensation established for a Contract Item added or modified pursuant to the Contract Documents.

Contract Time. The number of workdays or calendar days, including authorized adjustments, allowed for completion of the Project. When a specified Completion Date is shown in the Contract Documents instead of the number of workdays or calendar days, completion of the Project shall occur on or before that date. Specified Completion Date and Calendar Day Contracts shall be completed on or before the day indicated even when that date is a Saturday, Sunday, or holiday.

Contractor. The individual, firm, or corporation contracting with the Department for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the provisions of ORC 5525.02 to 5525.09 inclusive, and any amendments thereto.

County. The designated county in which the Work specified is to be done.

Culvert. Any structure not classified as a Bridge that provides an opening under the roadway.

Department. The Department of Transportation, State of Ohio.

Director. Administrative head of the Department appointed by the Governor.

Disputes. Disagreements, matters in question and differences of opinion between the Department's personnel and the Contractor.

Engineer. Duly authorized agent of the Department acting within the scope of its authority for purposes of engineering and administration of the Contract.

Equipment. All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Extra Work. An item of Work not provided for in the Contract as awarded but found essential to the satisfactory completion of the Contract within its intended scope.

Extra Work Contract. A Contract concerning the performance of Work or furnishing of materials involving Extra Work. Such Extra Work may be performed at agreed prices or on a force account basis as provided in ORC 5525.14.

Fabricator. The individual, firm, or corporation that fabricates structural metals or prestressed concrete members as an agent of the Contractor.

Final Inspector. An Engineer appointed by the DDD who inspects the completed Work and accepts it if it complies with the Contract Documents.

Inspector. The Engineer's authorized representative assigned to make detailed inspections of Contract performance.

Invitation for Bids. The invitation for Proposals for all Work on which Bids are required. Such Proposal will indicate with reasonable accuracy the quantity and location of the Work to be done or the character and quality of the material to be furnished and the time and place of the opening of Proposals.

Materials. Any materials or products specified for use in the construction of the Project and its appurtenances.

Partnering. A collaborative process for project cooperation and communication meant to achieve effective and efficient contract performance and completion of the Project within budget, on schedule, safely and with requisite quality in accordance with the contract.

Plans. The drawings, standard construction drawings and supplemental drawings provided by the Department that show the location, character, dimensions, and details of the Work.

Prebid Question. A written inquiry submitted by a prospective bidder.

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

Project Limits. Project limits are points on the mainline centerline of construction where the proposed improvement, as described in the project description on the Title Sheet (excluding incidental construction), begins and ends

Project Right-of-Way. That portion of the Right-of-Way between the beginning and end of the Project.

Project. The specific section of the highway together with all appurtenances and Work to be performed thereon under the Contract.

Proposal. The approved form on which the Department requires Bids to be prepared and submitted for the Work.

Proposal Guaranty. The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if its Bid is accepted.

Questionnaire. The specified forms on which the Contractor shall furnish required information as to its ability to perform and finance the Work required under ORC 5525.01.

Reasonably Close Conformity. Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances. Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the Department.

Registered Engineer. An engineer registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional engineering in the State of Ohio

Registered Surveyor. A surveyor registered with the Ohio State Board of Registration for Professional Engineers and Surveyors to practice professional surveying in the State of Ohio.

Right-of-Way. A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway.

Road. A general term denoting a public way for purposes of vehicular travel, including the entire area within the Right-of-Way, as defined in ORC 5501.01.

Roadbed. The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulder.

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

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

Roadway. The portion of a highway within limits of construction.

Shop Drawings. The drawings provided by the Contractor or Supplier that describe any portion of the Work that will remain in place permanently.

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

Sidewalk. That portion of the roadway primarily constructed for the use of pedestrians.

Signatures on Contract Documents. All signatures on Contract Documents must meet the requirements of 102.06.

Special Provisions. Additions and revisions to the standard and Supplemental Specifications covering conditions peculiar to an individual Project.

Specifications. The directions, provisions, and requirements contained herein as supplemented by the Supplemental Specifications and Special Provisions.

State. The State of Ohio acting through its authorized representative.

Street. A general term denoting a public way for purpose of vehicular travel, including the entire area within the Right-of-Way.

Structures. Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and other features that may be encountered in the Work and not otherwise classed herein.

Subcontractor. An individual, firm, or corporation to whom the Contractor sublets part of the Contract to be performed on the job site, who prior to such undertaking receives the written consent of the Director, and who is qualified under ORC 5525.02 through 5525.09 inclusive.

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

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

Superintendent. The Contractor's authorized representative in responsible charge of the Work.

Superstructure. The entire structure except the Substructure.

Supplement. A list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file in the Office of the Director.

Supplemental Agreement. A written agreement executed by the Contractor and by the Director covering necessary alterations.

Supplemental Specifications. Detailed specifications supplemental to or superseding these Specifications.

Surety. The corporation, partnership, or individual, other than the Contractor, executing a bond furnished by the Contractor.

Titles (or Headings). The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

Waters of the United States. Waters that are under the jurisdiction of the Corps of Engineers under the Clean Water Act as defined by 33 CFR Ch. II Part 328, which as applied to Ohio means: the Ohio River and Lake Erie and any other river, stream, creek, lake, pond, or wetland that drains directly or indirectly into the Ohio River or Lake Erie.

Work. All labor, materials, equipment, tools, transportation, supplies, and other incidentals and all tasks that comprise the project or any portion thereof, as described by the Contract Documents.

Work Limits. Work Limits are the extreme limits of the contractor's responsibility on a project, including all temporary and incidental construction, with the exception of work zone traffic control devices required for maintenance of traffic.

Workday. A calendar day that the Contractor normally works.

Working Drawings. Stress sheets, shop drawings, erection plans, falsework plans, installation plans, certified drawings, frame work plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data that the Contractor is required to submit.

101.04 Interpretations. In order to avoid cumbersome and confusing repetition of expressions in these Specifications, it is provided that whenever anything is, or is to be, done, if, as, or, when, or where “contemplated, required, determined, directed, specified, authorized, ordered, given, designated, indicated, considered necessary, deemed necessary, permitted, reserved, suspended, established, approval, approved, disapproved, acceptable, unacceptable, suitable, accepted, satisfactory, unsatisfactory, sufficient, insufficient, rejected, or condemned,” it shall be understood as if the expression were followed by the words “by the Engineer” or “to the Engineer.”

102 – BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. A Bidder must be prequalified by the Department according to ORC Chapter 5525 and the rules and regulations governing prequalification in order to submit a Bid. For foreign Contractors, refer to ORC 5525.18 and Ohio Administrative Rule 5501:2-3-07.

102.03 Issuance of Proposals.

A. General. Upon request, the Department will provide applicable rates and other relevant information for obtaining bidding information and submitting a Bid.

B. Department Will Not Issue. The Department may refuse to sell or issue Bid Documents to a prospective Bidder for any of the following reasons:

1. The prospective Bidder owes the Department for previously issued plans.
2. The prospective Bidder has defaulted on previous contracts.
3. The prospective Bidder is debarred from bidding on and receiving Department contracts.
4. The prospective Bidder is currently in the debarment process.

102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions. Carefully examine the Bid Documents and perform a reasonable site investigation before submitting a Bid. Submitting a Bid is an affirmative statement that the Bidder has investigated the Project site and is satisfied as to the character, quality, quantities, and the conditions to be encountered in performing the Work. A reasonable site investigation includes investigating the Project site, borrow sites, hauling routes, and all other locations related to the performance of the Work.

When available, the Department will include in the Contract Documents or provide for the Bidder’s review at the Department’s office, one or more of the following:

- A. Record drawings.
- B. Available information relative to subsurface exploration, borings, soundings, water levels, elevations, or profiles.
- C. The results of other preliminary investigations.

A reasonable site investigation includes a review of these documents.

Should a question arise at any time during the examination of Bid Documents or investigation of the site the Bidder may seek clarification by submitting a Prebid Question. Submit all Prebid Questions via email to the City of Fairview Park’s Director of Public Service & Development, Shawn Leininger, AICP, at Shawn.Leininger@fairviewpark.org. The Department will post a response on its website to all questions submitted before a deadline of 10:00 AM seven (7) working days prior to the public opening of Bids. Responses to Prebid Questions posted on the Department’s website are not revisions to the Bidding Documents and are not binding. The Department is not obligated to respond to, or otherwise act upon, a Prebid Question submitted after this deadline, but reserves the right to act upon any information received.

102.06 Preparation of Bids. Prepare a Bid according to this subsection and the requirements found in the Bid Documents. Properly complete the Expedite file and submit it using the software specified in the Bid Documents rather than completing it by handwriting, typing, or using unauthorized computer-generated forms.

Provide a unit price for each item listed in the Proposal. Calculate and place the products for the respective unit prices and quantities in the "Bid Amount" column. For a lump sum item, place the same price in the "Unit Price" column and in the "Bid Amount" column pertaining to that item. Indicate the total Bid amount by adding the values entered in the "Bid Amount" column for the listed items. Submit the Expedite file using the software specified in the Bid Documents.

Properly execute the Proposal by completing the miscellaneous section and attaching the required signatures in the space provided in the Expedite file.

**ENTITY SUBMITTING PROPOSAL
REQUIRED SIGNATURE**

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| Individual | The individual or a duly authorized agent. |
| Partnership | A partner or a duly authorized agent. |
| Joint Venture | A member or a duly authorized agent of at least one of the joint venture firms. |
| Corporation | An authorized officer or duly authorized agent of the corporation. Also, show the name of the state chartering the corporation and affix the corporate seal. |
| Limited Liability Company | A manager, a member, or a duly authorized agent. |

102.09 Proposal Guaranty. The Department will reject a Bid submitted without a Proposal Guaranty in the amount designated and payable to the Director. Submit the required Proposal Guaranty in one of the following forms:

- A. Properly executed project Bid bond submitted on the Department's form.
- B. Properly executed electronic bid transfer to the Department's account.
- C. Certified check drawn on the account of the Bidder submitting the Bid.
- D. Cashier's check.
- E. Properly executed electronic project Bid bond submitted using the software specified in the Bid Documents.

When submitting a Bid bond, ensure that the Surety is licensed to do business in the State.

If the Department invites alternate Bids and the Bidder elects to Bid more than one alternate, the Bidder may submit one Proposal Guaranty in the amount required for a single alternate. The Proposal Guaranty covers each individual Bid.

If the Department invites combined Bids and the Bidder elects to Bid only on one package, then the Bidder must submit only one Proposal Guaranty. If the Bidder bids on the combined Bid package, the Bidder must submit a Proposal Guaranty in the amount required for the combined Bid. The combined Proposal Guaranty covers each individual Bid.

102.10 Delivery of Bid. All Bids must be submitted to the City of Fairview Park, Ohio to the office of the Mayor, located at Fairview Park City Hall, 20777 Lorain Rd., Fairview Park, OH 44126. Bids will be accepted until the time and date designated in the Notice to Bidders. Bids received after the designated time will be returned to the Bidders unopened. Bids not prepared and submitted in accordance with the Proposal will be returned.

102.11 Withdrawal of Bids. After Bids are opened, ORC 5525.01 requires that a Bidder identify a mistake in its Bid within 48 hours of the Bid opening. After Bids are opened the Bidder must provide a written request to withdraw a Bid already filed with the Department. Any Bidder for whom a request to withdraw its Bid is approved by the Department will not be permitted to participate in any manner in a contract awarded for that project for which the Bid was withdrawn.

102.13 Public Opening of Bids. The Department will publicly open Bids at the time and place indicated in the notice to Contractors. The Department will announce the total Bid amount for each Bid.

Bidders or their authorized agent and other interested persons are invited to the opening.

The Department may postpone the receipt of Bid time or the opening of Bids time. If the Department changes the hour or the date of the receipt of Bids or the opening of Bids, it will issue an addendum or public notice to notify prospective Bidders.

102.14 Disqualification of Bidders. The Department will declare a Bid non-responsive and ineligible for award when any of the following occur:

- A. The Bidder lacks sufficient prequalification work types or dollars to be eligible for award.
- B. The Bidder fails to furnish the required Proposal Guaranty in the proper form and amount.
- C. The Bid contains unauthorized alterations or omissions.
- D. The Bid contains conditions or qualifications not provided for in the Bid Documents.
- E. The Proposal is not prepared as specified.
- F. A single entity, under the same name or different names, or affiliated entities submits more than one Bid for the same Project.
- G. The Bidder fails to submit a unit price for each contract item listed, except for lump sum items where the Bidder may show a price in the “Bid Amount” column for that item.
- H. The Bidder fails to submit a lump sum price where required.
- I. The Bidder fails to submit a complete Expedite file using the software specified in the Proposal.
- J. The Bidder is debarred from submitting Bids.
- K. The Bidder has defaulted, has had a Contract terminated for cause by the Department, has either agreed not to Bid or has had debarment proceedings initiated against the Bidder’s company and/or its key personnel.
- L. The Bidder submits its Bid or Proposal Guaranty on forms other than those provided by the Department.
- M. The Bidder fails to properly complete the supplemental questionnaire section of the Expedite file.
- N. The Bidder submits a Materially Unbalanced Bid as defined by 102.08.
- O. The Bidder fails to acknowledge addenda.
- P. The Department finds evidence of collusion.
- Q. Any other omission, error, or act that, in the judgment of the Department, renders the Bidder’s bid non-responsive.

102.17 Drug-Free Safety Program. During the life of this project, the Contractor and all its Subcontractors, that provide labor on the Project site, must be enrolled in and remain in good standing in the Ohio Bureau of Worker’s Compensation (“OBWC”) Drug-Free Safety Program (“DFSP”) or a comparable program approved by the OBWC.

In addition to being enrolled in and in good standing in an OBWC-approved DFSP or a comparable program approved by the OBWC, the Department requires each Contractor and Subcontractor that provides labor, to subject its employees who perform labor on the project site to random drug testing of 5 percent of its employees. The random drug testing percentage must also include the on-site supervisors of the Contractors and Subcontractors. Upon request, the Contractor and Subcontractor shall provide evidence of required testing to the Department.

Each Subcontractor shall require all lower-tier Subcontractors that provides labor on the project site with whom the Subcontractor is in contract for the Work to be enrolled in and be in good standing in the OBWC-approved DFSP prior to a lower-tier Subcontractor providing labor at the Site.

The Department will declare a bid non-responsive and ineligible for award if the Contractor is not enrolled and in good standing in the Ohio Bureau of Workers’ Compensation’s Drug-Free Safety Program (DFSP) Discount Program or a similar program approved by the Bureau of Workers’ Compensation within 8 days of the bid opening. Furthermore, the Department will deny all requests to sublet when the subcontractor does not comply with the provisions of this section.

Failure of the Contractor to require a Subcontractor to be enrolled in and be in good standing in the an OBWC-approved DFSP prior to the time that the Subcontractor provides labor at the Site, shall result in the Contractor being found in breach of the Contract and that breach shall be used in the responsibility analysis of that Contractor or the Subcontractor who was not enrolled in a program for future contracts with the State for five years after the date of the breach.

103 – AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Proposals. After opening and announcing the Bids, the Department will compare the Bidders' proposed prices. The proposed price is the summation of the products of the estimated quantities shown in the Proposal and the unit Bid prices. If the amount shown for the proposed product differs from the actual product of the unit Bid price and the estimated quantity, then the actual product will govern.

The Department may reject any or all Bids, waive technicalities, or advertise for new Bids without liability to the Department.

103.02 Award of Contract. The Department will award a Contract or reject Bids within 10 days after Bid opening. The Department will mail a letter to the address on the Bid notifying the successful Bidder of Bid acceptance and Contract award. The Department will award to the lowest competent and responsible bidder. The Department will not award a Contract until it completes an investigation of the apparent low Bidder.

If the Department's estimate for the cost of the improvement is not confidential, the Department will not award a Contract for an amount greater than 5 percent more than the Department's estimate. If the Department's estimate is confidential, the Department may award the Contract according to ORC 5525.15.

103.03 Cancellation of Award. The Department may cancel a Contract award at any time before all parties sign the Contract without liability to the Department.

103.04 Return of Proposal Guaranty. Immediately after the opening and checking of Bids, the Department will return all Proposal Guaranties provided in the form of a certified check or cashier's check, except to the three lowest Bidders. Within 10 days after opening bids, the Department will return the Proposal Guaranties of the two remaining unsuccessful Bidders. After the successful Bidder submits the signed Contract, Contract Bonds, and other Contract Documents, and after the Department signs the Contract, the Department will return the Proposal Guaranty to the successful Bidder. The Department will not return Bid bonds.

103.05 Requirement of Contract Bond. Furnish Contract Bonds within 10 days after receiving notice of award. Furnish Contract Bonds to the Director on the prescribed form, in the amount of the Contract, and according to ORC 5525.16.

103.06 Execution of Contract. Sign and return the Contract, along with the certificate of compliance, Contract Bonds, and other required Contract Documents, within 10 days after notice of award. The State does not consider a proposal binding until the Director signs the Contract. If the Director does not sign the Contract within 20 days after receiving the successful Bidder's signed Contract, certificates, Contract Bonds, and other Contract Documents, the successful Bidder may withdraw the Bid without prejudice.

103.07 Failure to Execute Contract. If the successful Bidder fails to sign the Contract and furnish the Contract Bonds, the Department will have just cause to cancel the award. The successful Bidder shall forfeit the Proposal Guaranty to the Department, not as a penalty, but as liquidated damages. The Department may award the Contract to the next lowest responsive Bidder, re-advertise the Work, or take any other action decided by the Director.

104 – SCOPE OF WORK

104.01 Intent of the Contract Documents. The intent of the Contract Documents is to provide for the construction and completion of the Work. Perform the Work according to the Contract Documents.

104.02 Revisions to the Contract Documents.

A. General. The Department reserves the right to revise the Contract Documents at any time. Such revisions do not invalidate the Contract or release the Surety, and the Contractor agrees to perform the Work as revised.

B. Differing Site Conditions. During the progress of the Work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract Documents or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, are encountered at the site, notify the Engineer as specified in 108.02.F of the specific differing conditions before they are disturbed or the affected Work is performed.

Upon notification, the Engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, the Department will make an adjustment and modify the Contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted.

C. Suspension of Work. If the performance of all or any portion of the Work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation or time is due as a result of such suspension or delay, notify the Engineer as specified in 108.02.

Upon receipt of notice, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost or time required for the performance of the Work has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an equitable adjustment (excluding profit) and modify the contract as specified in 108.06 and 109.05. The Engineer will notify the Contractor of its determination whether or not an adjustment to the Contract Documents is warranted. Failure of the Engineer to suspend or delay the Work in writing does not bar the Contractor from receiving a time extension or added compensation according to 108.06 or 109.05.

The Department will not make an adjustment under this subsection in the event that performance is suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this Contract.

The following language from 23 CFR 635.109(a)(3) shall replace that of 104.02(D).

Significant changes in the character of work.

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term "significant change" shall be construed to apply only to the following circumstances:

- (A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
- (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

E. Eliminated Items. The Department may partially or completely eliminate contract items.

The Department will only make an adjustment to compensate the Contractor for the reasonable cost incurred in preparation to perform significantly changed work as set forth in 104.02.D or work completely eliminated prior to the date of the Engineer's written order to significantly change or completely eliminate the Work. The adjustment will be determined according to 109.04 and 109.05. Such payment will not exceed the price of the Contract Item.

The Department will not seek a savings for maintaining traffic, mobilization, and construction layout stakes items for Eliminated Items of Work, unless there is a significant change.

F. Extra Work. Perform Extra Work as directed by the Engineer. The Department will pay for Extra Work as specified in 109.05. Time extensions, if warranted, will be determined according to 108.06.

G. Unilateral Authority to Pay. The Department has unilateral authority to pay the Contractor sums it determines to be due to the Contractor for work performed on the project. This unilateral authority to pay by the Department does not preclude or limit the rights of the Department and the Contractor to negotiate and agree to the amounts to be paid to the Contractor.

104.03 Rights in and Use of Materials Found on the Work. Upon obtaining the Engineer's approval, the Contractor may use material, such as stone, gravel, or sand, found in the plan excavation for another Contract Item. The Department will pay for both the excavation of the material under the corresponding Contract Item and for the placement of the excavated material under the Contract Item(s) for which the excavated material is used. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

Obtain written permission from the Engineer according to 107.11.A.

105 – CONTROL OF WORK

105.02 Plans and Working Drawings. The Plans show details of structures, the lines and grades, typical cross-sections of the Roadway, and the location and design of structures. Keep at least one set of Plans at the Project at all times.

Prepare working drawings when required by the Contract Documents and after verifying applicable field and plan elevations, dimensions, and geometries. Where Work consists of repairs, extension, or alteration of existing structures, take measurements of existing structures to accurately join old and new Work.

Unless otherwise indicated, the Department will review working drawing submittals to ensure conformance with the Contract and to provide the Contractor a written response to document the results of its review as follows:

- A. "ACCEPTED."** The Department accepts the submittal for construction, fabrication, or manufacture.
- B. "ACCEPTED AS NOTED."** The Department accepts the submittal for construction, fabrication, or manufacture, subject to the Contractor's compliance with all Department comments or corrections to the submittal. If also marked "RESUBMIT," the Department still accepts the submittal, but requires the Contractor to provide a corrected submittal to the Department.
- C. "NOT ACCEPTED."** The Department does not accept the submittal. The submittal does not conform to Contract requirements. Do not begin construction, fabrication, or manufacture of Work included in the submittal. Revise the submittal to comply with Department comments or corrections and Contract requirements and provide the revised submittal to the Department for another review.

The Department's acceptance will not relieve the Contractor of responsibility to complete the Work according to the Contract. Include the cost of furnishing working drawings in the cost of the Work they cover.

105.03 Conformity with Contract Documents. Perform all Work and furnish all Materials in reasonably close conformity with the lines, grades, cross-sections, dimensions, and material requirements as shown on the Plans and as specified.

If the DCA determines the Work is not in reasonably close conformity with the Contract Documents and determines the Contractor produced reasonably acceptable Work, the DCA may accept the Work based on engineering judgment. The DCA will document the basis of acceptance in a Change Order that provides for an appropriate adjustment to the Contract Price of the accepted Work or Materials. If the DCA determines the Work is not in reasonably close conformity with the Contract Documents and determines the Work is inferior or unsatisfactory, remove, replace, or otherwise correct the Work at no expense to the Department.

105.04 Coordination of the Contract Documents. The Contract Documents are those defined in 101.03. A requirement appearing in one of these documents is as binding as though it occurs in all. The Engineer will resolve discrepancies using the following descending order of precedence:

- A. Addenda.
- B. Proposal and Special Provisions.
- C. Plans.
- D. Supplemental Specifications.
- E. Standard Construction Drawings.
- F. Standard Specifications.

Immediately notify the Engineer upon discovering any latent error or omission in the Contract Documents.

105.05 Cooperation by Contractor. The Department will supply the Contractor with two sets of the Contract Documents, except for the standard construction drawings, which will only be supplied if requested. The Department will provide only one copy of these Specifications.

Provide the constant attention necessary to progress the Work according to the Contract Documents. Cooperate with the Engineer, inspectors, and all other Contractors on or adjacent to the Project.

105.11 Removal of Defective and Unauthorized Work. Work that does not conform to the requirements of the Contract is defective.

Unless the Department formally accepts defective Work according to 105.03, immediately remove and replace defective Work.

Unauthorized Work is Work done contrary to the instructions of the Engineer, beyond the plan lines, or any extra work done without the Department's permission. The Department will not pay for unauthorized Work. The Engineer may order the Contractor to remove or replace unauthorized Work at no expense to the Department.

If the Contractor fails to comply with the Engineer's orders under the provisions of this subsection, the DCA may correct or remove and replace defective or unauthorized Work and deduct the costs from the Contract Price.

105.12 Load Restrictions. Comply with all legal load restrictions when hauling materials on public roads.

Operate equipment of a weight or so loaded as to not cause damage to structures, to the roadway, or to other types of construction. Comply with subsection 501.05.B.6 for allowed loads on bridges.

Do not use off road vehicles on bases or pavements unless permitted by the DCA in writing.

Do not haul on concrete pavement, base, or structures before the expiration of the curing period.

Do not exceed the legal load limits in this section unless permitted by the Director in writing.

105.13 Haul Roads. Prior to hauling equipment or materials, provide written notification to the Engineer of the specific roads or streets on the haul route. If the haul route includes roads and streets that are not under the jurisdiction and control of the State and the DCA determines that State controlled roads are not available or practical for a haul route, the Contractor may use local roads and streets that are not restricted by local authorities. If the DCA determines that state controlled roads are available and practical for a haul route, revise the proposed haul route provided in the original written notification and resubmit to the DCA.

If the Engineer determines that haul route roads were not properly used during construction to haul equipment and materials and that the haul route roads were damaged, then the Engineer may order the Contractor to perform immediate and practical repairs to ensure reasonably normal traveling conditions. The Engineer will pay for repairs according to applicable provisions of 109.04 and 109.05.

The Contractor shall not file a claim for delays or other impacts to the Work caused by disputes with the local authorities regarding the use of local roads or streets as haul routes. The Contractor shall save the State harmless for any closures or hauling restrictions outside the Project limits beyond the control of the Department.

105.15 Failure to Maintain Roadway or Structure. If the Contractor, at any time, fails to comply with the provisions of 105.14, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain

the Project, and deduct the entire cost of this maintenance from monies due or to become due the Contractor on the Contract.

105.17 Construction and Demolition Debris. OAC-3745-37, OAC-3745-400, and ORC Chapter 3714 regulates the use and disposal of construction and demolition debris. Notify the local Board of Health or the local Ohio EPA office 7 days before placing Clean Hard Fill off the Right-of-Way. Submit copies of this notification to the Engineer.

Legally dispose of debris containing wood, road metal, or plaster at a licensed construction and demolition debris site.

Under the regulations cited above the disposal of brush, trees, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter is restricted. If allowed by the Contract Documents, the Contractor may waste brush, trees, stumps, tree trimming, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other plant matter within the Right-of-Way. Otherwise, submit a plan and any required permits to legally dispose of these materials off the Right-of-Way to the Engineer. Provide all documents submitted to obtain this permit to the Engineer.

If the Project contains garbage or solid and hazardous waste, the Contract Documents will detail the removal of these items.

When wasting PCC, mix the PCC with at least 30 percent natural soil to construct an inner core in the waste area. Cover this inner core with 3 feet (1.0 m) of natural soil on the top and 8 feet (2.4 m) on the side slopes. Place and compact the material according to 203.06.D to prevent future settlement and sliding.

Clean Hard Fill consisting of reinforced or non-reinforced concrete, asphalt concrete, brick, block, tile or stone that is free of all steel as per 703.16 shall be managed in one or more of the following ways:

1. Recycled into a usable construction material.
2. Disposed in licensed construction and demolition debris facility.
3. Used in legitimate fill operations on the site of generation according to 105.16.
4. Used in legitimate fill operations on a site other than the site of generation to bring a site up to grade.

A Beneficial Reuse Certification form needs to be properly executed by the Recipient prior to any material leaving the project.

106 – CONTROL OF MATERIAL

106.07 Unacceptable Materials. Unacceptable materials are all materials not conforming to the requirements of these Specifications at the time they are used. Immediately remove all unacceptable materials from the project site unless otherwise instructed by the DCA. The DCA will determine if unacceptance materials may remain conforming to Supplement 1102. The DCA must approve the use of previously identified unacceptable materials that have been corrected or repaired. If the Contractor fails to comply immediately with any order of the DCA made under the provisions of this subsection, the DCA will have authority to remove and replace defective materials and to deduct the cost of removal and replacement from any monies due or to become due to the Contractor.

106.09 Steel and Iron Products Made in the United States. Furnish steel and iron products that are made in the United States according to the applicable provisions of Federal regulations stated in 23 CFR 635.410 and State of Ohio laws, and ORC 153.011 and 5525.21. "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

A. Federal Requirements. All steel or iron products incorporated permanently into the Work must be made of steel or iron produced in the United States and all subsequent manufacturing must be performed in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product. Manufacturing begins with the initial melting and mixing, and continues through the bending and coating stages. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

B. State Requirements. All steel products used in the Work for load-bearing structural purposes must be made from steel produced in the United States. State requirements do not apply to iron.

C. Applications.

1. When the Work is federally funded both the Federal and State requirements apply. This includes all portions of the Work, including portions that are not federally funded.
2. When the Work has no Federal funds, only the State requirements apply.

D. Exceptions. The Director may grant specific written permission to use foreign steel or iron products in bridge construction and foreign iron products in any type of construction. The Director may grant such exceptions under either of the following conditions:

1. The cost of products to be used does not exceed 0.1 percent of the total Contract cost, or \$2,500, whichever is greater. The cost is the value of the product as delivered to the project.
2. The specified products are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet the requirements of the Contract Documents. The Director may require the Contractor to obtain letters from three different suppliers documenting the unavailability of a product from a domestic source, if the shortage is not previously established.

E. Manufactured Products. In order for a manufactured product to be subject to Federal requirements, the product must consist of at least 90% steel or iron content when it is delivered to the job site for installation.

Examples of products subject to Federal requirements include, but are not limited to, the following:

1. Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, prestressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
2. Guardrail, guardrail posts, end sections, terminals, cable guardrail;
3. Steel fencing material, fence posts;
4. Steel or iron pipe, conduit, grates, manhole covers, risers;
5. Mast arms, poles, standards, trusses, or supporting structural members for signs, luminaires, or traffic control systems; and
6. Steel or iron components of precast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables

The miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above components (or manufactured products that are not predominately steel or iron) are not subject to Federal requirements. Examples include, but are not limited to, cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.

F. Proof of Domestic Origin. Furnish documentation to the Engineer showing the domestic origin of all steel and iron products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product.

106.10 Qualified Products List. The Department may use Qualified Product Lists (QPL) for approval of manufactured materials. The Office of Materials Management (OMM) will maintain the QPL and the standard procedure for the QPL process. Inclusion of a material onto the QPL will be determined by OMM with support from other Department offices. To be kept on the QPL, manufacturers must recertify their material according to the Department's standard procedure by January 1 of each year. When a material requires QPL acceptance, only provide materials listed on the QPL at the time of delivery of the material to the project. Provide the Engineer documentation according to the Department's standard procedure that, at the time of delivery, the material provided is on the QPL.

107 – LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed. Stay fully informed of all Federal and State laws, all local laws, ordinances, and regulations, and all orders and decrees of authorities having any jurisdiction or authority that affect those engaged or employed on the Work, or that affect the conduct of the Work. Observe and comply with all such laws, ordinances, regulations, orders, and decrees. The Contractor shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees, subcontractors, or agents.

The Contractor, under Title VI of the Civil Rights Act and related statutes, agrees that in the hiring of employees for the performance of Work under this Contract or any subcontract hereunder, neither the Contractor, the subcontractor, nor any person acting on behalf of such Contractor or subcontractor shall, by reasons of race, religion, color, sex, national origin, disability or age, discriminate against any citizen of the United States in the employment of labor or workers, who is qualified and available to perform the Work to which the employment relates.

Neither the Contractor, the subcontractor, nor any person on their behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Contract on account of race, religion, color, sex, national origin, disability or age.

Comply with OAC-4123:1-3, entitled "Specific Safety Requirements of the Industrial Commission of Ohio Relating to Construction," as amended, and with the Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulations, Title 29, Chapter XVII, Part 1926 and as amended.

107.04 Restoration of Surfaces Opened by Permit. The Director may grant to the municipality in which the Work is performed a reservation of rights to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time.

Any individual, firm, or corporation wishing to make an opening in the highway must secure a permit. Allow parties bearing such permits, and only those parties, to make openings in the highway. When ordered by the Engineer, make in an acceptable manner all necessary repairs due to such openings. The necessary repairs will be paid for as Extra Work, or as provided in the Contract Documents, and will be subject to the same conditions as the original Work performed.

107.05 Federal-Aid Provisions. When the United States Government pays for all or any portion of the Project's cost, the Work is subject to the inspection of the appropriate Federal agency.

Such inspections will not make the Federal Government a party to this Contract. The inspections will in no way interfere with the rights of either party to the Contract.

107.09 Use of Explosives. When the use of explosives is necessary for the prosecution of the Work, exercise the utmost care not to endanger life or property, including new Work. The Contractor is responsible for all damage resulting from the use of explosives.

Obtain written permission to perform in-stream blasting from the Chief of the Division of Wildlife, Ohio DNR according to ORC 1533.58. Provide the Engineer with all documentation submitted to obtain this permit and with a copy of the permit.

The Contractor agrees, warrants, and certifies that it will observe State laws and local ordinances and regulations relative to the use and storing of explosives kept on the Project site.

Perform all blasting operations according to Item 208.

107.10 Protection and Restoration of Property. The Contractor is responsible for the preservation of all public and private property impacted by the Contractor's operations.

The Contractor is responsible for all damage or injury to property, during the prosecution of the Work, resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the Work. The Contractor will remain responsible for all damage and injury to property until the Project is accepted under 109.12, except for portions of the Work accepted under 109.11.

If the Contractor causes any direct or indirect damage or injury to public or private property by any act, omission, neglect, or misconduct in the execution or the non-execution of the Work, then it must restore, at its own expense, the property to a condition similar or equal to that existing before the damage or injury.

If mail boxes, road, or street name signs and supports interfere with the Work, then remove and erect them in a temporary location during construction in a manner satisfactory to and as directed by the Engineer. After completion of the Work and before final acceptance of the Project, erect the mailboxes, road, or street name signs and supports in their permanent locations according to the plans unless otherwise directed by the Engineer. Consider the cost of this Work as incidental to the affected items.

Cooperate with the Engineer in protecting and preserving survey monuments that are affected by the Work as required by ORC 5519.05. At the beginning of the Work, verify the position of all survey monuments in the area to be improved, according to 623. If survey monuments not shown in the Contract Documents are unexpectedly encountered, then protect, reference, and preserve them in the same manner as survey monuments that are shown in the Contract Documents.

Do not create staging areas, store materials and equipment, or borrow or waste materials in areas labeled as an environmental resources areas in the Contract Documents. All properties to be utilized by the Contractor outside the project Work Limits must be cleared for all environmental resource impacts prior to the beginning of work. Environmental resources include but may not be limited to:

1. Cultural Resources
 - a. Buildings, structures, objects, and sites eligible for or listed on the National Register of Historic Places
 - b. Historic or prehistoric human remains, cemeteries, and/or burial sites (pursuant with ORC 2909.05 and 2927.11)
2. Ecological Resources
 - a. Wetlands
 - b. Streams
 - c. Wooded areas with trees to be removed in excess of 8 inches diameter at breast height
3. Public Lands
 - a. Lands meeting the criteria of 49 U.S.C. 303, 23 CFR 771.135: 4(f).
 - b. Lands meeting the criteria of 16 U.S.C. 4601-4, 36 CFR 59.1: 6(f).
4. FEMA Mapped 100 year Floodplains
5. Hazardous Waste Areas

Except for locations utilized specifically for:

1. Parking of equipment between workdays for maintenance type projects:
2. Reuse of Clean Hard Fill as described in CA-EW-20 (ODOT Beneficial Reuse Form). Prior to transferring Clean Hard Fill from the project, fully execute form CA-EW-20 and provide appropriate documentation to the Engineer as described for each reuse option.

All areas proposed to be utilized by the Contractor outside the project construction limits and not described above shall be reviewed by environmental Contractor(s) that are prequalified by the Department for each environmental resource. Exception (1.) noted above only applies to projects with “maintenance” in the project description. Have the consultant(s) certify that the proposed site to be utilized for the Contractor will not impact:

1. Cultural Resources
2. Ecological Resources
3. Public Lands

4. FEMA Mapped 100 year Floodplains5. Hazardous Waste Areas

Provide all documentation and the consultant certification to the Office of Environmental Services with a copy to the Engineer.

Should the areas proposed for use by the Contractor outside the project right of way limits contain environmental resources the Contractor is responsible to the Department for all environmental clearances and permits prior to the beginning of work.

107.12 Responsibility for Damage Claims and Liability Insurance. The Contractor shall indemnify and save harmless the State and all of its representatives, municipalities, counties, public utilities, any affected railroad or railway company, and any fee owner from whom a temporary Right-of-Way was acquired for the Project from all suits, actions, claims, damages, or costs of any character brought on account of any injuries or damages sustained by any person or property on account of any negligent act or omission by the Contractor or its subcontractors or agents in the prosecution or safeguarding of the Work.

The Contractor shall procure and maintain insurance for liability for damages imposed by law and assumed under this Contract, of the kinds and in the amounts hereinafter provided from insurance companies authorized to do business in the State by the Ohio Department of Insurance. The cost of insurance is incidental to all contract items. Before the execution of the Contract by the Director, furnish to the Department a certificate or certificates of insurance in the form satisfactory to the Department demonstrating compliance with this subsection. Provide an insurance certificate or certificates that show that the Contractor's liability and auto policies coverage are not reduced, restricted, or canceled until 30 days written notice has been given to the Department by the insurer. Mail all certificates and notices to: Administrator, Office of Contracts, Ohio Department of Transportation, 1980 West Broad Street, Columbus, Ohio 43223. Upon request, the Contractor shall furnish the Department with a certified copy of each policy, including the provisions establishing premiums.

The types and minimum limits of insurance are as follows:

A. Workers' Compensation Insurance. Comply with all provisions of the laws and rules of the Ohio Bureau of Workers' Compensation covering all operations under Contract with the Department whether performed by it or its subcontractors. In addition, if a portion of the Work is performed from a barge or ship or requires unloading material from a barge or ship on a navigable waterway of the United States, it is the responsibility of the Contractor to arrange coverage for that portion of the Work under the Longshore and Harborworkers' Compensation Act [33 USC Section 901 et seq.] and the Jones Act [5 USC Section 751 et seq.] and provide proof of coverage to the Department.

B. Commercial General Liability Insurance. The minimum limits for liability insurance are as follows:

| | |
|---|-------------|
| General Aggregate Limit | \$2,000,000 |
| Products - Completed Operations Aggregate Limit | \$2,000,000 |
| Personal and Advertising Injury Limit | \$1,000,000 |
| Each Occurrence Limit | \$1,000,000 |

Obtain the above minimum coverages through primary insurance or any combination of primary and umbrella insurance. In addition, the Department will require the General Aggregate Limit on a per project basis.

Ensure that the Commercial General Liability Insurance policy names the State of Ohio, Department of Transportation, its officers, agents, and employees as additional insureds with all rights to due notices in the manner set out above. Obtain Explosion, Collapse, and Underground (XCU) coverage at the same limits as the commercial general liability insurance policy. In addition, if blasting is to be performed, obtain XCU coverage providing a minimum Aggregate Limit of \$5,000,000 and Each Occurrence Limit of \$1,000,000. Submit proof of insurance, endorsements, and attachments to the Engineer prior to starting the Work.

C. Comprehensive Automobile Liability Insurance. The Comprehensive Automobile Liability policy shall cover owned, non-owned, and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability Limit, Each Occurrence \$1,000,000

Insurance coverage in the minimum amounts set forth neither relieves the Contractor from liability in excess of such coverage, nor precludes the Department from taking such other actions as are available to it under any other provisions of this Contract or otherwise in law.

Clearly set forth all exclusions and deductible clauses in all proof of insurance submitted to the Department. The Contractor is responsible for the deductible limit of the policy and all exclusions consistent with the risks it assumes under this Contract and as imposed by law.

If the Contractor provides evidence of insurance in the form of certificates of insurance, valid for a period of time less than the period during which the Contractor is required by terms of this Contract, then the Department will accept the certificates, but the Contractor is obligated to renew its insurance policies as necessary. Provide new certificates of insurance from time to time, so that the Department is continuously in possession of evidence that the Contractor's insurance is according to the foregoing provisions.

If the Contractor fails or refuses to renew its insurance policies or the policies are canceled or terminated, or if aggregate limits have been impaired by claims so that the amount available is under the minimum aggregate required, or modified so that the insurance does not meet the requirements of 107.12.C, the Department may refuse to make payment of any further monies due under this Contract or refuse to make payment of monies due or coming due under other contracts between the Contractor and the Department. The Department in its sole discretion may use monies retained pursuant to this subsection to renew or increase the Contractor's insurance as necessary for the periods and amounts referred to above. Alternatively, should the Contractor fail to comply with these requirements, the Department may default the Contractor and call upon the Contractor's Surety to remedy any deficiencies. During any period when the required insurance is not in effect, the Engineer may suspend performance of the Contract. If the Contract is so suspended, the Contractor is not entitled to additional compensation or an extension of time on account thereof.

Nothing in the Contract Documents and insurance requirements is intended to create in the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

107.13 Reporting, Investigating, and Resolving Motorist Damage Claims. The Contractor and the Department are required to report, investigate, and resolve motorist damage claims according to 107.10 and 107.12 and as follows.

When a motorist reports damage to its vehicle either verbally or in writing to the Contractor, the Contractor shall within 3 days make and file a written report to the District's construction office. In the event that the Department directly receives the motorist's claim, the Department shall within 3 days send the claim report to the Contractor. In the event the Contractor has not agreed to resolve the motorist claim, the District's construction office shall forward the report to the Department's Court of Claims Coordinator who, as a co-insured party, may then contact the Contractor's insurance company and request that the insurance company investigate and resolve the claim. If the Contractor or their insurance company does not resolve the claim in a timely manner, the Department may advise the motorist of the option of pursuing the claim in the Ohio Court of Claims.

In the event of a lawsuit filed against the Department in the Ohio Court of Claims by the motorist, the Department, as co-insured party, may request the Contractor's insurance company to defend this lawsuit and hold the Department harmless according to 107.12.

If the lawsuit claim amount is \$2,500 or less and the Court of Claims Coordinator determines that the Contractor is responsible for the claimed damages then the Department's Court of Claims Coordinator may, after notifying the Contractor, determine that it would be in the best interest of the Department to settle the claim. Any settlement amount including court costs may be assessed to the Contractor and deducted from the project. The Engineer will notify the Contractor prior to executing the deduction. The Contractor or the Contractor's insurance company may within 14 days appeal the assessment decision of the Court of Claims Coordinator to the District Construction Engineer. The decision of the DCA will be made within 14 days and will be administratively final.

107.15 Contractor's Responsibility for Work. Until the Final Inspector accepts the Work during the Final Inspection according to 109.12.A, the Contractor is responsible for the Project and will take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. Rebuild, repair, restore, and make good all injuries or damages to any portion of the Work

occasioned by any of the above causes before final acceptance. Bear the expense of the repairs except when damage to the Work was due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor. Unforeseeable causes include but are not restricted to; (a) earthquake, floods, tornados, high winds, lightning or other catastrophes proclaimed a disaster or emergency, (b) slides, (c) civil disturbances, or (d) governmental acts.

In the event that the Engineer determines that damage to completed permanent items of Work results from traffic using a substantially completed section of Roadway, the Department may compensate the Contractor for repair of the damage as authorized by Change Order. To receive compensation for the damage the Contractor must meet the following requirements.

- A. Notify the Engineer of each occurrence of damage in writing within 10 Calendar Days.
- B. Contact the local law enforcement agency to determine if the accident was investigated and a report filed. If an accident report was filed, obtain the report and notify the motorist, and copy their insurance company, via registered mail that the motorist is responsible for the cost of damage repairs. If the motorist does not respond within 30 days, make a second attempt to contact the motorist and copy the insurance company via registered mail.
- C. If no response is received from the motorist or insurance company within 30 days, send a letter to the Engineer within eighteen months of the event and include documentation of good faith effort to seek recovery from responsible parties.
- D. The Department will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from repairing damaged Work.

If there is no accident report on file and no means of identifying the guilty motorist, the Contractor will likewise be compensated to repair the damaged Work.

In case of suspension of Work by the Contractor or under the provisions of 105.01, the Contractor is responsible for the Project and shall take necessary precautions to prevent damage to the Project; provide for normal drainage; and erect any necessary temporary structures, signs, or other facilities at its expense. During such period of suspension of Work, properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Contract, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

The Engineer may direct the Contractor to remove graffiti any time during the Work. The Department will make an adjustment according to 108.06 and 109.05 to compensate the Contractor for the added costs and delays, if any, resulting from all ordered graffiti removal.

107.19 Environmental Protection. Comply with all Federal, State, and local laws and regulations controlling pollution of the environment. Avoid polluting streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, sediments, or other harmful materials, and avoid polluting the atmosphere with particulate and gaseous matter.

By execution of this contract, the Contractor, will be deemed to have stipulated as follows:

- A. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- B. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- C. That the firm shall promptly notify the Department of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

Fording of streams is prohibited. Causeways for stream and river crossings or for Work below a bridge are permitted provided:

- A. The causeway complies with the requirements of the 404 Permit the Department obtained for the Project.
- B. The Contractor obtains a 404 Permit from the U.S. Army Corps of Engineers if the Department has not obtained such a permit. Obtain the 404 Permit prior to beginning construction of the causeway. The Department does not guarantee that the Contractor will be able to obtain a 404 Permit.

Comply with all current provisions of the Ohio Water Pollution Control Act (OWPCA), (ORC Chapter 6111). The Department will obtain a storm water permit under the OWPCA provisions when the plan work acreage requires a permit. Apply for a permit to cover operations outside the Project limits shown on the plans as required by the OWPCA provisions. When the Department has not applied for a permit on the Project and a permit is required under the provisions of the OWPCA because of the total area of the Contractor's work, apply for, obtain, and comply with the required permit for both the Work within Project limits and the Contractor's work.

The Department has obtained the required permits from the U.S. Army Corps of Engineers and Ohio EPA for Work in the "Waters of the United States" and isolated wetlands under ORC Chapter 6111. Comply with the requirements of these permits.

When equipment is working next to a stream, lake, pond, or reservoir, appropriate spill response equipment is required. Do not stockpile fine material next to a stream, lake, pond, or reservoir.

Take precautions to avoid demolition debris and discharges associated with the excavation and hauling of material from entering the stream. Remove any material that does fall into the stream as soon as possible.

When excavating in or adjacent to streams, separate such areas from the main stream by a dike or barrier to keep sediment from entering the stream. Take care during the construction and removal of such barriers to minimize sediment entering the stream.

Contain, collect, characterize and legally dispose of all liquid waste and sludge generated during the work. Do not mix wastes with storm water. Do not discharge any liquid waste without the appropriate regulatory permits. Manage liquid waste and sludge in accordance with ORC Chapter 6111 and all other laws, regulations, permits and local ordinances relating to this waste. Liquid waste management is incidental to the Work unless otherwise specified in the contract.

Control the fugitive dust generated by the Work according to OAC-3745-17-07(B), OAC-3745-17-08, OAC-3745-15-07, and OAC-3745-17-03 and local ordinances and regulations. Prior to the initiation of abrasive coating removal, pavement cutting or any other construction operation that generates dust, demonstrate to the Engineer that construction related dust will be controlled with appropriate Reasonable Available Control Measures (RACM) as described in OEPA Engineering Guide #57.

In addition, use dust control measures when fugitive dust creates unsafe conditions as determined by the Engineer. Perform this work without additional compensation except for Item 616.

Perform open burning according to 105.16.

107.20 Civil Rights. Comply with Federal, State, and local laws, rules, and regulations that prohibit unlawful employment practices including that of discrimination because of race, religion, color, sex, national origin, disability or age and that define actions required for Affirmative Action and Disadvantaged Business Enterprise (DBE) programs.

107.21 Prompt Payment. . In accordance with ORC 4113.61, make payment to each subcontractor and supplier within 10 Calendar Days after receipt of payment from the Department for Work performed or materials delivered or incorporated into the Project, provided that the pay estimate prepared by the Engineer includes Work performed or materials delivered or incorporated into the public improvement by the subcontractor or supplier. Promptly release any retainage held, as set forth in any subcontractor or supplier agreement, within 10 days of Department's acceptance of the work involving the subcontractor or supplier from whom retainage has been held. For the sole purpose of establishing a time frame for the release of the subcontractor or supplier retainage, acceptance of subcontractor or supplier work will occur when the subcontractor or supplier has complied with the requirements of 109.12.A, B and C.

Also require that this contractual obligation be placed in all subcontractor and supplier contracts that it enters into and further require that all subcontractor and suppliers place the same payment obligation in each of their lower tier contracts.

If the Contractor, subcontractors, or supplier subject to this provision fail to comply with the 10 Calendar Day requirement, the offending party shall pay, in addition to the payment due, interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from the Department and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and suppliers timely pursuant to this subsection will result in a finding by the Department that the Contractor is in breach of Contract and subject to all legal consequences that such a finding entails. Further, repeated failures to pay timely pursuant to this subsection will result in a lower evaluation score for the Contractor and those subcontractors who are subject to evaluation by the Department.

108 – PROSECUTION AND PROGRESS

108.01 Subletting of the Contract. Perform Work amounting to not less than fifty percent (50%) of the Contract Price with its own organization, unless otherwise approved by the Director. The phrase “its own organization” includes only workers employed and paid directly, inclusive of employees who are employed by a lease agreement acceptable to the Department, and equipment owned or rented with or without operators by the Contractor. The phrase does not include employees or equipment of a subcontractor, assignee, or agent of the Contractor. Obtain the Director’s written consent to subcontract, sublet, sell, transfer, assign, or otherwise relinquish rights, title, or interest in the Work. Provide the Director with a copy of all Disadvantaged Business Enterprise subcontracts.

The Contractor’s percentage of the total Contract Price includes the cost of materials and manufactured products purchased by the Contractor, but not the cost of materials and manufactured products purchased by subcontractors.

The Director will calculate the Contractor’s percentage based on the quantities shown in the Proposal and the unit prices of the contract items to be performed by the Contractor’s organization. If the Contractor performs only a portion of a contract item, then the Director will determine the proportional value administratively on the same basis. The Director will follow this procedure even when the part not subcontracted consists only of the procurement of materials. However, if a firm both sells the materials to the Contractor and performs the Work of incorporating the materials into the Project, then the Department will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the Department may refuse approval. An affiliate is one who has some common ownership or other close relation to said firm.

Use actual subcontract prices for calculating compliance with any Disadvantaged Business Enterprise (DBE) percentage subcontracting obligations. If only a part of a contract item is sublet, then determine its proportional value administratively on the same basis. The Director will follow this procedure even when the part not sublet consists only of procuring materials. However, if a firm both sells the materials to the Contractor and performs the work of incorporating the materials into the Project, then the Department will consider these two phases in combination and as a single subcontract. If an affiliate of the firm either sells the materials or performs the Work, the Department may refuse approval.

108.02 Partnering. It is the intent of the Department to partner every project. The purpose of Partnering is to develop a proactive effort and spirit of trust, respect, and cooperation among all stakeholders in a project. Partnering does not affect the terms and conditions of the Contract. The Partnering process in this section is Self-facilitated Partnering performed by the Project personnel. Costs associated with the Self-facilitated Partnering process are incidental to the Contract.

D. Post-milestone Meeting. In conjunction with the Engineer, determine whether the Post-milestone Meeting will be conducted as part of the Progress Meeting or as a separate meeting for multi-year, multi-phase, or projects with critical items of work or milestone dates. Consider discussing and updating items from the Initial Partnering Session in addition to items specific to the Project. All stakeholders should be invited to attend.

F. Mitigation and Notice. Mitigation of any issue, whether caused by the Department, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and substitution of materials. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

1. **Contractor Initial Oral Notification.** Provide immediate oral notification to the Engineer upon discovering a circumstance that may require a revision to the Contract Documents or may result in a dispute. Upon notification, the Engineer will attempt to resolve the identified issue as quickly as possible.

2. **Contractor Written Early Notice.** If the Engineer has not resolved the identified issue within two (2) working days after receipt of oral notification, provide written notice to the Engineer of any circumstance that may require a revision to the Contract Documents or may result in a dispute. This early notice must be given by the end of the second working day following the occurrence of the circumstance.

The Engineer and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the Engineer. Tracking such information is not an acknowledgement that the Department accepts responsibility for payment for this disputed work.

If an issue is not resolved through the initial mitigation efforts, either abandon or escalate to the Dispute and Administrative Claims Process defined in 108.02.G.

A. G. Dispute Resolution and Administrative Claims Process. Whenever an issue is elevated to a dispute, the parties shall exhaust the City of Fairview Park's Dispute Resolution and Administrative Claim process set forth below prior to filing an action in any court of competent jurisdiction. The following procedures do not otherwise compromise the Contractor's right to seek relief in any court of competent jurisdiction.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. Do not contact the City of Fairview Park's personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. City of Fairview Park personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor's right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against the City of Fairview Park but not supported by the Contractor will not be reviewed by the City of Fairview Park. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the City of Fairview Park.

Continue with all work, including that which is in dispute. The City of Fairview Park will continue to pay for work not in dispute.

The City of Fairview Park will not make the adjustments allowed by 104.02.B, 104.02.C, and 104.02.D of the 2016 ODOT Construction and Materials Specifications if the Contractor did not give notice as specified above. This provision does not apply to adjustments provided in Table 104.02-2 of the 2016 ODOT CMS.

1. **Step 1 (On-Site Determination).** The Director of Public Service & Development will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice set forth in 108.02.F of the 2016 ODOT CMS. They will review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The Director of Public Service & Development will issue a written Step 1 decision within fourteen (14) calendar days of the meeting and receipt of substantiating documentation. If the dispute is not resolved, either abandon or escalate the dispute to Step 2.

2. **Step 2 (Fairview Park Dispute Resolution Committee).** The Fairview Park Dispute Resolution Committee which will be responsible for hearing and deciding disputes at the Step 2 level. The committee will consist of the Mayor, Director of Public Service & Development and the Law Director or designees (other than the project personnel involved).

Within seven (7) calendar days of receipt of the Step 1 decision, submit a written request for a Step 2 meeting to the Director of Public Service & Development. The Director of Public Service & Development will assign the dispute a dispute number. Within fourteen (14) calendar days of receipt of the request for a Step 2 meeting, submit the dispute documentation as follows:

- a) Submit three (3) complete copies of the documentation of the dispute to the Director of Public Service & Development
- b) Identify the dispute on a cover page by county, project number, Contractor name, subcontractor or supplier (if involved in the dispute), and the dispute number.

- c) Clearly identify each item for which additional compensation and/or time is requested.
- d) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.
- e) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the dispute documentation.
- f) Include the dollar amount of additional compensation and length of contract time extension requested.
- g) Include supporting documents for the requested compensation stated in letter (f) above.
- h) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
- i) Include copies of relevant correspondence and other pertinent documents.

Within fourteen (14) calendar days of receipt of the Contractor's dispute documentation, the committee will conduct the Step 2 meeting with the Contractor personnel who are authorized to resolve the dispute. The committee will issue a written decision of Step 2 within fourteen (14) calendar days of the meeting. If the dispute is not resolved, either abandon or escalate the dispute to Step 3.3. **Step 3 Hired Neutral Third Party (Mediation).** Submit a written Notice of Intent to File a Claim to the Director of Public Service & Development, who will serve as the Dispute Resolution Coordinator (DRC), within fourteen (14) calendar days of receipt of the Step 2 decision.

The dispute becomes a claim when the DRC receives the Notice of Intent to File a Claim.

Submit six (6) complete copies of the claim documentation to the DRC within thirty (30) calendar days of receipt of the Notice of Intent to File a Claim. This timeframe may be extended upon mutual agreement of the parties and with approval of the DRC.

In addition to the documentation submitted at Step 2:

- (a) Enhance the narrative to include sufficient description and information to enable understanding by a third party who has no knowledge of the dispute or familiarity with the project.
- (b) Certify the claim in writing and under oath using the following certification:

"I, (Name and Title of an Officer of the Contractor) certify that this claim is made in good faith, that all supporting data is accurate and complete to the best of my knowledge and belief, and that the claim amount accurately reflects the contract amendment for which (Contractor Company name) believes the City of Fairview Park is liable."

Sign and date this claim certification and have the signature notarized pursuant to the laws of the State of Ohio. The date the DRC receives the certified claim documentation is the date of the City of Fairview Park's Receipt of the Certified Claim for the purpose of the calculation of interest as defined in 102.02.G.4 of the 2016 ODOT CMS. The Dispute Resolution Coordinator will forward one (1) complete copy of this documentation to the District.

- (c) An overview of the project
- (d) Response to each argument set forth by the Contractor
- (e) Any counterclaims, accompanied by supporting documentation, the City of Fairview Park wishes to assert

The Director of Public Service & Development will then choose Mediation in the manner in which those methods are allowed by law. The DRC will coordinate the agreement of the parties to the Mediation, and the selection of a Mediator. The fees of the Mediator will be shared equally between the City of Fairview Park and the Contractor. The DRC will obtain a written agreement, signed by both parties, that establishes the Mediation process. The Mediator will have complete control of the claim upon execution of the Mediation agreement.

The decision of the Mediator is the final step of the City of Fairview Park's Dispute Resolution Process. The decision may be appealed by the City of Fairview Park who is not bound by any offers of settlement or findings of entitlement made during Steps 1, 2, and 3 of the Dispute Resolution Process.

H. Post Construction Meeting. The District will conduct a Post Construction Meeting with the Contractor prior to the project finalization. The District will invite the design agency and any other stakeholders deem necessary including utility companies, other transportation entities (i.e. railroads), community leaders, all Project participants including subcontractors performing critical work to attend this meeting.

Consider the following items for discussion:

1. Project Safety.
2. How were the goals evaluated or measured?
3. How were foremen/ workers involved in the Partnering process?

4. How were the subcontractors involved in the Partnering process?
5. How were relationships with key stakeholders managed?
6. Teambuilding activities or unique motivational activities.

I. Partnering Close-Out Survey. Complete the final Partnering evaluation to get participants' feedback and improve the Partnering process. The Partnering Close-Out Survey is located on the Division of Construction Management's Partnering website:

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/Pages/Partnering.aspx>

108.06 Determining a Time Extension to the Completion Date and Payment for Excusable Delays.

A. General. The Department will only extend the Completion Date if an excusable delay, as specified in 108.06.B or 108.06.D, delays Work on the critical path shown on the accepted progress schedule and impacts the Completion Date. The critical path is defined as; the longest path of activities in the project that determines the project schedule completion date. The activities that make-up the critical path of activities are the "Critical Activities." Any extension of the Completion Date will be executed by a change order.

Mitigation of any delay, whether caused by the Department, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and continuation of work through an otherwise planned shutdown period. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

The Department will not evaluate a request for extension of the Completion Date unless the Contractor notifies the Engineer as specified in 108.02.F. Notification shall be in writing to the Engineer within 30 days following the termination of the event giving rise to the request and shall be accompanied by supporting analysis and documentation.

The Engineer will evaluate the Contractor's analysis and determine the time extension due, if any. The Engineer will measure all time extensions in Calendar Days. For delays measured in Workdays, the Engineer will convert Workdays to Calendar Days by multiplying by 1.4 for a 5-day work week or less; 1.2 for a 6-day work week; and 1 for a 7-day work week; and extend the Completion Date by the resulting number of Calendar Days plus any holidays the Contractor does not normally work that occur in the extension period. When the conversion of Workdays to Calendar Days results in a decimal of 0.5 or greater, the Engineer will round the number of Calendar Days to the next highest whole number. When the conversion results in a decimal less than 0.5, the Engineer will delete the decimal portion of the Calendar Days.

The Engineer will not grant an extension of time for delays incurred from December 1 to April 30 unless the Contractor's accepted progress schedule depicts work on the critical path occurring during this period.

The Engineer may order the Contractor to continue Work after November 30 and compensate the Contractor for costs incurred due to cold weather Work.

The Contractor's plea that insufficient time was specified is not a valid reason for an extension of time.

The Department will relieve the Contractor from associated liquidated damages, as specified in 108.07, if the Engineer extends the Completion Date under 108.06.A.

The extended Completion Date shall then have the same standing and effect as though it was the original Completion Date.

If the Contractor contends that an excusable delay is also compensable, as specified in 108.06.D, submit a detailed cost analysis of the requested additional compensation along with the request for extension of Completion Date.

B. Excusable, Non-Compensable Delays. Excusable, non-compensable delays are delays that are not the Contractor's or the Department's fault or responsibility. The Engineer will not grant additional payment for excusable, non-compensable delays.

The following are excusable, non-compensable delays:

1. Delays due to floods, tornadoes, lightning strikes, earthquakes, or other cataclysmic phenomena of nature.

2. Delays due to weather as specified in 108.06.C.

3. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts, or area-wide material shortages. Delays due to the Contractor's, subcontractor's, or supplier's insolvency or mismanagement are not excusable.

4. Delays due to civil disturbances.

5. Delays from fires or epidemics.

6. Delays from labor strikes that are beyond the Contractor's, subcontractor's, or supplier's power to settle and are not caused by improper acts or omissions of the Contractor, subcontractor, or supplier.

7. Added quantities that delay an activity on the critical path.

8. All other delays not the Contractor's and Department's fault or responsibility.

C. Extension to the Completion Date for Weather or Seasonal Conditions. A weather day is defined as a workday that weather or seasonal conditions reduced production by more than 50 percent on items of work on the critical path. Submit the dates and number of weather days in writing to the Engineer at the end of each month. In the event the Contractor fails to submit weather days at the end of each month the Engineer will determine the dates and number of weather days from project records.

Delays caused by weather and seasonal conditions should be anticipated and will be considered as the basis for an extension of time when the Contractor's accepted progress schedule depicts Work on the critical path and the actual workdays lost exceeds the number of work days lost each month as determined by Table 108.06-1.

TABLE 108.06-1

| Month | Number of Workdays Lost Due to Weather |
|--------------|---|
| January | 8 |
| February | 8 |
| March | 7 |
| April | 6 |
| May | 5 |
| June | 5 |
| July | 4 |
| August | 4 |
| September | 5 |
| October | 6 |
| November | 6 |
| December | 6 |

This table applies to the duration between contract execution and original completion date. Extensions for weather days beyond the original completion date will be for the actual workdays lost each month.

The Engineer will not consider weekends and holidays as lost workdays unless the Contractor normally works those days or unless the Engineer directs the Contractor to work those days.

D. Excusable, Compensable Delays. Excusable, compensable delays are delays that are not the Contractor's fault or responsibility, and are the Department's fault or responsibility or are determined by judicial proceeding to be the Department's sole responsibility or are the fault and responsibility of a local government. For the following excusable, compensable delays, the Engineer will extend the Completion Date if the conditions specified in 108.06.A are met:

1. Delays due to revised Work as specified in 104.02.B, 104.02.D, or 104.02.F.

2. Delays due to utility or railroad interference within the Project limits.

3. Delays due to an Engineer-ordered suspension as specified in 104.02.C.

4. Delays due to acts of the government or a political subdivision other than the Department; however, these compensable delay costs are limited to escalated labor and material costs only, as allowed in 109.05.D.2.b and 109.05.D.2.d.

5. Delays due to the neglect of the Department or its failure to act in a timely manner. Compensation for excusable, compensable delays will be determined by the Engineer according to 109.05.D.

E. Non-Excusable Delays. Non-excusable delays are delays that are the Contractor's fault or responsibility. All non-excusable delays are non-compensable.

F. Concurrent Delays. Concurrent delays are separate critical delays that occur at the same time. When a non-compensable delay is concurrent with a compensable delay, the Contractor is entitled to additional time but not entitled to additional compensation.

108.07 Failure to Complete on Time. If the Contractor fails to complete the Work by the Completion Date, then the Director, if satisfied that the Contractor is making reasonable progress, and deems it in the best interest of the public, may allow the Contractor to continue in control of the Work. The Department will pay the Contractor for Work performed on the Project less any liquidated damages incurred.

If the Work is not completed by the Completion Date and the Director permits the Contractor to remain in control, prosecute the Work at as many different places, at such times, and with such forces as the Director requests. Provide a written plan for the completion of the Work.

For each calendar day that Work remains uncompleted after the Completion Date, the Department will deduct the sum specified herein from any money due the Contractor, not as a penalty, but as liquidated damages. The Director will adjust the Completion Date or other contractually mandated dates for delays specified in 108.06.B.7 and 108.06.D.

Permitting the Contractor to continue and complete the Work or any part of the Work after the Completion Date, or after extensions to the Completion Date, will in no way operate as a waiver on the part of the Department of any of its rights under the Contract.

The Director may stop deducting liquidated damages when:

- A. The Work is substantially complete and the project is available for use as intended by the contract.
- B. The Contractor is diligently pursuing the remaining Work.
- C. The Work remaining will not interfere with the intended use of the project and will not impact traffic. For the limited purposes of assessing liquidate damages, the closing of a shoulder is not considered an impact upon traffic.
- D. All contract safety items are complete and operational. These safety items include but are not limited to signs, pavement markings, guardrail, attenuators, and signals. Raised pavement markers (RPM) are required safety items if the roadway section involved had RPMs before the project started.
- E. Deemed reasonable and appropriate by the District Deputy Director.

TABLE 108.07-1 SCHEDULE OF LIQUIDATED DAMAGES

| Original Contract Amount (Total Amount of the Bid) | | Amount of Liquidated Damages to be Deducted for each Calendar Day of Overrun in Time |
|---|------------------|--|
| From More Than | To and Including | |
| \$0.00 | \$500,000 | \$600 |
| \$500,000 | \$2,000,000 | \$600 |
| \$2,000,000 | \$10,000,000 | \$900 |
| \$10,000,000 | \$50,000,000 | \$1,400 |
| Over \$50,000,000 | | \$2,900 |

108.08 Unsatisfactory Progress and Default of Contractor. The Director will notify the Contractor in writing of unsatisfactory progress for any of the following reasons:

- A. The Contractor has not commenced the Work by the dates established in the schedule.

- B. The Contractor does not proceed with the Work in a manner necessary for completion of the Project by the Completion Date.
- C. The Contractor is performing the Work improperly.
- D. The Contractor abandons, fails, or refuses to complete the Work.
- E. Any other reason the Director believes jeopardizes completion of the Work by the Completion Date.

If the Contractor does not respond to the satisfaction of the Director, the Director may declare the Contractor in default and may notify the Contractor and Surety that the responsibility to complete the Work is transferred to the Surety. Upon receipt of this notification, the Contractor's right to control and supervise the Work will immediately cease. In such a case, the Director will proceed as specified in ORC 5525.17. The defaulted Contractor will not be compensated for costs resulting from the default and is not eligible to be retained by the Surety to complete the Work. If it is determined that the Department's default of the Contractor according to 108.08 is wrongful, then the default will revert to a termination of the Contract according to 108.09.

108.09 Termination of the Contract for Convenience of the Department. The Director may terminate the Contract at any time for the convenience of the Department. The Department will compensate the Contractor according to 109.04 and 109.05 for termination of the Contract for the convenience of the Department. This subsection is subject to the provisions of ORC 5525.14.

108.10 Payroll Records. Keep payroll records as specified in ORC 4115.07 or as required by Federal law.

Authorized representatives of the Director may inspect the certified payroll and other payroll records. Upon completion of the Work and before receiving the final estimate and when required by ORC 4115.07, submit an affidavit stating that wages have been paid according to the minimum rates specified in the Contract Documents.

109 – ACCEPTANCE, MEASUREMENT, AND PAYMENT

109.03 Scope of Payment. Payment of the Contract Price is full compensation for all resources necessary to complete the Contract Item and maintain the Work. Assume liability for risk, loss, damage, or expense resulting from the Work. The Contract Price and Contract Time shall only be changed by written Change Order or as determined by the Department in writing in accordance with the contract documents.

109.04 Compensation for Altered Quantities, Eliminated Items or Termination of the Contract for Convenience of the Department. If the agreed quantities of contract items vary from the quantities in the Contract, the Department will make payment at the original Contract unit prices for the agreed quantities of Work.

A. If an item is eliminated in accordance with 104.02.E or the contract is terminated in accordance with 108.09 the Department will pay the following in addition to that provided by 104.02.D:

1. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.
2. The cost of material transferred to the Department or a local government agency in lieu of restocking or disposal. The allowed compensation is the paid invoice cost plus 15 percent markup, but no more than the unit bid price for the reference number involved.
3. Hauling costs, if not included in restocking charges, for returned material and for material delivered to the Department.

B. If the project is terminated for convenience of the Department, the Department will negotiate compensation with the Contractor for actual costs incurred as a result of the termination. The Department will pay for Extra Work as stipulated in approved Extra Work Change Orders or written authorizations subject to the limitations set forth in ORC 5525.14. Such authorizations for emergencies and to avoid Project delays are in advance of an approved Extra Work Change Order and commit the Department only to the terms of the authorizations. The Department will pay for Extra Work after the approval of the subsequent Change Order.

109.05 Changes and Extra Work.

A. General. If the Department revises the Contract under: 104.02, 105.07, 105.10, 105.13, 107.10, 107.14, 107.15, 108.09, 109.06, or 109.07, the Department will pay for changes and Extra Work with a Change Order using the sequence specified in 109.05.B through 109.05.E.

In establishing the method of payment for contract changes or extra work orders, force account procedures shall only be used when strictly necessary, such as when agreement cannot be reached with the Contractor on the price of a new work item, or when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The reason or reasons for using force account procedures shall be documented.

Unless otherwise stated in 109.05, the compensation provided in 109.05.B through 109.05.E constitutes payment in full for all changes and Extra Work completed by original Contract Price, agreed unit price, agreed lump sum price, and for work performed on a force account basis, including:

1. Administration.
2. Superintendence.
3. Project and field office overhead.
4. Home office overhead.
5. Use of tools and equipment for which no rental is allowed.
6. Profit.
7. Taxes other than sales tax.
8. Premiums on insurance including additional premiums for Commercial General Liability Insurance required by 107.12.B and any additional coverage carried by the Contractor or subcontractor, excluding pollution and railroad General Liability Insurance. The Department will pay the Contractor's pollution and railroad liability insurance premiums, if required by the contract, by a separate Change Order for the cost of the premium without any markup. When the Contractor's or subcontractors basic rate for General Commercial Liability Insurance required by 107.12.B is greater than 5 percent of payroll, the Department will pay directly without markup the portion of the premium in excess of 5 percent and provide copies of paid premiums.

Sales tax will not be allowed on any item for which tax exemption was obtained.

B. Negotiated Prices. Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitive bid contract. The Engineer and Contractor will negotiate agreed unit or lump sum prices using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:
 - a. increased or decreased material costs specified in 109.05.C.3.
 - b. increased or decreased labor costs specified in 109.05.C.2
 - c. increased or decreased equipment costs specified in 109.05.C.4

Adjustments of these prices for inflation or markup for subcontractor work is not allowed.

2. State-wide average unit price awarded for the item or items as listed in the Department's annual "Summary of Contracts Awarded." These prices may be adjusted for inflation using factors issued by the Office of Construction Administration. No markup for subcontractor work is allowed.

3. Average price awarded on three different projects of similar work and quantity. These prices may be adjusted for inflation using factors issued by the Office of Construction Administration. No markup for subcontractor work is allowed.

4. Prices computed by the Office of Estimating.
5. Cost analysis of labor, material, equipment, and markups as allowed in 109.05.C.
6. For the cost of compensable delays as defined in 108.06, prepare a cost analysis as allowed by 109.05.D.

Provide proposed pricing and cost justification for changes or Extra Work within 5 business days after the Department's request. The Department will respond within 5 business days after receipt of the Contractor's proposal. The Department and the Contractor can mutually agree to extend these 5-day time limits.

If the Department negotiates with the Contractor but does not agree on a price adjustment, the Engineer may direct the Contractor to perform all or part of the revised Work under force account.

C. Force Account.

1. General. The Engineer may direct the Contractor to perform the revised Work under force account. Submit a written proposal and estimated costs for the Work, including the planned equipment, materials, labor, and a work schedule.

The Department will pay the Contractor as specified in 109.05.C as full compensation for performing the force account Work. The Project and Contractor personnel will document the labor and equipment used on the force account work on a Daily Force Account Record. At the end of each Workday, the Project and Contractor personnel will compare and sign the Daily Force Account Record. The Department will make no force account payment before the Contractor submits an itemized statement of the costs for that work.

The Engineer will examine and, if found to be acceptable, approve all rates and costs submitted by the Contractor.

Provide the following content in itemized statements for all force account work:

- a. Name, classification, date, daily hours, total hours, rate, and amount for all labor.
- b. Designation, dates, daily hours, total hours of actual operation and idle time, Blue Book rate with reference or category, and amount for each unit of equipment and the applicable Blue Book hourly operating cost for each unit of equipment and invoices for all rental equipment. The designation includes the manufacturer's name or trademark, model number, and year of manufacture.
- c. Quantities of materials and prices.
- d. Transportation charges on materials, free on board (F.O.B.) at the job site.
- e. Cost of workers' compensation insurance premiums, all applicable insurance premiums, unemployment insurance contributions, and social security tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which should be expressed as a cost per hour.
- f. Documentation showing payment for all surveying, professional, or similar specialized Work not normally a part of a Department contract.
- g. If materials are taken from Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, provide an affidavit and certify all of the following:
 - (1) The materials were taken from the Contractor's stock.
 - (2) The quantity shown was actually used for the force account work.
 - (3) The price and transportation costs represent the actual cost to the Contractor.
- h. Documentation showing payment to trucking firms and owner-operators. Submit documentation showing owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.1.a, 109.05.C.1.b, and 109.05.C.1.e.
- i. Provide "receipted invoices" for all costs substantiated by an invoice.

If only part of the expenditure represented by an invoice is applicable to force account work, or if the invoice represents expenditure for more than one item of work, clearly indicate the actual amount of expenditure applicable to each item of work.

2. Labor. The Department will pay the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. The Department will pay an additional 38 percent markup on these wages and benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are

required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The Department will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.
- e. Longshore and Harborworkers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

Provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. Provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the Department will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The Department will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The Department will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account work.

If the foreman or timekeeper is employed partly on force account work and partly on other work, the Contractor shall prorate the number of hours between the force and non-force account work according to the number of people on each task as shown on payrolls.

The Department will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor must provide payroll records for pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original Contract Work. The Department will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in original Contract Work.

The Department will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The Department will not pay a percent markup on these costs.

3. Materials. The Department will pay the Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Engineer approved materials the Contractor uses in force account Work. The Department will pay an additional 15 percent markup on these costs.

Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented equipment used to haul materials to the project is not part of the materials cost. Such equipment, when used for hauling materials, shall be listed under cost of equipment.

Provide itemized statements in addition to the documentation requirements for all equipment including the quantity and price of each material and transportation charges free on board (F.O.B.) at the job site. Attach invoices to support the quantities of materials used, unit prices paid and transportation charges. If the Contractor uses materials from the Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the Department

and the Contractor will agree on a price that represents the actual cost to the Contractor. Provide an affidavit and certify all of the following:

- a. The materials were taken from the Contractor's stock.
- b. The quantity shown was actually used for the force account work.
- c. The price and transportation costs represent the actual cost to the Contractor.

Do not incorporate materials into the Work without a price agreement.

4. Equipment.

a. **General.** The Department will pay the Contractor's costs for equipment the Engineer deems necessary to perform the force account work for the time directed by the Engineer or until the Contractor completes the force account Work, whichever happens first. The Department will pay the Contractor the established rates for equipment only during the hours that it is operated, except as otherwise allowed elsewhere in these Specifications. The Department will pay for non-operating hours at the idle equipment rate as specified in 109.05.C.4.c. Report equipment hours to the nearest 1/2 hour. The established equipment rates in these Specifications include compensation for overhead and profit except as otherwise specified.

The Department will pay for use of Contractor-owned equipment the Engineer approves for force account Work at established rates. The Department will pay the rates, as modified in 109.05.C.4.b, given in the Rental Rate Blue Book for Construction Equipment (Blue Book) published by Equipment Watch, a unit of Interec Publishing, a PRIMEDIA Company.

Provide, and the Engineer will confirm, the manufacturer's ratings and manufacturer-approved modifications required to classify equipment for rental rate determination. For equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.

The Department will not pay rental for small tools or equipment that show a daily rate less than \$5.00 or for unlisted equipment that has a value of less than \$400.

Tool trucks will be allowed for compensation if they are used at the force account site. Only the tools used from the tool truck will be allowed for compensation. Tools in the tool truck that are not used in the force account work will not be compensated. A tool trailer that remains at the Contractor's office or yard will not be allowed on the force account work. Tool trailers that are taken to the force account site will be allowed for compensation along with the tools used on the force account work that were taken from the trailer.

Treat traffic control devices used in Maintaining Traffic and owned by the Contractor as owned equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by the Department.

Use Engineer approved equipment in good working condition and providing normal output or production. The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the Work.

For each piece of equipment used, whether owned or rented, provide the Engineer with the following information:

- (1) Manufacturer's name or trademark.
- (2) Equipment type.
- (3) Year of manufacture.
- (4) Model number.
- (5) Type of fuel used.
- (6) Horsepower rating.
- (7) Attachments required, together with their size or capacity.
- (8) All further information necessary to determine the proper rate.
- (9) Dates, daily hours, total hours of actual operation and idle time,
- (10) Blue Book rate with reference or category,
- (11) Amount

- (12) Applicable Blue Book hourly operating cost
- (13) Invoices for all rental equipment.

b. Hourly Owned Equipment Rates. The base rate for the machine and attachments represent the major cost of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

For all equipment used on force account work, determine, and have the Department confirm, the hourly owned equipment rates as follows:

$$\text{HOER} = [\text{RAF} \square \text{ARA} \square (\text{R} / 176)] + \text{HOC}$$

Where:

- HOER = hourly owned equipment rate
- RAF = regional adjustment factor shown in the Blue Book
- ARA = age rate adjustment factor shown in the Blue Book
- R = current Blue Book monthly rate
- HOC = estimated hourly operating cost shown in the Blue Book

However, compensation for equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs.

The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base equipment.

When multiple attachments are included with the rental equipment, only the attachment having the highest rental rate will be eligible for payment, provided that the attachment has been approved by the Engineer as being necessary to the force account Work.

When a piece of owned equipment is not listed in the Blue Book, use the rate for similar equipment found in the Blue Book or use 6 percent of the purchase price as the monthly rate (R) and add the hourly operating rate found in the Blue Book for similar equipment of the same horsepower.

For equipment brought to the Project exclusively for force account work and on the Project for less than a month, multiply the monthly rate (R) by the factor listed below:

TABLE 109.05-1

| Working Hours | Factor |
|---------------------------|---------------------|
| Less than or equal to 8.0 | 2.00 |
| 8.1 to 175.9 | 2.048 - (hours/168) |
| 176 or greater | 1.00 |

The term "WORKING HOURS," as used in Table 109.05-1, includes only those hours the equipment is actually in operation performing force account work; apply the factor, as determined above, to these actual working hours only. Calculate compensation for any idle time according to 109.05.C.4.c without application of the factor.

The Department will pay as working equipment for the entire Workday equipment used intermittently during the Workday. The following criteria qualify for intermittently used equipment:

- (1) Equipment dedicated to the force account exclusively all day and not used on bid work.
- (2) Equipment works before and after the intermittent idle period and its total working time during the Workday is at least 2 hours.

Equipment that is captive to the force account work (i.e. it must remain at the force account site), but does not qualify for intermittently used owned equipment, is paid as idle equipment according to 109.05.C.4.c. for the time it is not working.

c. Hourly Idle Equipment Rate. For equipment that is in operational condition, on site, and necessary for force account Work, but is idle, the Department will pay an hourly idle equipment rate. The procedure to determine the hourly idle equipment rate for Contractor owned equipment is as follows:

$$\text{HIER} = \text{RAF} \times \text{ARA} \times (\text{R} / 176) \times (1/2)$$

Where:

HIER = Hourly idle equipment rate.

RAF = Regional adjustment factor shown in the Blue Book.

ARA = Age rate adjustment factor shown in the Blue Book.

R = Current Blue Book monthly rate.

If rented equipment necessary for force account work is idle, the Department will pay the Contractor for the actual invoiced rates prorated for the duration of the idle period. The actual invoiced rates must be reasonably in line with the Blue Book rates and approved by the Engineer. The Department will pay a 15 percent markup for overhead and profit for the actual invoiced rates during the idle period.

The Department will not pay idle owned equipment costs for more than 8 hours in a 24-hour day or 40 hours in a week.

The Department will not pay for inoperable equipment.

The Engineer may order specific equipment to the site up to 5 days before its planned usage. If this equipment is not used for other work, the Department will pay for it as idle equipment until used.

The Department will pay for the cost of idle owned or rented equipment when the Work was suspended for the convenience of the State. The Department will not pay the cost of idle equipment when the Work was suspended by the Contractor for the Contractor's own reasons.

The Department will only pay for the number of Calendar Days during the existence of the suspension. The Department will not compensate the Contractor for days that the Engineer determined were lost to weather.

The Department will only pay for equipment physically located at the Project site that was received to prosecute the scheduled work during the delay.

Compensation for idle equipment will stop at the completion of the force account Work or at the end of the suspension of Work.

d. Rented Equipment. The Department will pay a 15 percent markup for overhead and profit for all rented equipment, its corresponding Blue Book hourly operating costs, and State and Local sales taxes.

(1) Equipment Rented Solely for Force Account Work. If the Contractor rents or leases equipment from a third party exclusively for force account Work, the Department will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Engineer. The Department will pay a 15 percent markup for overhead and profit for all rented equipment paid for by the actual invoices. Add the Blue Book hourly operating cost to the marked up actual invoiced rates.

(2) Equipment Rented for Original Contract Work, but Used for Force Account Work. If the Contractor uses rented equipment currently on the Project for original Contract Work to perform force account Work, then determine the hourly outside-rented equipment rate as follows:

$$\text{HRER} = (\text{HRI} \times 115\%) + \text{HOC}$$

Where:

HRER = hourly rented equipment rate

HRI = hourly rental invoice costs prorated for the actual number of hours that rented equipment is operated solely on force account work. Use a monthly invoice rate divided by 176, a weekly invoice rate divided by 40, or a daily invoice rate divided by 8.

HOC = hourly operating cost shown in the Blue Book

The Department will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the Work by the Engineer.

e. Moving of Equipment. The Department will also pay for the time required to move needed equipment to the location of the force account work and to return it to its original location. The Department will pay for loading and transportation costs instead of moving time if equipment is moved by means other than its own power. Moving time back to the original location or loading and transportation costs will not be allowed if the equipment is used at the site of the force account work on contract items or related work.

The Department will consider the actual cost of transferring the equipment to the Project and returning it to the original location as an additional expense and pay for it as specified, for equipment moved on the Project exclusively for force account work.

The Engineer will confirm the original location of the equipment before the Contractor moves and uses it for force account work.

If the equipment is transported by a common carrier, the allowance is the invoiced amount paid for the freight plus 15 percent. However, if the Contractor's forces transport the equipment, the allowable compensation will be Blue Book rate of the hauling unit and hourly Blue Book operating cost plus the driver's wages and the cost of loading and unloading the equipment calculated according to 109.05.C.2.

5. Foreman's Transportation. The Department will pay the Blue Book rate for every hour the foreman's truck is on the force account site or moving to or from the site. This rate includes equipment cost, fuel and lubricants, overhead, profit, and mobile phone or two-way radios.

6. Subcontract Work. For Work performed by an approved subcontractor, the Department will pay an amount to cover administrative costs of 8% on the first \$10,000 of work and 5% for work in excess of \$10,000 as provided in 109.05.C.2 through 109.05.C.5. No additional mark-up is allowed for work of a sub-subcontractor or trucking services employed by a subcontractor.

7. Final Adjustment to Premium for Contract Bonds. The final bond premium amount for the payment and performance bonds will be computed based on the actual final contract value. For the purpose of computing a bond premium adjustment the actual final contract value is defined as the whole sum of money, excluding any bond premium adjustment, which is passed from the Department to the Contractor as a result of the completion of the Work. If the actual final contract value is different from the original contract value, the premium shall be adjusted accordingly; either by refund of part of the original bond premium by the Contractor if the original contract value is larger than the actual final contract value; or by payment of additional bond premium by the Department if the original contract value is smaller than the actual final contract value. Additional payment by the Department or refund by the Contractor will be based on the difference between the invoiced bond premium for the original contract value and the invoiced bond premium for the actual final contract value without any markup. A final bond premium adjustment will not be made when the actual final contract value differs from the original contract value by less than \$ 40,000.00.

8. Trucking.

a. Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8% on the first \$10,000 of trucking and 5% for trucking in excess of \$10,000 to cover administrative costs.

b. Trucking that is subject to the prevailing wage law will be compensated according to 109.05.C.1, 109.05.C.2, 109.05.C.4, 109.05.C.6, 109.05.C.10, and 109.05.C.11.

Provide documentation showing payment to trucking firms and owner-operators and owner-operations status. When the trucking is subject to prevailing wage, submit payroll and equipment usage records according to 109.05.C.2 and 109.05.C.4.

9. Professional and Specialized Work. The following work, when performed by a firm hired by the Contractor, is paid at the reasonable and fair market invoiced cost plus 8% on the first \$10,000 of work and 5% for work in excess of \$10,000.

- a. Surveying.
- b. Engineering design.
- c. Specialized work that is not normally part of a Department Contract and is not normally subject to prevailing wage.
- d. Installation, periodic maintenance, and removal of traffic control devices under Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project full-time. Maintenance of Traffic services performed by LEO.
- e. Other professional or specialized work not contemplated at the time of Bid.

Provide documentation showing payment for professional and specialized Work.

10. Payment for Force Account Work. Submit an analysis of estimated cost prepared in accordance with 109.05C for work that will be performed on a force account basis. Attach an original affidavit to the analysis stating:

“Labor rates shown are the actual rates paid for labor, unit prices for materials and rates for owned and rented equipment have been estimated on the basis they are not in excess of those charged in the area in which the work will be performed.”

The Engineer will process an Estimated Cost of Force Account (ECFA) if the amount of the force account work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. The Engineer will process an Actual Cost of Force Account (ACFA) to make any necessary adjustment between the ECFA and the final itemized costs for the force account work.

For force account work estimated to be less than \$100,000 and anticipated to require less than two weeks to perform, the Engineer will process an Actual Cost of Force Account (ACFA) at the conclusion of the work.

Submit biweekly itemized statement of costs prepared from the Daily Force Account Records to the Engineer as the work is being performed. The Engineer will process estimates as the force account work is performed. Payment will only be made upon receipt of the Contractor's itemized statement of costs.

Upon conclusion of the work performed by an ECFA or work performed by an ACFA submit an itemized statement of the actual costs prepared from the Daily Force Account Record and utilizing the Department's electronic template titled "Electronic Force Account." Submit a compact disk (CD), labeled with the Contractor's name and the project number, and a hard copy of the "Electronic Force Account." The "Electronic Force Account" template can be downloaded from the following website:

www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx

The Engineer may approve an alternative electronic template provided all calculations and printouts are equivalent to those generated by the "Electronic Force Account" template.

Attach an original affidavit to the hard copy stating:

“The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons employed on the force account work. All unit prices for materials and rates for owned and rented equipment listed on the Summary of Actual Costs are substantiated by actual records of materials and equipment actually used in performance of the force account work and the price of any owned equipment not previously agreed upon does not exceed prices charged for similar equipment in the area in which the work was performed.”

Daily Force Account Records signed by both the Department and Contractor will govern over other Department and Contractor records subject to the following:

a. When the Contractor is subject to a Union Contract that requires a minimum number of paid hours, the compensation will be for the verified contract minimum hours.

b. Material quantity disagreements will be resolved by field measurements of the installed quantities or the Engineer's estimate of the amount of temporary or un-measurable material used. The Engineer may also review and consider the Contractor's material invoices and material certifications to make the final determination.

In the event the Contractor declines to sign the Daily Force Account Record, the Department's records shall govern. Any resulting dispute must be pursued in accordance with 108.06.G.

D. Delay Costs.

1. General. If the Department agrees that it has caused a delay, the Department will pay for the costs specified in 109.05.D as allowed by 108.06.D, unless these costs have been previously paid as listed in 109.05.B or 109.05.C. Such payment constitutes full compensation for any and all delay costs

The Department will make no payment for delays occurring during the period from December 1 to April 30 unless the Contractor's approved progress schedule depicts critical Work occurring throughout this period.

The Department will not pay for delay costs until the Contractor submits an itemized statement of those costs. Provide the content specified in 109.05.C.1, for the applicable items in this statement and as follows:

- a. Proof of cost of Superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
- b. Proof of cost of office rent, utilities, land rent, and office supplies.
- c. Proof of escalated cost for labor and material.
- d. Proof of material storage costs.

2. Allowable Delay Costs

a. Extended Labor. Compute labor costs during delays as specified in 109.05.C.2 for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Engineer-approved reasons.

b. Escalated Labor. To receive payment for escalated labor costs, demonstrate that the Department-caused delay forced the Work to be performed during a period when labor costs were higher than planned at the time of Bid. Provide adequate support documentation for the costs, allowances, and benefits specified in 109.05.C.2. The Department will pay wages and fringes with a 20 percent mark-up to cover administrative costs.

c. Idle Equipment or Equipment Demobilization. The Department will pay the Contractor according to 109.05.C.4.c for idle equipment, other than small tools, that must remain on the Project during the delays. The Department will pay the Contractor's transportation costs to remove and return equipment not required on the Project during the delays. No other equipment costs are recoverable as a result of delay.

d. Material Escalation or Material Storage. The Department will pay the Contractor for increased material costs or material storage costs due to the delay. Obtain the Engineer's approval before storing materials due to a delay. Payment will be based upon the accepted quantity of work performed during the period for which escalated costs have been approved. The Department will pay increased material costs with an 8 percent mark-up to cover administrative costs and any material waste inherent to the Work.

e. Field Overhead. The Department will pay any Contractor or subcontractor for field overhead costs which include the cost of supervision, field office and office supplies, and utilities for which payment is not provided for in 109.05.D.2.f, during a delay period provided all of the following criteria are met:

(1) The Contractor or subcontractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of field overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3, 108.06.D.5 or for delays due to revised Work as specified in 104.02.B or 104.02.F.

The Department will pay the salary and fringes plus a 5 percent markup for field personnel identified in Table 109.05-4.

TABLE 109.05-5

| Original Contract Amount | Field Personnel |
|-----------------------------|---|
| Up to \$5,000,000 | One Superintendent |
| \$5,000,001 to \$50,000,000 | One Superintendent, One Assistant Superintendent or One Engineer, One Clerk |
| Over \$50,000,000 | One Superintendent, One Assistant Superintendent, One Engineer, One Clerk |

Superintendent's transportation is compensable at the same rate allowed for foreman's transportation in 109.05.C.5, which includes the cost of mobile communication devices. The allowed hours are when the superintendent is at the project site.

Superintendent's subsistence, provided this is the company's terms of compensation to such employees, as documented by the Contractor's written company policy or contracts with their employees.

The Contractor's or subcontractor's field office costs include field office trailers, tool trailers, office equipment rental, temporary toilets, and other incidental facilities and supplies. Compute these costs on a Calendar Day basis. Owned trailers are paid at the Blue Book rate. Rented trailers are paid at the invoiced cost plus a 15 percent markup. Rented office space, toilets, and office equipment are allowed a 5 percent markup. Purchased office supplies are allowed a 5 percent markup.

Office utilities include, but are not limited to, telephone, electric, water, and natural gas. Compute these costs on a Calendar Day basis and allow a 5 percent markup.

f. Home Office Overhead. The Department will pay the Contractor for home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in 109.05.D.2.e, including overhead costs that would otherwise be calculated using the Eichleay formula or some other apportionment formula, provided all of the following criteria are met:

(1) The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Calendar Days beyond the original Completion Date. These days are cumulative throughout the project.

(2) The delay for which payment of home office overhead is sought is only due to delays defined in 108.06.D.2, 108.06.D.3 and 108.06.D.5.

Any subcontractor that has approved C-92's for subcontracted work totaling \$4,000,000 or more is eligible for reimbursement of home office overhead provided the criteria set forth in 109.05.D.2.f.(1) and 109.05.D.2.f.(2) are met.

Payment will be made for every eligible day beyond the original contract completion date at the rate determined by 109.05.D.2.f.i. Payment for eligible days occurring during an unanticipated construction period will be calculated in accordance with 109.05.D.2.f.ii. Payment for eligible days occurring during an unanticipated winter period will be calculated in accordance with 109.05.D.2.f.iii.

(i) Home Office Overhead Daily Rate

Calculate the home office overhead daily rate using the following formula:

$$\text{Daily HOOP} = (A \times C)/B$$

Where:

A = original contract amount

B = contract duration in Calendar Days

C = value from Table 109.05-5

TABLE 109.05-5

| Original Contract Amount | C |
|-----------------------------|------|
| Up to \$5,000,000 | 0.08 |
| \$5,000,001 to \$25,000,000 | 0.06 |
| Over \$25,000,000 | 0.05 |

Daily HOOP = home office overhead daily rate

Contract duration term, B, includes every Calendar Day from the execution of the Contract, unless otherwise specified by the Director, to the original Contract Completion Date.

When the Contractor requests home office overhead compensation for a subcontractor, use the above formula to calculate the subcontractor's Daily HOOP; however, in the subcontractor calculation, A is equal to the subcontractor's portion of the original contract amount as determined by the sum of all approved C-92's issued for the subcontracted work.

(ii) Home Office Overhead Payment for an Unanticipated Construction Period

Calculate the home office overhead payment for an unanticipated construction period occurring between May 1 and November 30 using the following formula:

$$CP\ HOOP = \text{Daily HOOP} \times D$$

Where:

D = sum of all excusable, compensable delays in Calendar Days minus the sum of all delays due to 108.06.D.1 and 108.06.D.4 in Calendar Days

Daily HOOP = daily home office overhead rate

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30

The excusable, compensable delay term, D, is the additional, unanticipated extended period for work performed between May 1 and November 30 in Calendar Days.

(iii) Home Office Overhead Payment for an Unanticipated Winter Period

Calculate the payment for home office overhead for an unanticipated winter period occurring between December 1 and April 30 using the following formula:

$$WP\ HOOP = \text{Daily HOOP} \times F \times D/E$$

Where:

D = sum of all excusable, compensable delays in Calendar Days minus the sum of all delays due to 108.06.D.1 and 108.06.D.4 in Calendar Days

E = sum of all excusable, compensable delays in Calendar Days plus the sum of all excusable, non-compensable delays in Calendar Days

F = 151 for a non-leap year or 152 for a leap year

Daily HOOP = daily home office overhead rate

WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30

Payment for Home Office Overhead for an unanticipated winter period will not be made when the value of the remaining work is below the lesser of \$500,000.00 or 10 percent of the estimated final contract value.

(iv) Total Home Office Overhead Payment

Calculate the total home office overhead payment using the following formula:

$$\text{Total HOOP} = CP\ HOOP + WP\ HOOP$$

Where:

CP HOOP = home office overhead payment for an unanticipated construction period occurring between May 1 and November 30
 WP HOOP = home office overhead payment for an unanticipated winter period occurring between December 1 and April 30
 Total HOOP = total home office overhead payment

g. Subsistence and Travel Allowance. The Department will pay costs for subsistence and travel allowances for labor that must remain on the Project during the delays, when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the project. Overnight lodging will be reimbursed if the person is at a location greater than forty-five miles from their residence up to a maximum of \$106 per day. Meals and incidental expenses will be reimbursed up to a maximum of \$56 per day. The Department will not pay a percent markup on these costs.

E. Changes in Materials. Changes in material specifications that result in increased cost to the Contractor are compensated by lump sum adjustment to the reference number. The allowed compensation is equal to the invoice supported material cost increase plus 15 percent markup for profit and overhead.

Material cost savings resulting from a specification change shall be credited to the project by a lump sum adjustment to the reference number plus a 15 percent markup if the originally specified material has not been ordered.

If the original material was ordered before the Contractor was informed of the change, the savings markup allowed is 2.5 percent in order to exclude profit on the original bid price and pay only for incurred overhead.

109.06 Directed Acceleration. The Engineer may order the Contractor to accelerate the Work to avoid delay costs or to complete the Project early. The Director and the Contractor will negotiate acceleration costs.

109.07 Inefficiency. The Department will compensate the Contractor for inefficiency or loss of productivity resulting from 104.02 Revisions to the Contract Documents. Use the Measured Mile analysis comparing the productivity of work impacted by a change to the productivity of similar work performed under un-impacted conditions to prove and quantify the inefficiency.

109.08 Unrecoverable Costs. The Contractor is not entitled to additional compensation for costs not specifically allowed or provided for in 109.05 including, but not limited to, the following:

- A. Loss of anticipated profit.
- B. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.
- C. Indirect costs.
- D. Attorney's fees, claim preparation expenses, and the costs of litigation.

109.09 Estimates. If satisfactory progress is being made, the Contractor will receive monthly payments equaling the Work and materials in place. The monthly payment is approximate, and all partial estimates and payments are subject to correction in the Final Estimate and payment. Payment for Work and materials shall not, in any way, prevent later rejection when defective Work or material is discovered, or constitute acceptance under 109.11 or 109.12.

Except for estimates generated during Project finalization, the Department will not pay an estimate until the Contractor certifies to the Engineer that the work for which payment is being made was performed in accordance with the contract. Certification will be made on forms provided by the Department.

The Department may pay estimates twice each month if the Engineer concludes the amount of work performed is sufficient.

No estimate or payment shall be construed as acceptance of defective Work or improper materials.

The Department will not pay the adjusted final estimate until the Contractor remedies all defective Work and accepted Work damaged by the Contractor's operations.

Interest will be paid in accordance with ORC 126.30 when warranted.

109.10 Payment for Delivered Materials. The Department will pay, up to 75 percent of the applicable contract item, for the invoiced cost of the delivered and approved materials before they are incorporated in the Work, if the approved materials are delivered, accepted, and properly stored on the project or stored in acceptable storage places in the vicinity of the Project.

The Department will pay for the cost of approved materials before they are incorporated in the Work when asked by the Contractor, if the Engineer determines that it is not practical to deliver the material to the Project site. This provision applies only to bulky materials that are durable in nature and represent a significant portion of the project cost, such as aggregates, steel, and precast concrete. The Department will pay for un-fabricated structural steel if the following requirements are met:

1. The Contractor has provided both the Engineer and the Office of Materials Management an itemized invoice from the steel mill for the steel for which reimbursement is requested
2. Project structural Steel design plans are complete with no forthcoming revisions. For design build projects, Contractor accepted show drawings per 501.04, will need to be provided.
3. Contractor accepted certified test data for all steel in question along with mill shipping notices have been received by the Office of Materials Management per 501.06.
4. The steel is properly stored to allow inspection by the Office of Materials Management. It shall also be properly set apart from other material and identified as belonging to ODOT.
5. The Contractor will provide the Engineer a written statement that under 106, the Contractor is responsible for the steel that has been paid for until the actual steel is erected and accepted in the field.
6. Payment shall only be authorized after all the aforementioned documentation has been received by the Office of Materials Management and the steel has been inspected by the Office of Materials Management to verify that all steel listed in the itemized invoice has been received by the fabricator and properly stored. The amount to be paid shall be equivalent to the itemized invoice from the steel mill, but shall not exceed 50% of the bid price for the structural steel.

The Department will not pay delivered materials on small warehouse items or for plant materials.

109.11 Partial Acceptance. Upon completion of a portion of the Work, the Contractor may request acceptance of a completed portion of the Work.

- A. An inspection may be performed on a completed portion of the project roadway section provided:
 1. All safety items are in place including permanent pavement markings.
 2. Traffic is in its final pattern.
 3. A completed portion of the project constitutes a completed geographic section of the project or a direction of traffic on a divided highway.
 4. Is in accordance with other contract provisions.
- B. An inspection may be performed on a completed bridge provided:
 1. All work on the bridge and approaches are complete, including all safety items and permanent pavement markings.
 2. The Contractor will not return to the bridge for any work except as allowed in 4.
 3. Traffic is in its final pattern.
 4. Painting of structural steel is either completed or scheduled to be performed.
 5. Is in accordance with other contract provisions.

The Final Inspector will grant written partial acceptance for that portion of the Work or reject the Contractor's request. Such written partial acceptance will designate what portion of the Work is accepted, the date of acceptance, and the warranty provisions started by the partial acceptance.

Partial acceptance will relieve the Contractor of maintenance responsibility for the designated portion of the Work. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the Department is entitled at law or in equity.

109.12 Final Acceptance.

A. Final Inspection. The Department will perform a Final Inspection for the sole purpose of relieving the Contractor of maintenance responsibility for the Work.

The Final Inspection shall be a limited visual review of the Work and shall only serve as the Department's verification that the Work appears substantially complete. Final Inspection does not waive any available rights or remedies of the Department, nor divest the Contractor of any responsibility for compliance with the contract or liability for damages.

Notify the Engineer when the Project is complete and all of the Engineer's punch list items are complete. If the Engineer agrees the Project is complete, then within 10 business days the District Final Inspector will inspect the Work and categorize it as one of the following:

1. Unacceptable or not complete.
2. Substantially complete with punch list items found by the Final Inspector.
3. Substantially complete.

If the Final Inspector finds the Work substantially complete or substantially complete with punch list items, then the Contractor's maintenance responsibilities end on the day of the Final Inspection, except for any maintenance related to unfinished punch list items. This does not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the Department is entitled at law or in equity. The Final Inspector will issue a Final Inspection Report that will document the findings of the inspection and start any warranty period.

B. Punch List. The Final Inspector will issue to the Contractor a written punch list of work required as a condition of acceptance. The Final Inspector's punch list will stipulate a reasonable time to complete the required Work. Failure of the Contractor to complete the punch list items by the stipulated time will result in the assessment of fifty percent of the Liquidated Damages according to 108.07 for each Calendar Day for every day beyond the stipulated time the punch list work remains incomplete and beyond the revised Completion Date.

C. Finalization. The Contractor shall accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within 30 Calendar Days of receiving the Engineer's list of final quantities. The prescribed 30 Calendar Day period can be modified by mutual agreement of the Contractor and the District Construction Engineer. If no notice of disagreement is received, then the final payment will be based on the Engineer's list of final quantities.

Supply all documents necessary for Project finalization within 60 Calendar Days from the date that the Work is physically complete. These documents include:

1. Delinquent material certifications.
2. Delinquent certified payrolls or required revised payrolls.
3. Wage affidavit required by ORC Chapter 4115 on projects without any Federal funding.
4. Delinquent force account records.
5. If applicable, DBE affidavits.
6. Any other document required to complete finalization of the project.

Failure to submit these acceptably completed documents will result in an administrative fee of \$100 per Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

D. Final Payment. Final payment is based on:

1. The agreed final quantities or as determined by the Engineer if agreement is not possible, no compensation for unauthorized work is allowed.
2. Finding of substantial completion by the Final Inspector.
3. Receipt of acceptable finalization documents.
4. Contractor certification that the Work was performed in accordance with the contract.

E. Completion of Contract and Continuation of Contractor's Responsibility. The Contract is complete, except for items covered by the required bonds, when the Contractor receives final payment. The DCA will issue a letter confirming completion of the contract, noting any exception as provided in Items 659 and 661 and any warranty. The date the final payment is approved by the District constitutes acceptance for the purpose of ORC 5525.16. Neither Completion of the Contract nor substantial completion relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the Department is entitled at law or in equity.

CITY OF FAIRVIEW PARK - GENERAL PROVISIONS

DEFINITIONS

Wherever the words herein defined or pronouns used in their stead occur in this contract and in these specifications, they shall have the meaning here given:

1. Wherever in this contract the words "Approved", "Acceptable", "Satisfactory" or words of like import are used, it shall mean approved by, or acceptable or satisfactory to the Engineer is intended, unless another meaning is plainly intended and so stated in the contract.
2. "City" or "Municipality" or words "City of Fairview Park, Ohio", or "Municipality of Fairview Park, Ohio", or the expression "Party of the First Part", or "First Party", or "Local Public Agency" or "LPA", or "Owner" shall mean the City of Fairview Park, Ohio, acting through its properly authorized agents such agents acting severally within the scope of the particular duties entrusted to them.
3. Council shall mean the duly elected Council of the City of Fairview Park, Ohio.
4. Wherever in the contract, the words "Directed", "Required", "Permitted", "Ordered", "Instructed", "Considered Necessary", "Prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, instruction, designation, or prescription, etc. of the Engineer and Owner is intended, unless another meaning is plainly intended and so stated in the contract.
5. "Mayor" as used herein, shall refer to and designate the Mayor of the City of Fairview Park, Ohio.
6. Owner. The "Municipality" or "City" of Fairview Park, Ohio which will purchase the goods and services provided under this contract.
7. Responsible Agency. The City of Fairview Park, Ohio.

CONTRACT DOCUMENTS

Should anything be omitted from the Contract drawings or specifications which is necessary to a clear understanding of the work, or should any error appear either in any of the various instruments furnished or in the work done by other Contractors affecting the work included in the Contract, the Contractor shall promptly notify the Engineer of such omissions or errors and in the event of the Contractor's failure to do so, he shall make good any damage to or defect in his work caused thereby. He will not be allowed to take advantage of any error or omission on the contract drawings, as full instructions will be furnished by the Engineer. Such instructions or interpretation by the Engineer shall be final, and the Contractor shall carry them out as if originally specified.

OBLIGATIONS OF CONTRACTOR

The Contractor shall, at his own cost and expense, furnish all the necessary materials, labor, superintendence, tools, appliances, and equipment, and shall execute, construct, furnish, and test in an expeditious, substantial and workmanlike manner the work of this contract within the time and in the manner specified, and in conformity with the requirements set forth in the specifications herein contained or hereto attached, and in accordance with the contract drawings of said work.

He shall complete the entire work to the satisfaction and approval of the Engineer and Owner, and shall accept in consideration, thereof, and as full compensation therefor, a sum of money equal to the total of the sums determined from the actual amount of work done or materials furnished under each stipulated item of work and the appropriate unit or lump sum price stated in the proposal or in any subsidiary agreement to this contract, and with the quantities of work done determined in finality by the Engineer and approved by the Owner.

PERSONAL ATTENTION OF CONTRACTOR

The Contractor shall give his personal attention to the faithful and continuous prosecution of the work. He shall maintain, at the site of the work, a copy of the contract, specifications, and drawings appropriate to the contract.

Should the Contractor himself be absent, there shall be present on the work at all times, a duly authorized representative who shall receive and execute all orders given by the Engineer or his duly authorized agents, and such orders so given to and received by the said representative, shall be deemed to have been given to and received by the Contractor. Whenever the Contractor or his representative is not present at any place on the work where it may be necessary to give orders or directions, they will be given to, and shall be received and promptly obeyed by the Superintendents or the Foreman who may have immediate charge of the men employed on the particular work in relation to which, the order may be given.

COMPETENT PEOPLE TO BE EMPLOYED

The Contractor shall employ only competent, skillful, faithful and orderly people to do the work, and whenever the Engineer shall notify the Contractor that any person on the work is, in his opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, the Contractor shall discharge such person from the work, and shall not again employ such person except with the written consent of the Engineer.

STATEMENT OF QUANTITIES

The Schedule of quantities for the work as stated in the form of proposal or shown on the drawings is approximate only, and will be used for the purpose of computing and comparing proposals which are submitted. This contract is for a complete and satisfactory project, and the contractor must do all work and furnish all materials necessary regardless whether such are, or are not shown in proper detail on the contract drawings or specifically called for in the specifications.

ORDERS TO CONTRACTOR

The address given in the bid or proposal upon which this contract is founded is hereby designated as the place where all notices, letter and other communications to the Contract shall be mailed or delivered. The delivering at the above named place, or depositing in a postpaid wrapper directed to the above named place, in any post office box regularly maintained by the office, or any notice, letter or other communications to the Contractor shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing. Such address may be changed at any time by an instrument in writing executed and acknowledged by the Contractor and delivered to the Owner. Nothing herein contained shall preclude or render inoperative the service of any notice, letter, or other communications upon the Contractor personally.

ACCESS TO WORK

The Contractor shall at all times give to the Owner and to the Engineer, and to their officers and agents, all the necessary facilities for determining both on the work and at the places of manufacture, that all work to be done and all the materials to be furnished under this contract is being performed and are being made strictly in accordance with the terms of the contract and with the contract drawings and specifications. The Contractor shall notify the Engineer in writing at least seven (7) days previous to the commencement of the manufacture of any materials of the time and place where the manufacture is to take place, in order that a representative of the Engineer may be present to inspect the manufacture, should the Engineer deem such presence necessary.

DECISIONS

All the work under this contract shall be done to the satisfaction of the Engineer, who shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for hereunder, and shall decide all questions which may arise as to the fulfillment of this contract on the part of the Contractor, and the Engineer's determination and decision thereon shall be final and conclusive; and such determination and decision, in case any question shall arise, shall be a condition precedent to the right of the contract to receive any monies hereunder.

INSPECTION

No materials that will be incorporated into the work shall be used until it has been inspected and accepted by the Engineer. The Contractor shall provide all labor and all reasonable facilities necessary for the inspection of materials and work, and where directed, he shall furnish proper samples for test before or after the delivery of materials as required.

The Engineer is empowered to reject and refuse all work and materials, and the method of application of any part thereof that do not comply in kind, quality, quantity, time or place with the specifications or contract drawings.

Materials or workmanship found to be defective at any time during the period of the contract or not in conformity with the requirements of the contract, shall be replaced or remedied by the Contractor, regardless of previous inspection, approval, acceptance of payment on account thereof. No unapproved equipment or material shall be incorporated into the work nor will such be included in any estimate for payment.

All materials which are rejected shall be removed from the site or vicinity of the work within two (2) days of its rejection.

PERMITS

The Contractor shall, at his expense, obtain all necessary permits. There will be no charge(s) or fee(s) for permits issued by the Owner for work performed within the jurisdiction of the Owner and for the Owner.

MATERIALS AND WORKMANSHIP

All materials furnished under this contract shall be as specified or required, or in the absence of particular specifications, shall be the best of their respective kinds, of new stock, unused and not deteriorated, and all the work contemplated and described shall be done in a good, substantial and workmanlike manner.

Wherever the contract drawings or the specifications describe materials, devices, or equipment as those which shall be similar or equal to certain material devices or equipment designated by trade or manufacturer's name, the Contractor will be required to demonstrate to the satisfaction of the Engineer that the materials, devices or equipment he proposes to furnish are in fact similar or equal to those designated. It is understood and provided, moreover, that the decision of the Engineer on all such questions of similarity or equality shall be final and that in the event of any adverse decision, no claim of any sort shall be made or allowed against the Engineer or the owner.

If, subsequent to the signing of the contract and by reason of conditions of availability, time of delivery or other element of supply, the Contractor offers substitutions for the standards stipulated in the contract, the acceptability of such substitution may be conditioned upon adjustment of the contract price to reflect any difference between the cost of the article stipulated for standard in the contract and the cost of the article offered in substitution and if the Engineer finds such difference in costs due to general difference in quality, efficiency, history of performance or service for repairs or replacements, it being the intent herein that savings in cost which from substitutions subsequent to the signing of the contract shall occur in major part to the advantage of the Owner.

DEFECTIVE WORK

If at any time before the final payment for the work, any material or workmanship should be discovered which do not comply with the specifications and contract drawings, or which have become damaged as a result of Contractor's operations or neglect, they shall be immediately removed by the Contractor, when notified to do so by a written notice from the Owner, and they shall be replaced at the Contractor's expense. Any work condemned by the Engineer as unsuitable or improperly done shall be removed and repaired or otherwise remedied, as the owner may direct.

Any material condemned by the Engineer shall be removed from the site of the work within two (2) days if and after notice to that effect is given. Should work or materials not readily accessible or available to examination be suspected or be defective or not in accord with this contract, the Engineer may require the Contractor to uncover or take work down or to make openings in the finished work for the purpose of examination at such points as may be designated.

If the Contractor shall neglect or refuse to remove or replace defective work or materials or to uncover completed work for examination within seven (7) days from the date of the written notice to do so, then the Owner may remove or cause the same to be removed and satisfactorily replaced by contract or otherwise as it may deem expedient, and the Owner is empowered to charge the expense thereof to the Contractor. The expense so charged will be deducted and paid by the Owner out of such monies as are or may become due under this agreement, or if such monies are not sufficient to meet said expense, the additional monies shall be provided by the contractor, and if he refuses or neglects to provide the necessary monies, they shall be provided by his surety.

Failure or omission on the part of the Engineer or the Owner or any of their officers or agents, to condemn defective or inferior work, material or equipment, shall not release the Contractor from the obligation of tearing out, removing and properly replacing the defective work, material or equipment without compensation and at his own cost and expense at any time upon the discovery of said defective work, material or equipment prior to final acceptance of the entire contract and the release of the Contractor by the Owner, notwithstanding that such work, such material, or such equipment may have been estimated for payment, or that partial payments may have previously been made on the same.

If the work so uncovered meets the specifications and contract drawings in all particulars, then the Contractor shall be compensated for his cost of uncovering the work at the unit price bid for the classes of work involved in his complying with the Engineer's or the Owner's orders to uncover such work.

SUSPENSION OF WORK

The Owner may order any or all of the work suspended for reasons of public necessity, adverse weather, or for other causes. Upon receipt of such order in writing, the Contractor shall protect work and materials affected by the order and shall suspend all operations pertinent thereto.

LAWS AND ORDINANCES

The Contractor shall keep himself fully informed of, and shall carefully observe and comply with all Federal, State, Municipal, and Local Laws, Ordinances and Regulations which in any manner affect the conduct of the work, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the work and shall indemnify and save harmless the Owner, the Engineers, and all their officers, agents and servants against any claim or liability arising from or based upon the violation of any such law, ordinances, regulation, order or decree, whether by himself, his agents or employees.

WORKER'S COMPENSATION AND INSURANCE

The contractor shall comply with the State law known as the Worker's Compensation Act, and he shall relieve and protect the Owner from any costs due to accidents or other liabilities mentioned in said Act. At the time of delivery of this contract and at such other times as may be requested, the Contractor shall furnish official certificates or receipts showing compliance with the Act and the provision of adequate and proper compensation insurance. If, for any reason, employees engaged in the work of this contract are not or cannot be protected directly under the Worker's Compensation Act, the Contractor shall provide other and adequate compensation insurance for such employees together with proof thereof.

In case any of the work is sublet, the contractor shall require the subcontractor to provide compensation insurance for those employees who are not covered by the Contractor himself, and he shall furnish evidence that such insurance is provided.

The Contractor shall not perform any work on this contract until the requirements of this section have been met and proof thereof submitted to and approved by the Owner.

SOCIAL SECURITY

The Contractor shall be and remain an independent Contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on work performed under the terms of this contract, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are not or hereafter may be issued or promulgated under said respective laws by any duly authorized state and federal officials; and said Contractor also agrees to indemnify and save harmless the Owner from any such contributions or taxes or liability therefor.

PUBLIC LIABILITY, PROPERTY DAMAGES & AUTOMOBILE INSURANCE

The Contractor shall take out and maintain during the life of this contract at his own expense, public liability and property

damage insurance and owner's protective insurance which shall insure against liability arising out of any accident occurring as a result of this contract and the performance thereof, which will protect the Contractor, the Owner and the Engineer, in respect to the Owner's governmental capacity and any subcontractor performing work covered by this contract, from claims for damages due to personal injuries or wrongful death and damages to property which may arise from the operations under this contract, whether such operations be by the Contractor, any subcontractor or any agent or employees thereof directly or indirectly engaged in the performance of this contract and related matters, and such insurance coverage shall be not less than the following amounts to wit:

PUBLIC LIABILITY INSURANCE: Contractor must provide Comprehensive General Liability Insurance in amount no less than \$2,000,000.00 general aggregate, \$2,000,000.00 products, completed operations, \$1,000,000.00 personal injury and advertising offense, \$1,000,000.00 any one occurrence, \$50,000.00 fire legal liability, \$5,000.00 medical payments.

Independent Contractors coverage is to be written at a limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Explosion, collapse and underground liability must be included in the General Liability policy.

AUTOMOBILE INSURANCE: Contractor must provide automobile liability insurance in amounts no less than \$1,000,000.00 combined single limit bodily injury and property damage, \$1,000,000.00 hired and non-owned liability.

INSTALLATION FLOATER: Contractor shall insure for the life of the contract against all loss or damage by fire, windstorm, hail, lighting, explosion and other hazards covered by the "special perils" policy cover. The amount of coverage shall be the contract price. The City of Fairview Park shall be named as an additional insured and loss payee on this policy.

SUBLET WORK: Should any part of the work covered by this contract be sublet, the contractor must furnish satisfactory proof of insurance of the subcontractor and in the amounts deemed necessary and required by owner to provide insurance protection which will be equal to that specified by the principal contractor if no work were sublet.

GENERAL INSURANCE: The policies shall contain a 10 day notice at cancellation or reduction in coverage with respect to the contract involved. This written notice is to be mailed by the Insurance Company to the City of Fairview Park. The insurance is to be written, by an insurance company licensed to conduct business in the State of Ohio, and possess a rating by Best of AVI or better.

The City of Fairview Park is to be named as additional insured on the Contractors policy. A certificate of insurance will also be provided by the Contractor to the City of Fairview Park as evidence of limits of liability and naming the City of Fairview Park as additional insured. This certificate must provide 10 days notice of cancellation.

No work shall be performed until such proof of insurance be presented to be approved by the City of Fairview Park.

ACCIDENTS TO BE GUARDED AGAINST

The Contractor shall at all times exercise reasonable precautions for the safety of the public and of employees on the work, and he shall comply with all applicable provisions of Federal, State and Municipal safety laws. The Contractor must comply with the provisions of Sections 4101.11 and 4113.06, Ohio Revised Code, relative to providing a "Safe Place to Work." All machinery and other physical hazards shall be guarded in accordance with safety codes approved by the American Standards Association unless such codes are incompatible with Federal, State and Municipal laws or regulations.

The Contractor shall be held responsible for all accidents and shall indemnify, defend and save harmless the Engineer and the Owner from all suits, claims and actions, and all expenses, including costs to defend and costs for liability to which the Owner or the Engineer may be put for any injury or alleged injury to the person or property of another arising in connection with the performance of the Contractor's work, or in caring for the same, or from any improper or inferior workmanship or inferior materials used. The Contractor shall employ at all times as many watchmen as are needed and when necessary, shall erect and maintain on the work such strong and suitable barriers and at night time such red lights and/or flashers, as will effectually prevent any accident to life, limb or property in consequence of said work, or in the use or occupancy of street, alley, highway

or public or private grounds. All loss or damage to the work arising from fires, floods, storms, or other natural causes or from any detention, obstruction or other difficulties which may be encountered in the prosecution of the work shall be borne by the Contractor.

PATENTS

The Contractor shall indemnify and save harmless the Owner and its officers, agents and Engineers from all damages, judgements, claims and expenses arising from the infringement of any letters patent, or patent right or because of any royalty fee or license for the use, arrangement or operation of any tools, machinery, appliances, devices or materials which may be used by the Contractor or furnished by him in fulfillment of the requirements of this contract. In the event of any claim or action at law on account of such patents or fees, it is agreed that the Owner may retain out of the monies which are or which may become due the Contractor under this contract, a sum of money sufficient to protect itself against loss, and to retain the same until said claims are paid or satisfactorily adjusted.

CERTIFICATE OF APPROPRIATIONS

This contract, or any agreement subsidiary thereto, shall not be binding or of any force unless the Owner shall endorse thereon its certification that there remains unexpended or in process of collection and unapplied, an appropriation of funds applicable thereto and sufficient to pay the estimated expenses of completing this contract or subsidiary agreements which are certified by the officers making the same.

EXTRA WORK

Any additional work not originally contemplated under this contract, and which, in the opinion of the Engineer and the Owner seems desirable or necessary, shall be performed by the Contractor, if authorized, but only subsequent to and in accordance with subsidiary agreement between the Owner and the Contractor, in which agreement of the prices and method of payment and of doing the work and any extension of time, shall be fixed and agreed upon. The Contractor shall not proceed with work under any subsidiary agreement until so notified in writing by the Owner.

In case the parties to this agreement fail to agree upon the term of the said subsidiary agreement, the Owner shall have the right to provide otherwise for the execution of said work, and the Contractor shall permit the doing of said work, and afford every necessary opportunity therefor and further shall be entitled to no pay for damages due to delay or detention caused thereby.

It is agreed further that any increase in quantities of unit price items, over those stated in the estimated quantities, which might be required for the proper completion of this contract will not be classified as extra work, it being presumed that the bidder had verified the quantities before having submitted his proposal.

It is distinctly agreed and understood that any changes made in the plans and specifications for this work, whether such changes increase or decrease the amount thereof or any change in the manner or time of payments, nor of time for completing the work made by the Owner to the Contractor shall in no way annul, release or affect the liability and surety on the bond given by the Contractor.

ABANDONMENT OF WORK

Should the Contractor abandon or in any manner fail to complete the work of this contract, the Owner is hereby authorized and empowered to pay any laborers for work done who may have been employed by said Contractor upon the herein work, and to pay any claim against the Contractor for materials furnished, out of any funds that would otherwise be due or become due said Contractor under this contract, and in every case said Owner is hereby authorized and empowered to ascertain the amount or amounts so due or owing such labor or laborers, or for materials, from said Contractor, in such manner and upon such proof as it may deem sufficient. The amount or amounts so found to be due and payable to such labor or laborers, or for materials furnished, shall be final and conclusive against the Contractor, and may thereafter be paid by the Owner for said labor or laborer, and to liquidate claims for materials furnished; and any estimate or payment may be withheld from said Contractor until all such claims for labor or material on his contract have been satisfied.

FORFEITURE OF CONTRACT AND COMPLETION BY OWNER

If, at any time prior to the date of acceptance, the work to be done under this contract shall be abandoned by the Contractor, or if this contract or any part thereof shall be assigned or the work sublet by him without previous written consent of the Owner; or an employee thereof, shall become directly or indirectly interested in this contract or in furnishing the supplies or performing the work thereunder or in any portion of the profit thereof, or if at any time, the Owner shall be of the opinion that the performance of this contract is unnecessarily or unreasonably delayed, or that the Contractor is willfully violating any of the provisions of the contract; or if the work be not fully completed within the time named in this contract or such time may be extended in the manner herein provided; or if the Contractor shall fail or refuse to remedy defective work or materials when so ordered as herein provided; or if the Contractor should be adjudged bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, then and in any such case the Owner shall have the right and power to declare the whole or any part of the contract forfeited, and, in such event, shall notify the Contractor and his surety or affect the liability of the Contractor and his surety for breach of any of the covenant and conditions of said contract.

Upon the service of a declaration of forfeiture, the Contractor shall discontinue the work in whole or part as may be directed, hereupon the surety may, at its option, assume the contract, and proceed to perform the same, and may, with the written consent of the Owner, sublet the work or any portion of the work; provided, however, that the surety shall exercise its option within two (2) weeks after the date of service of notice of forfeiture. The surety, in such event, shall take the Contractor's place in all respects and shall be paid by the Owner for all work performed by it in accordance with the terms of the contract.

In case the surety does not, within the herein before specified time of two (2) weeks, exercise its right and option to assume this contract, to the extent forfeited, then the Owner shall have the right and power to complete by contract, or otherwise, as it may determine, the work in default, and for such completion the Owner, for itself or for its agents, may take possession of and use or cause to be used any materials, machinery, equipment, or tools provided by the Contractor, and may procure or cause to be procured other materials, machinery, equipment, or tools for the completion of the work, and the cost and expense thereof shall be charged to the Contractor or the surety.

All expenses, including those of re-letting, incurred at the instance of and charged under the foregoing clauses, or by virtue of this contract, shall be deducted from and paid by the Owner out of any monies then due the Contractor under and by virtue of this contract or any part thereof. In case such expense shall exceed the amount which would have been payable under the contract if the same had been completed by the Contractor, the Contractor or the surety shall pay the full amount of such excess to the owner; but should such expenses be less than the amount payable under this contract had the same been completed by the Contractor, he shall receive the difference, but shall not be entitled to damages for not being allowed to complete the work himself.

Should, by virtue of this section, a part or parts of the contract be forfeited, the Contractor hereunder shall continue the remainder of the work in conformity with the terms of this contract, and in such manner as no way to interfere with the operation of the Owner or of others designated to complete work forfeited as herein provided.

CLAIM FOR DAMAGES

If the Contractor shall claim compensation for any alleged damage by reason of the acts or omissions of the owner, or its Engineers or agents, he shall, within five (5) days after the sustaining of such damage, make a written statement to the Owner of the Nature of the alleged damage. On or before the last day of the month next succeeding that in which any such damage is claimed to have been sustained, the Contractor shall file with the claim an itemized statement of the details and amount of the damage and unless such itemized statement is filed as thus required, the Contractor's claim for compensation shall be forfeited and invalidated, and he shall not be entitled to payment on account of any such damage. Upon request of the Owner, the Contractor shall give the Owner access to all books of account, receipts, vouchers, bills of lading and other books or papers containing evidence relative to the amount of claimed damages.

TIME

Work on this contract shall be commenced within ten (10) days from the date of notice in writing from the City to proceed with work.

The work shall be carried and with such force and in such manner and order and at such points that within the number of days designated by the Contractor or established in his proposals or as may be modified or extended as hereinafter provided, and as computed for the date of notice to proceed with work, the whole work and its parts shall be performed in accordance with the terms of this contract.

It is mutually agreed by and between the parties hereto that time is an essential part of this contract, and that, if the Contractor shall fail to complete the work or any part thereof within the time above fixed, the Owner may retain as liquidated damages incident to such delay, from the monies that are or which may become due said Contractor, such sum per day as specified in the contract for each and every day (Sundays and legal holidays excepted) the completion of the work be delayed beyond the time specified herein for such completion.

It is agreed by and between the parties hereto that inasmuch as expenses and inconvenience and other damages will be sustained by the Owner in event that said Contractor fails to perform the work herein specified within the time herein set forth, such as inconvenience to the public, Engineer, and other departments, salaries of inspectors, delay caused to other work by failure to perform this contract and other elements, some of which are indefinite and in some cases insusceptible of easy proof, the sum per day specified in the contract for each days delay (Sunday and legal holidays excepted) shall be considered as liquidated damages and not as a penalty and shall become due said Owner in full payment for all expenses and damages sustained to it by the failure of said Contractor to complete the work as herein specified.

EXTENSION OF TIME

If the Contractor be delayed in the completion of the work by any act or neglect of the Owner or by any other Contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual cause beyond the Contractor's control, or by delay authorized by the Owner or by and cause with the Owner shall decide to justify the delay, then for all such delays and suspensions, the Contractor shall be allowed one (1) day additional to the time herein stated for each and every day of such delay so caused in the completion of the work, the same to be ascertained by the Engineer and a similarly allowance of extra time for such delays as the Engineer may find justified, or to have been caused by the Owner.

The Contractor is cautioned to take full cognizance of time required for delivery of materials and equipment and should be governed accordingly in setting his time for completion and in placing his orders. Delay in delivery may not be accepted by the Owner as justification for extension of time.

No such extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay, a written request for additional time shall be filed with the Owner. In case of a continuing cause of delay, only one (1) request is necessary.

No claim for damages or any claim other than for an extension of time as herein provided shall be make or asserted against the Owner by reason of any of the delays herein before mentioned.

PRICES

The Owner will pay and the Contractor shall receive the prices herein stipulated in the proposal herein contained or hereto annexed, as full compensation for everything required to be furnished and done by the Contractor under this contract, including all incidental work required but not specifically mentioned, and also for all loss or damage arising out of the nature of the work or from action of the weather, floods or from any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work herein specified, and for well and faithfully completing the work and the whole thereof as herein provided, together with the remedying of all defects developing within the period for which the work is under guarantee.

The Owner is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price or a trade discount from catalog prices, shall be exclusive of all such taxes and

will be so construed.

LABOR AND MATERIAL SUPPLIERS

- (a) The Contractor shall well, truly and promptly pay or satisfy the just and equitable claims of all persons who have performed labor or furnished material for said contract in the execution of the contract, including those who shall have previously filed attested account of such claims with the Owner and all bills, costs or claims of whatever kind which might in law or equity become a lien upon said work or against the Owner. In case said attested accounts, claim, bills, or costs are not paid or adjusted to the satisfaction of the Owner, then it is agreed the said Owner may proceed as in the next succeeding paragraph.
- (b) The Owner may retain out of any monies at any time due the Contractor, a sum sufficient to pay all persons who have done work or furnished labor or materials for the work herein contracted for, and who shall have filed an attested account of such claims with the Owner within four (4) months from the performance of labor, or the delivery of materials, and before the acceptance of said work, stating that any balance for said work or materials is still due and unpaid, which amount may be retained by the owner until satisfactory evidence is furnished to the Owner that said balance has been fully paid, and if said evidence is not furnished before the next estimate becoming due to the Contractor under the contract, the Owner may pay said balance to the person claiming it and charge such payment to the Contractor as payment on the contract, unless the Contractor shall have previously filed with the Owner written notice that such claim is in dispute. In the event of such dispute, the owner will retain the amount until the claim has been adjusted or the money paid into court on proceedings in the nature of an inter-pleader.

PARTIAL PAYMENT ESTIMATES

On the first day of each month, or within seven (7) days thereof, during construction, the Contractor shall prepare and submit to the Engineer for approval, an estimate of the amount of labor performed and of the amount of materials incorporated in the work and/or materials delivered to the site in reasonable amounts and in proper condition. The Engineer shall review the Contractor's estimate for the Owner to verify that the estimate is just and fair of the amount of value of work satisfactorily done and the materials and equipment incorporated into the work during the previous calendar month. Upon agreement between the Engineer and Contractor as to the amount of labor performed and of the materials incorporated in the work and/or materials delivered to the site, the Engineer will approve the estimate and submit it to the Owner for payment to the Contractor. More frequent estimates may, at the option of the Owner, be made at any time during the progress of the work, and payment may at any time be withheld if the work is not proceeding in accordance with this contract.

Partial payment to the Contractor for work performed under a lump sum price shall be based on a detailed cost breakdown of the bid showing labor and material as prepared by the Contractor preceding the state of construction and approved by the Engineer.

Allowances at invoice prices or at the unit price bid for materials, or the lesser value of the two, will be made for approved nonperishable equipment and materials which are to be incorporated into the work, when approved, delivered, properly stored and protected upon the site and verified to the Engineer by a copy of the invoice. For materials and equipment meeting the foregoing conditions, the Owner will pay, when properly included in an approved estimate, ninety-two percent of the invoice value of the same. Until the job is fifty percent (50%) completed, the Contractor will be paid ninety-two (92%) of the estimated value of labor and material completed. All labor performed after the job is fifty percent (50%) completed shall be paid for at a rate of one hundred percent (100%) of the estimates submitted by the Contractor and approved by the Engineer, provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. The retainer shall be withheld by the Owner until thirty (30) days after completion of work as defined, and upon completion of the work, the retainage shall be reduced to that amount necessary to assure completion of the contract work and retained for thirty (30) days after the approval and acceptance of the contract work by the Owner. After the job is fifty percent completed, material incorporated in the work and labor performed will be paid for at one hundred percent of the estimated value of same as bid.

The Owner may at all times reserve and retain out of any/or all of said partial payments, all such sums as it is or may be authorized to reserve or retain. The making of any such estimates or payment thereon shall not be taken or construed as an

approval or acceptance by the owner of any work or estimates.

The Contractor may provide the owner with a cash bond or irrevocable letter of credit in lieu of the eight percent (8%) cash retained held by the Owner until construction is 50% complete, or the four percent (4%) total retained held thereafter, or of that amount retained by the Owner necessary to assure completion of the contract amount. The cash bond or irrevocable letter of credit shall be that of an approved surety company or financial institution, to the satisfaction of the Director of Law and meeting the provision of the Contract Bond as to agent, Surety Company and failure of surety. The cash bond or irrevocable letter of credit shall be only for all or part of the amount retained until completion of the work, and thereafter, shall be equal to the total amount being retained by the Owner and due the Contractor. All provision of the Contract including Completion of Work Defined, Approval and Acceptance of Work, Release of Guaranty Retainer, and Warranty Band shall be applicable to the manner in which the release of the cash bond or irrevocable letter of credit shall be executed.

COMPLETION OF WORK DEFINED

The time for completion of the herein specified work is defined as that stage when the installations included under this contract have been completed and tested and are, together ready for continuous, permanent, satisfactory use and occupancy for the purpose intended. After this date there may still remain some cleaning up of Contractor's plant or other minor work which does not prevent the permanent satisfactory use of the installations. The date established by the owner as the date of completion shall be the date from which bonus or liquidated damages shall be computed.

APPROVAL AND ACCEPTANCE OF THE WORK

Following the completion of this contract, as such completion is defined herein; and after the Contractor has completed all work required by him to be done in full conformity with the plan, specifications and the orders of the Owner; and after he had completed fine grading, seeding, sodding, and landscaping and has removed all equipment, debris, construction shanties and trailers; and after he has repaired or replaced all damaged fence, walks, drives, shrubbery, trees, etc.; and when he has repaired all defects in material and workmanship and cleaned up all work included in the Engineer's check list; THEN, the Owner will inspect the entire work in all parts and details, or cause the same to be inspected by the Engineer, and if said work and all workmanship, materials and equipment, and all contract performances are found to be satisfactory, complete and in accordance with the provisions and terms of the contract and specifications, the Engineer will certify the work as acceptable and will accept it upon behalf of the Owner, in writing to the Contractor. The date of the letter of acceptance shall be the beginning of the thirty day guarantee period and shall also be the date for preparation of the Pre-Final Estimate which will release to the Contractor all monies due him less a retainer of ten (10) percent of the total due the Contractor, which shall be security in guarantee for a period of thirty (30) days.

RELEASE OF GUARANTEE RETAINER

Within thirty days after acceptance of the work by the Owner, the Owner will make or will cause to be made, and inspection of the work, materials and equipment and of all contract performances. If the said performance and work shall be found satisfactory and the work shown no signs of deterioration through defects of workmanship, equipment or materials; and after the Contractor has furnished the owner a notarized affidavit evidencing his satisfaction of any and all claims of whatever nature against the Contractor; and upon Contractor's delivery to the Owner of an acceptable Maintenance Bond; then the Owner shall certify the release of the four (4) percent guarantee retainer and will instruct the Engineer to prepare and to issue the final estimate, releasing to the Contractor all funds due him excepting only such monies as the Owner may be authorized or required by law to retain. Release of the final estimate shall also release the surety on the Contract Bond. If, however, the review and re-inspection as herein or any prior inspection discloses defects due to the nonfulfillment of this contract, or noncompliance with its requirements, the Owner shall so notify the Contractor in writing, and thereupon the Contractor shall, at his own expense, repair and replace and shall make good all defects of workmanship, materials and guarantee, and shall rectify any noncompliance and such repairs and fulfillment shall be a prerequisite to certifying the release of the guarantee retainer and of the surety on the Contract Bond. If, however, the Contractor shall, after due notice, refuse or neglect to make good the defects as notified and to the satisfaction of the Owner, then the owner may and is empowered to proceed in the manner prescribed in the event of abandonment or forfeiture of the work by the Contractor, and completion by the Owner and the payment of claims for materials and labor and other expenses as provided in such procedures shall be a prerequisite to the release of, the four percent (4%) retainer and to the release of the surety on the Bond.

MAINTENANCE BOND

Before the four percent (4%) guarantee retainer is released to the Contractor, as above provided, the Contractor shall furnish to the Owner an acceptable maintenance bond for a period of two years to insure the Owner against any defects in the work, materials or equipment which might become manifest during the period of required maintenance, and which shall be corrected at the full cost of the Contractor and at no cost to the Owner.

Maintenance Bond shall be that of an approved surety company, to the satisfaction of the Law Director, and meeting the provisions of the Contract Bond as to agent, Surety Company, and failure of surety. Maintenance Bond shall be for ten percent (10%) of final contract value. (See Section 5.301 Maintenance Bond.)

Within twenty-five (25) months after the acceptance of the work as herein before provided, and provided, further, that any repairs necessitated by defects in material or workmanship as determined by the Owner shall have been made, the Owner upon certification in writing by the Engineer, that the terms of the contract have been complied with and the work and the performances of the contract itself satisfactorily and fully completed, will inform the Contractor of the Owner's final acceptance of the work and such notice will serve to release the contractor of any further liability on the contract and the surety on the Maintenance Bond.

OTHER CONTRACTS

It is understood and agreed that the Contractor shall execute his work in such a manner and in such order as will not interfere with work in progress and will permit the Owner to perform other work or to enter into other contracts for work herein described, with the least interference possible and with complete cooperation whenever it is desirable to prosecute said work, either simultaneously with the work under this contract or otherwise.

It is agreed that the Contractor shall not be entitled to any damages or extra compensation from the Owner an account of any work performed by the Owner or other Contractors that in any way affects the work under this contract, provided that such work of the Owner and other Contractors shall in the opinion of the Engineer be performed in a proper and expeditious or a necessary manner. The Engineer shall decide all questions between the Contractor hereunder, and other Contractors; and the order of the carrying and the work shall always be subject to his direction and approval.

If, in the judgment of the Engineer, the joint occupation of the site of the work by the Owner or by two or more Contractors working an different contracts as the time, actually impeded progress of the work herein described, then the Engineer may extend the time for the completion of the work and in an amount which accords with and compensates for the delays so caused.

In case the Contractor by his own acts or the acts of any person or persons in him employ, shall unnecessarily delay, in the opinion of the Engineer, the work of the Owner or other Contractors, by not properly cooperating with them, or by not affording them sufficient opportunity or facility to perform work as may be specified, the Contractor shall, in that case, pay all costs and expenses incurred by such parties due to any such delays, and he hereby authorizes the Owner to deduct the amount of such cost and expenses from any monies due or to become due the Contractor under this contract. The Engineer shall decide the extent of such delay or delays, and the amount of such cost and expenses, and his decision shall be binding upon both parties to this contract. Nothing contained in the paragraph shall however, relieve said Contractor from any liability or damage resulting to the owner an account of such delay or delays.

SUBLETTING-ASSIGNING

The Contractor shall give his personal attention to the faithful prosecution of the work, shall keep the same under his personal control, and shall not assign by power of attorney or otherwise, nor sublet the work or any thereof, without the previous consent of the Owner, and shall not, either legally or equitably, assign any of the monies payable under this agreement, or his claim thereto, unless by and with the like consent of the Owner. Assigning or subletting the whole or any portion of this contract shall not operate to release the Contractor or the Surety hereunder from any of the contract obligations.

NO WAIVER OR ESTOPPEL

The Owner shall not be precluded or estopped by any return or certificate made or given by it from at any time either before or after the final completion and acceptance of the work and payment therefore pursuant to any such return or certificate, showing the true and correct amount and character of the work done and materials furnished by the Contractor or any other person under this agreement, or from showing at any time that any such return or certificate is untrue and incorrect or improperly made in any particular, or that the work or materials, or any part thereof, do not in fact conform to the specifications; and the Owner shall not be precluded or estopped notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the specifications. Neither the acceptance by the Owner, nor any order, measurement or certificate by the Owner, nor any order for payment of money, nor any payment for, nor acceptance of the whole or any part of the work by the Owner, nor any extension of time, nor any processions taken by the owner, or its employees, shall operate as a waiver of any portion of this contract or of any power herein provided; nor shall any waiver of any breach of this contract be held to a waiver of any other or subsequent breach.

DIVISION OF WORK

The part of the contract specifications which deal with materials and construction matters, essential to the performance of this contract, are generally divided into units of work for the purpose of ready reference. The actual division or assignment of any of the work among his subcontractors, as may be necessary by the Contractor to properly perform the contract, is the Contractor's responsibility and the Engineer hereby assumes no responsibility to act as an arbiter to establish subcontract limits between the Divisions, Parts, Sections, or Subsections of the work. The Contractor is reminded, however, that all subcontractors must be approved as provided for elsewhere in the specifications.

LOCAL INCOME TAXES

The Contractor shall be responsible for assuring that all locally taxable income of all person and/or firms who have done work or otherwise provided goods and/or services as a part of the Contractor's obligation for the project a reported to the local government which has proper jurisdiction for taxing such aforementioned incomes. He shall comply with all local ordinances regarding income reporting and tax withholding for his employees, subcontractors, suppliers, etc. as applicable. He shall ascertain that his employees, subcontractors, and suppliers are all properly informed of their respective local income tax obligations.

CONSTRUCTION SCHEDULE

The Contractor shall provide a proposed construction schedule for the project to the Engineer at the pre-construction meeting for approval. The schedule shall set up a dated and detailed program for the starting and completing of all sections for the work in each state. It shall also provide space for the detailed charting of the actual progress of all portions of the scheduled work. No payment will be made to the Contractor unless his construction schedule has been submitted and approved by the Engineer.

The Contractor shall submit the construction schedule, upon which has been indicated the actual progress with each requisition for payment.

If the Contractor shall fail to maintain the scheduled progress as noted above, the City may, by giving the Contractor five (5) day written notice, require the Contractor to provide for overtime and/or additional manpower until such progress schedule is brought up to date.

The cost for this additional manpower or for providing overtime shall be borne solely by the Contractor.

If the Contractor, after written notice to said effect, makes no substantial effort to speed up his work and to meet the schedule, then the Owner may notify the Contractor's Surety of the circumstances or may declare the work abandoned or forfeited and proceed according to the provisions of this contract.

PROGRAM AND METHOD OF CONSTRUCTION

The order of sequence of execution of the work, the methods of construction, the general conduct of the work, and the general arrangement of the construction plant to be installed shall be at all times subject to the approval and direction of the Engineer.

If at any time before the commencement or during the progress of the work, or any part of it, such methods, features, and appliances used or to be used appear to the Engineer as unsafe, insufficient or improper, he may order the Contractor to increase their safety or efficiency or to improve the character, and the Contractor shall conform to such orders, but the failure of the Engineer to demand any increase of such safety, efficiency, adequacy or any improvement shall not release the Contractor from his obligation to secure the safe conduct and quality of the work specified.

NIGHT WORK

No night work or work on Sundays and legal holidays requiring the presence of an Engineer or Inspector will be permitted except in case of emergency and, then only to such an extent as is absolutely necessary and with the written permission of the Engineer.

WORK IN FREEZING WEATHER

Unless written permission be given, work liable to be affected by frost shall be suspended during freezing weather. When work proceeds under such a condition, the Contractor shall provide approved facilities for heating the materials and for protecting the finished work.

SANITARY MEASURES

Sanitary conveniences for the use of all persons employed on the work shall be contracted and maintained by the Contractor in sufficient number, in such manner, and in such places as shall be approved by the Engineer. All persons connected with the work shall be obligated to use them, and any employees found violating these provisions shall be discharged and not again employed without written consent. All necessary precautions, including the care of employees, shall be at all times satisfactory to the governing Health Department. The Contractor shall promptly and fully comply with all orders and regulations in regard to these matters.

PUBLIC TRAVEL NOT TO BE OBSTRUCTED

The Contractor shall provide at his own expense means for public travel over, by, or around the work as it progresses so far as he may, in the judgment of the Engineer, be able to do so without injury to the work. Such means for travel to be maintained so as to inconvenience public travel as little as possible.

ACCESS TO PROPERTY

The Contractor shall grade all driveways and side ditches, when and to the extent ordered to do so by the Engineer, that occupants or owners of property may not be deprived of access to their premises. Such grading will not be paid for as such, and the cost thereof must be included in the various item of the contract.

WORK OUTSIDE OF PUBLIC RIGHT OF WAY

The Contractor shall not perform work outside of the public right of way.

LIGHTS AND PROTECTION

The Contractor shall, when necessary, erect and maintain such strong and suitable barriers and such lights as will effectually prevent the happening of any accidents to health, limb or property. Lights shall be maintained between the hours of sunset and sunrise.

SEWAGE, SURFACE AND FLOOD FLOWS

The Contractor shall furnish all the necessary equipment, shall take all necessary precautions, and shall assume the entire cost of handling and properly disposing of any sewage, seepage, storm surface, and flood flows which may be encountered at any time during the construction of the work. The manner of providing for these flows shall meet with the approval of the Engineer, and the entire cost of said work shall be included in the price stipulated for the work to be done under this contract.

COOPERATION WITH UTILITIES

The Contractor is hereby notified that this work shall be so scheduled and performed as to provide a minimum of interference with any and all utility services. Continuous services will be maintained at the same level during construction as existing prior

to the construction. If because of construction operation, it is necessary to interrupt such utility service, a designated representative of the Owner of the Utility involved shall be advised in writing not less than 72 hours in advance of such proposed interruption. Work of this type shall be scheduled to be performed during periods of minimum demand, day or night, on the utility involved and within the time limit established by the Owner's representative. Periods of shutdown longer than those established as the maximum by the Owner of the Utility involved will not be permitted. If such shutdowns occur, the Contractor will be considered liable for any resultant damages.

OBSTRUCTIONS ENCOUNTERED

The information regarding size, depth and locations of the underground Utilities is shown on the plans in conformity with O.R.C. Sec. 153.64(B). The Contractor shall comply with the provision of O.R.C. Sec. 153.64. If the Contractor encounters an underground utility requiring relocation which is not shown on the plans nor marked on the ground by the owner of the underground utility and the Contractor has complied with O.R.C. Sec. 153.64, the utility company charge for such relocation shall not be paid unless approved in writing by the Engineer.

UNDERGROUND UTILITY FACILITIES

The Contractor shall, at least two working days, excluding Saturdays, Sundays, and legal Holidays, prior to commencing construction operations in the construction area which may involve underground utility facilities, cause notice to be given to the registered underground utility protection services and the owners of utility facilities shown on the plans and specifications who are not members of a registered underground utility protection service, in writing, by telephone, or in person.

The Contractor shall alert immediately the occupants of nearby premises as to any emergency that he may create or discover at or near such premises. The Contractor shall report immediately to the owner or operator of the underground facility any break or leak in its lines or any dent, gouge, groove, or other damage to such lines or to their coating or cathodic protection, made or discovered in the course of their excavation.

Any anticipated temporary or permanent relocation of underground utility facilities deemed necessary by the Engineer shall be negotiated or arranged by the City with the owners of the underground utility facilities prior to the start of construction. If a temporary or permanent relocation of utility facilities is necessary, the owner of the underground utility facility shall be given a reasonable time to move such utility facilities.

Disputes in the application of O.R.C. Sec. 153.64 shall be resolved by the Engineer and determination shall be a final resolution of the dispute.

The Contractor will be required, to do everything necessary to protect, support, and sustain all sewers, water or gas pipes, service pipes, electric lights, power, telephone or telegraph poles, conduits, and other fixtures laid across or along the site of the work. The cost of protecting and supporting existing utilities shall be borne entirely by the Contractor and shall be included in the unit price bid items for pipe or structures.

Relocation of underground utility facilities owned by others than the City of Fairview Park shall be performed by the owners of said underground utility facilities.

PROTECTING EXISTING BUILDINGS AND STRUCTURES

The Contractor shall, at his own expense, shore up and protect any building or other public or private structures which may be encountered or endangered in the prosecution of the work, and that may not be otherwise provided for, and he shall repair and make good any damages caused to any such property by reason of his operations. All existing fences which, due to the prosecution of the work, were removed shall be replaced by the Contractor. No extra payment will be made for said work or material, but the cost of this work must be included in the price stipulated for the work to be done under this contract.

MONUMENTS AND LANDMARKS

Monuments and landmarks shall not be molested or removed by the Contractor or any of his employees without the written

consent of the Owner. Any monument or landmark so removed will be replaced by the Engineer at the expense of the Contractor. The cost thereof shall be retained from the monies due or to become due the Contractor under this agreement.

AID TO THE INJURED

The Contractor shall keep in this office, ready for immediate use, all articles necessary for giving "First Aid to the Injured". He shall also have standing arrangements for the immediate removal and hospital treatment of any employee who may be injured on the work.

STORING OF MATERIALS AND EQUIPMENT

All materials required for the work may be stored on the site at such locations as are designated by the Engineer, but all such materials, tools and machinery shall be neatly and compactly piled so as to cause the least inconvenience to the Owner and others at the site.

Materials, tools and machinery shall not be piled or placed against shade trees, unless they shall be amply protected against injury therefrom. All materials, tools, machinery, etc., stored upon public thoroughfares must be provided with red lights at night time so as to warn the traffic of such obstruction.

Materials shall be stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by the Contractor at his expense. Private property shall not be used for storage purposes without written permission of the Owner or lessee, and copies of such written permission shall be furnished to the Engineer. All storage sites shall be restored to their original condition by the Contractor at his expense. This shall not apply to the stripping and storing of topsoil, or to other materials salvaged from the work. The City disclaims all responsibility for loss or damage to stored materials or equipment, or both.

LINE AND GRADE

All base lines and all bench marks for grades have been established by the Engineer and are shown on the plans.

The Contractor will be responsible for furnishing his own line and grade from the stakes furnished by the Engineer. No special compensation will be made for the cost to the Contractor of any of the work or delay occasioned by giving base lines and bench marks or making other necessary measurements or by inspection, but such cost shall be considered as having been included in the price stipulated for the work to be done under this contract. Base lines, bench marks, line and grade stakes shall be furnished by the Engineer only once. If the Contractor damages, destroys or otherwise renders said points unusable or inaccurate, the Engineer will replace said points at the Contractor's expense. The cost of replacement shall be deducted from monies due the Contractor.

ACCESS TO ENGINEER

During the prosecution of this contract, the Contractor shall enable and facilitate access to all parts of the work by the Engineer.

CLEANING UP

The Contractor shall at his own expense, keep the site of his operation, building or structure being worked on clean during the construction, and shall remove all rubbish as it accumulates.

Before final acceptance, the project, including stream, channels and banks at drainage structures and all borrow and waste areas, storage sites, temporary plan sites, haul roads and other ground occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures, all equipment. These areas shall have suitable vegetative cover established by seeding and mulching or by other approved methods, and all parts of the work shall be left in an acceptable condition.

MILL AND SHOP TESTS INSPECTION

Where the construction and materials specifications call for mill or shop tests, the Contractor shall furnish duplicate copies of attested manufacturer's certificates showing details of quality or performance sufficient to demonstrate conformity to contract requirements. Mill, shop or witness tests shall be subject to view by the Engineer's representative, but the Engineer's representation shall not relieve the Contractor from the necessity of furnishing certificates specified. The Engineer shall be notified by the Contractor in writing, sufficiently in advance of the time of making tests, so that proper arrangements may be made. Waiving of witness of tests by the Engineer may be in writing only by the Engineer. All costs for travel, lodging, food and transportation that are necessary for the Engineer's representative to attend witness tests shall be included in the Contractor's bid for those item(s) specifically designated as being subject to witness testing.

UNNECESSARY NOISE

The movement and use of machinery and equipment, the handling of materials, and the conduct of the work shall be such as to avoid and eliminate unnecessary noise, dirt and dust. The contractor shall comply with the City of Fairview Park requirements and ordinances concerning noise.