
**CONTRACT DOCUMENTS
AND SPECIFICATIONS**

**MARSHALL ELEMENTARY WATERLINE EXTENSION
(U.S 27 Corridor from Stillwell Beckett Road to 3260 Oxford-Millville Rd)
for the
TALAWANDA CITY SCHOOL DISTRICT**

December 14, 2020

BOARD MEMBERS

Chris Otto	President
Mary Jane Roberts	Vice-President
Pat Meade	Member
Rebecca Howard	Member
Kathleen Knight-Abowitz	Member

PREPARED BY:

Talawanda City School District
131 W. Chestnut Street
Oxford, OH 45056

Shaunna Tafelski
Treasurer/CFO

Date

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INVITATION FOR BIDS

Separate sealed BIDS for the contract of **Oxford Millville Road Waterline Extension** will be received by the Board Members of the Talawanda City School District at the Board Office located at 131 West Chestnut Street Oxford, Ohio 45056 until **10:00 A.M.** (LOCAL TIME) on **January 11, 2021**, and then at said office publicly opened and read aloud. Bidders should address all questions in writing to Treasurer/CFO Shaunna Tafelski at the District, tafelskis@talawanda.org.

No pre-bid meeting will be held for this project.

Each Bidder is required to furnish with its proposal a Bid Guaranty in accordance with Section 153.54 of the Ohio Revised Code. Such Bid Guaranty shall be in the form of either a bond, secured by a corporate surety, in the amount of 100% of the bid amount; **OR** a certified check, cashier's check, or irrevocable letter of credit, made payable to the District, in an amount equal to 10% of the Bid amount. All corporate sureties shall be licensed in the State of Ohio to provide said surety.

Each Proposal must contain the full name of the party or parties submitting the Proposal and all persons interested therein.

All contractors and subcontractors involved with the project will, to the extent practicable, use Ohio products, materials, services and labor in the implementation of this project. This is not an Ohio prevailing wage project pursuant to R.C. 4115.04(B)(3) and (C).. This project is funded by Talawanda City School District and the Southwest Regional Water District.

The CONTRACT DOCUMENTS, consisting of INVITATION FOR BIDS, INFORMATION FOR BIDDERS, BID FORM, BID GUARANTY, AGREEMENT, GENERAL CONDITIONS, SUPPLEMENTAL GENERAL CONDITIONS, PERFORMANCE AND PAYMENT BOND, NOTICE OF AWARD, NOTICE TO PROCEED, DRAWINGS, SPECIFICATIONS AND ADDENDA, may be examined at the following location:

Talawanda City School District 131 West Chestnut Street, Oxford, OH 45056

Copies of the CONTRACT DOCUMENTS may be obtained at the Board office at 131 West Chestnut Street, Oxford, Ohio, 513-273-3100 (tafelskis@talawanda.org). Contact the Board office for pricing of the contract documents.

The project is described as follows: Install 7,238 ft of 8-inch ductile iron water main and appurtenances, in Hanover Township, Butler County, Ohio.

No contract will be awarded if the lowest and best Base Bid is in excess of 10% above the Engineer's pre-bid estimate of cost, which is \$553,697.40. The Board will award one or more contracts, whichever is in the best interest of the Board.

The Talawanda City School District reserves the right to reject any or all bids and to waive any nonmaterial irregularities in the bidding.

Chris Otto, Board President
Talawanda City School District

**CHECKLIST FOR SUBMITTING BID
ALL ITEMS MUST BE INCLUDED**

PROJECT: TALAWANDA CITY SCHOOL DISTRICT

Oxford-Millville Road Waterline Extension

BID DATE: JANUARY 11, 2021 — 10:00 A.M. EST

- _____ 1. Bid Form – completed and signed. Submit entire book; do not remove Bid Form from book.
- _____ 2. A Bid Guaranty, properly signed by the Bidder and its surety, in the sum of at least 100% of amount bid **OR** a certified check, irrevocable letter of credit, or cashier’s check in the amount of 10% of the bid amount.
- _____ 3. Evidence, including Owner/Engineer names and phone numbers, that five similar projects have been performed.
- _____ 4. Proof of registration to do business in the state of Ohio, if the Bidder is a foreign corporation (“foreign” means anywhere but Ohio), limited liability company, partnership, limited partnership or limited liability partnership.
- _____ 5. New Hire Reporting Information form
- _____ 6. Pages EEO-3 and EEO-5, completed
- _____ 7. EEO Certificate of Compliance (page EEO-3) or proof of application for same.
- _____ 8. Proof on enrollment in Ohio BWC Drug-Free Workplace Program (see EEO-2 or proof of application for same.

INFORMATION FOR BIDDERS

The Talawanda City School District Board ("Board"), a political subdivision of the state of Ohio organized under Title 33 of the Ohio Revised Code, is soliciting bids, in accordance with these plans and specifications, for the completion of the **Oxford-Millville Road Waterline Extension** ("Project"). All work involved in the Project is to be completed on a furnish-and-install basis. Nothing within these contract documents shall be interpreted to relieve the Contractor from any responsibility for the storage, handling, and protection of any and all materials and equipment, etc., required by the proposals.

The Engineer for the Project is Bayer & Becker, Inc, an independent company contracted for professional services with the Talawanda City School District, 131 West Chestnut Street, Oxford, OH 45056.

This Project is not subject to prevailing wages.

This Project is fully funded by The Board and the Southwest Regional Water District.

The Board shall not award a bid to a bidder which is a foreign corporation, limited liability company, partnership, limited partnership, limited liability partnership, or other form of business entity (except a sole proprietorship) until the bidder demonstrates to the satisfaction of the District that the bidder is registered to do business in the state of Ohio.

THE BID

Each sealed envelope containing a Bid must be plainly marked on the outside as a Bid for the **Oxford Millville Road Waterline Extension**, and the envelope should bear on the outside the name of the Bidder and his address. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to the Talawanda City School District, 131 West Chestnut Street, Oxford, Ohio 45056 and clearly marked on the outside "**Oxford Millville Road Waterline Extension**".

All Bids must be made on the required Bid Form. All blank spaces for Bid prices must be legibly filled-in, with ink or typewritten, and the Bid Form must be fully completed and signed when submitted. Only one copy of the Bid Form is required. **DO NOT REMOVE BID FORM FROM BOOK – SUBMIT WHOLE BOOK.**

A conditional or qualified Bid will not be considered.

The Board may waive any informalities or defects which do not materially affect the fairness of the bidding process, and may reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within 60 days after the actual date of the opening thereof. If the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Board and the Bidder.

Prior to bidding, the Board, or its designated representative(s), shall make available to Bidders all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The Contract Documents contain the provisions required for the completion of the Project. Information obtained from an officer, agent, or employee of the Board or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the contract.

Domestic steel use requirements as specified in Section 153.011 of the Revised Code apply to this project. This project is not supported by state capital funds. Copies of Section 153.011 of the Revised Code can be obtained from any of the offices of the Department of Administrative Services.

When working in public road rights-of-way, the Contractor shall include in his price for crossing said roads, all work necessary in the right-of-way including grading and seeding as outlined in the specifications. Contractor shall be responsible for all damage to the road surface, and to any other property adjoining the work area, unless otherwise expressly provided in the contract documents.

Bidders must satisfy themselves of the accuracy of the estimated quantities in the Bid Schedule, and of the representations as to worksite conditions and other project details, by examination of the site and a review of the contract Documents including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the quantities of Work or the nature of the Work to be done.

The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his bid. No plea of ignorance of conditions that exist, or of condition of the Work under this contract, as a result of failure to make the necessary examinations and investigations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail the requirements of said Contract, Specifications and Drawings or will be accepted as basis for any claim whatsoever for extra compensation.

Any mathematical errors discovered in a Bid Schedule will be corrected based upon the unit prices for labor and material stated in the Bid.

No Bid(s) will be accepted for the Project if the total of the lowest Bid(s) for all contracts related to the Project is in excess of 10% of the estimated construction cost for the Total Project. **As of the date of preparation of the Contract Documents, the estimated Engineer's construction cost is \$553,697.40.** The Owner may from time to time amend the estimated cost for any Division in accordance with section 153.12 of the Ohio Revised Code. Notwithstanding that multiple Divisions may be covered by these Contract Documents, the Divisions shall collectively constitute a single project; **provided, however**, that the Owner shall have the right to reject all bids for any one, or more, Divisions and to rebid the Division(s) for which all bids were rejected.

BID GUARANTY; PERFORMANCE AND PAYMENT BOND; INSURANCE

Each Bid must be accompanied by a Bid Guaranty payable to the Board. Such Bid Guaranty shall be in the form of either:

- a bond, secured by a corporate surety, in the amount of 100% of the bid amount; or
- a certified check, cashier's check, or irrevocable letter of credit, made payable to the Owner, in an amount equal to 10% of the bid amount.

The Bid Guaranty shall be in the form set forth in the Bid Book. All corporate sureties shall be authorized to execute bonds in Ohio, and the surety's liability incurred on such bond shall be within the limits of section 3929.02 of the Ohio Revised Code. Any letter of credit shall be revocable only at the option of the Board. As soon as the BID prices have been compared, the Board will return the Bid Guaranty of all except the three lowest Bidders. When the Agreement is executed by the successful bidder, the Bid Guaranty of the two remaining unsuccessful Bidders will be returned.

The Bid Guaranty, in bond form, upon acceptance of the Bid, shall constitute a Performance and Payment Bond. If the Bidder submits a 10% bond, a Performance and Payment Bond (in the form included in the Bid Book) in the amount of 100 percent of the Contract Price, with a corporate surety approved by the Board, will be required for the faithful performance of the contract.

The Contractor shall include in his bid price, or prices, the cost of all insurance set forth in the General Conditions and any Supplemental General Conditions.

CONTRACT AWARD

Based upon its analysis of the bids and other information gathered by the Board relative to the bids and the bidders, the Board Members will determine which bidder submitted the lowest responsive and responsible bid and award the contract(s) for the Project to the lowest responsive and responsible bidder; notwithstanding the foregoing, the Board reserves the right to reject all bids and to rebid, or abandon, the Project as the Board determines to be in the best interests of the School District. The lowest Bid will be determined by the lowest Total Unit Price Base Bid.

This determination will be based upon any Bidder's compliance with all requirements of the Contract Documents and upon the Board's assessment of any Bidder's ability to execute the contract properly after considering information available to the Board concerning the Bidder's, including but not limited to:

- Experience in the construction of projects of similar size and complexity, especially projects relating to public potable water production and distribution facilities;
- Experience, conduct and performance on previous contracts with the District;
- Financial condition;
- Employees, staff, subcontractors, agents, facilities and equipment available for the Bidder's performance of the work covered by the Bid; and
- Management skills.

The Board may make such investigations as it deems necessary to determine the ability of any Bidder to perform the Work, and such Bidder shall furnish to the Board all such information and data for this purpose as the Board may request. In considering the relevant information, the Board will assign such weight to any relevant factor as the Board deems appropriate based upon the facts and circumstances relative to each bid. In determining the lowest responsive and responsible bid, the Board also reserves the right to consider whether the interests of the Board will be best served by awarding a combined contract for both Part 1 and Part 2, or by awarding separate contracts for Part 1 and Part 2.

Upon award of the contract by the Talawanda City School District's Board Members, a Notice of Award shall be delivered to the successful bidder. The party to whom the contract is awarded will be required to execute the Agreement, and to provide any required Performance and Payment Bond within ten (10) calendar days from the date when Notice of Award is delivered to the Bidder. The Notice of Award shall be accompanied by the necessary Agreement and Bond forms. In case of failure of the Bidder to execute the Agreement, the Board may, at its option, consider the Bidder in default, in which case the Bid Guaranty accompanying the proposal shall become the property of the Board.

In addition to execution of the Agreement, the successful Bidder shall also execute and deliver to the Board the following documents in the form attached hereto:

1. Contractor's Acknowledgement (page IB-10);
2. New Hire Reporting Information (page IB-11); and
3. Civil Rights Compliance (page IB-12).

Within five (5) days of the Board's receipt of the properly executed Agreement, the Performance and Payment Bond (if applicable), Certificates of Insurance and the other documents as required herein, the Board shall execute the Agreement and return to the Contractor an executed duplicate of the Agreement. Should the Board not execute the Agreement within such period, the Bidder may by written notice withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the Board.

A Notice to Proceed shall be issued within five (5) days of the execution of the Agreement by the Board. Should there be reasons why a Notice to Proceed cannot be issued within such period, the time

may be extended by mutual agreement between the Board and Contractor. If a Notice to Proceed has not been issued within the five (5) day period or within the period mutually agreed upon, the Contractor may terminate the Agreement without further liability on the part of either party.

TIME OF COMPLETION

All work is to be substantially complete (all complete excepting establishment of grass growth) no later than **75 calendar days** after the Notice to Proceed. TIME IS OF THE ESSENCE OF THIS AGREEMENT. In the event of an unjustified delay in completion of the work, liquidated damages shall be deducted from any sums remaining unpaid under the Agreement, or from any retainage. The amount of liquidated damages shall be \$200.00 per calendar day.

PERMITS

The Board shall provide all special drawings for permit applications and approvals for construction within the right-of-way for any public road or any railroad. It shall be the Contractor's responsibility, prior to construction and installation of water mains, within any right-of-way for any public road or any railroad, to verify that the governing agency has issued to the Board the necessary permits or approval for construction within such right-of-way. The Contractor shall also comply with all requirements and specifications of such governing agencies. The Contractor shall have in its possession or have access to, at all times, a copy of the necessary permit(s), approval(s), and drawing(s) when working within any right-of-way for any public road or any railroad.

REGULATORY ISSUES

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout. The Board is a political subdivision of the state of Ohio and must comply with various provisions of Ohio law relative to the making, execution and performance of its contractual obligations. Although the District makes a good faith effort to comply with its legal obligations, the Contractor is charged with knowledge of all such legal requirements. The Contractor will immediately notify the Board if the Contractor has reason to believe that the Board has failed to abide by, or has otherwise failed to comply with, any such legal requirement which might either affect the validity of the Agreement, or give rise to a claim by Contractor or any other party in connection with the performance of this Agreement. Upon receipt of such notice from the Contractor, the Board will make a good faith effort to correct its performance, if possible, so as to bring the Board into compliance with such legal requirement(s); Contractor agrees to cooperate with the Board to achieve such compliance.

Bidder shall abide by the nondiscrimination and equal employment requirements of Ohio law, and specifically to comply with any Discrimination prohibitions set forth in the Supplemental General Conditions.

Contractor shall comply with all applicable federal, state and local laws and regulations, including but not limited to:

- OSHA and other safety standards and regulations;
- Ohio EPA and health department requirements;
- Ohio workplace smoking regulations;
- FLSA, Ohio minimum wage law, Ohio prevailing wage laws (if applicable) and other laws relating to the payment of wages or other compensation;
- Legal requirements relative to the collection and payment of taxes on the earnings of Contractor's employees.

In hiring and retaining employees, agents or contractors for the performance of work under this contract, or any subcontract, neither the Contractor, nor any subcontractor, nor any person acting on their respective behalf, shall:

- discriminate against any person by reason of race, creed, national origin, gender, handicap, disability, or color, who is qualified and available to perform the work to which the employment relates;
- discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, sex, handicap or color;
- employ any person who is not a citizen or legal resident of the United States, or otherwise legally eligible for employment in the United States.

NON-DISCRIMINATION STATEMENT

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: program.intake@usda.gov

USDA is an equal opportunity provider, employer, and lender.

Talawanda City School District is an equal opportunity provider and employer.

GENERAL

Wherever in these Contract Documents and Specifications the words "provide", "provided" or "providing" are written, they shall be interpreted to read "furnish and install", "furnished and installed" and "furnishing and installing", respectively. Pronouns used in the Contract Documents and Specifications shall be regarded as being gender neutral unless the context clearly requires otherwise.

Plans, specifications, and extra proposal forms issued to prospective Bidders are intended to be complete for preparing and submitting of proposals. However, each Bidder shall verify to its own satisfaction that all material issued to it are complete. After Bids have been submitted, no claims of ignorance of the requirements of bidding or of construction due to such missing material will be recognized.

Bidders shall carefully examine the entire site of the work and adjacent premises and the various means of approach to the site(s) and shall make all necessary investigations to inform themselves thoroughly as to the facilities for delivering, placing, and operating the necessary construction plant, and the facilities for delivering and installing the equipment specified and for handling the materials at the site, and to inform themselves thoroughly as to all the difficulties that may be encountered in the complete execution of all Work, in accordance with the Specifications and Drawings.

Upon request, all available material information in the possession of the Board, or any designated Engineer, will be shown to the Bidders, but the correctness of such information is not guaranteed.

Notwithstanding any other provision of the Contract Documents and Specifications, Contractor's guarantee as described in the Contract Documents and Specifications shall be for a period of one year after the Board's final acceptance of the work.

The Board has the right to increase or decrease the quantity of any unit price bid item as outlined in the Bid Proposal. Payment will be made at the unit price specified in the bid for the quantity actually installed.

ENVIRONMENTAL ISSUES

Contractor shall provide temporary sanitary facilities, or otherwise make arrangement for sanitary facilities, for the use of its employees and contractors at, or in the vicinity of, the work site(s) involved in the Project.

Contractor shall control all unnecessary noise.

Contractor shall control dust by wetting down or use of chemicals when necessary or requested by the Board.

All areas disturbed by construction shall be restored to at least the original preconstruction conditions, and to the satisfaction of the Board.

SPECIAL PROJECT INFORMATION

- Water main shut-downs will not be permitted on Board-observed holidays (Christmas Eve, Christmas Day, New Year's Eve, New Year's Day and Martin Luther King Day).
- Contractor shall reimburse the Board for inspection of any Saturday work at the rate of \$75/hour. Contractor will not be permitted to perform any work requiring inspection on Sundays.
- Maintenance of Traffic is of the utmost importance for the safety of Contractor's employees and of the traveling public, due to the high volume of traffic and the high percentage of heavy vehicles. Contractor shall adhere to ODOT CMS and MUTCD (latest edition) requirements.
- The proposed water main in several areas will be installed along either up/down-slopes or side-slopes. Erosion and sedimentation control of disturbed areas (using silt fencing, straw bale inlet filters around catch basins, straw bale ditch checks, etc.) shall be maintained at all times until restored grass areas are established and accepted.

TALAWANDA CITY SCHOOL DISTRICT
Contractor's Acknowledgment

Project: Oxford-Millville Road Waterline Extension
Contractor:
Engineer: Bayer & Becker, Inc.
Pre-Construction Conference Date:

For the express purpose of inducing the Talawanda City School District to issue its Notice to Proceed with Construction on the above-referenced Project, the undersigned, being the duly-authorized representative of the Contractor named above who attended the Pre-Construction Conference regarding the above Project on the date specified above, does state and warrant, the following:

1. Contractor has thoroughly reviewed the Plans, Specifications and Contract Documents, and the Project Site, and has raised all issues or ambiguities relating thereto with the Engineer. Contractor is satisfied with the condition of such Plans, Specifications and Contract Documents and is aware of no defects or ambiguities therein which have not been explained, or corrected, to its satisfaction;
2. Contractor understands that:
 - a. The Engineer, Resident, or Field, Inspector designated for the Project by the Owner is observing Contractor's work on the Project for the sole protection of Owner's interests.
 - b. Said Inspector has no authority to approve any construction methods employed by the Contractor, nor to give Contractor any directions as to how the work on the Project is to be completed.
 - c. Although said Inspector may direct Contractor to stop work in the event that the Inspector determines that Contractor's work is NOT in compliance with the Project Plans, Specifications and Contract Documents, Contractor shall NOT rely on any action, inaction or statement by the Inspector as to whether any construction methods are in accordance with the Project Plans, Specifications and Construct Documents.
 - d. All issues relating to Change Orders, and changes in, or deviations from, the Project Plans or Specifications, may be resolved only with the Engineer, or the District's Operations Manager.
3. Contractor is solely responsible for compliance with OSHA rules and regulations, and for the safety of Contractor's employees, agents, subcontractors and subcontractor's employees, during the course of construction on the Project.

Dated: _____

Contractor

By _____

Printed Name _____

New Hire Reporting Information
Ohio Dept. of Job & Family Services
Child Support Enforcement

The Talawanda City School District is required to report certain information to the Ohio Dept. of Job & Family Services whenever an independent contractor is either a:

- Sole proprietorship;
- Single shareholder corporation; or
- Single member limited liability company.

To enable the District to comply with its legal obligations, each contractor must complete the following:

- The Contractor hereby certifies that the Contractor is NOT a sole proprietorship, single shareholder corporation or single member limited liability company.
- The Contractor hereby certifies that the Contractor is a sole proprietorship, single shareholder corporation or single member limited liability company. *The following information is provided regarding the sole proprietor, single shareholder or single member:*

Name: _____

Home Address: _____

Social Security Number: _____

Date of Birth: _____

Dated: _____

Contractor

By _____

Printed Name _____

CIVIL RIGHTS COMPLIANCE

[Construction Project Agreement]

R.C. § 153.59

In connection with this contract, Contractor agrees that:

1. In the hiring of employees for the performance of work under the contract or any subcontract, neither Contractor, any of Contractor's subcontractors, nor any person acting on a Contractor's or a subcontractor's behalf, by reason of race, creed, sex, disability or military status (as defined in section 4112.01 of the Ohio Revised Code), or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and
2. Neither contractor, any of Contractor's subcontractors, nor any person on Contractor's or any subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color; and
3. Contractor currently has, and will maintain during the term of this contract, an affirmative action program for the employment and effective utilization of disadvantaged persons whose disadvantage may arise from cultural, racial, or ethnic background, or other similar cause, including, but not limited to, race, religion, sex, disability or military status (as defined in section 4112.01 of the Ohio Revised Code), national origin, or ancestry.

Contractor: _____

By: _____

Title: _____

Date: _____

BID FORM

Proposal to the Talawanda City School District (hereinafter called "**OWNER**") by _____ (hereinafter called "**BIDDER**"), whose address is _____, and whose form of business entity¹ is:

- ___ sole proprietor
- ___ partnership organized under the laws of the state of _____
- ___ corporation organized under the laws of the state of _____
- ___ limited liability company organized under the laws of the state of _____
- ___ other: _____ organized under the laws of the state of _____

In compliance with the Invitation for Bids and Information for Bidders, BIDDER hereby proposes to perform all WORK for the construction of **Oxford-Millville Road Waterline Extension** in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the price of: \$_____, as stated in the attached **BID SCHEDULE**. Bidder hereby certifies that it has reviewed the CONTRACT DOCUMENTS, that it intends to complete the project with no deviation from the CONTRACT DOCUMENTS and that it can complete the project in the time frame specified in the CONTRACT DOCUMENTS. BIDDER acknowledges receipt of the following ADDENDA:

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to its own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within the time specified in the CONTRACT DOCUMENTS. BIDDER further agrees to pay as liquidated damages, the sums set forth in the CONTRACT DOCUMENTS in the event of failure to complete the PROJECT by the completion date.

Bidder's Full Legal Name: _____

By: _____
(Signature)

Date: _____

(Printed name and title of person signing above)

Phone Number: _____

Email: _____

¹ **NOTE:** At the time of execution of the Contract, the successful bidder must be authorized to do business in the state of Ohio.

Bid Guaranty

(For use with surety)

[R.C. §§ 153.54(A)(1) & (B); R.C. § 153.571]

Know All Men By These Presents, that we, the undersigned _____, as principal, and _____, as sureties, are hereby held and firmly bound unto the Talawanda City School District, as obligee, in the penal sum of the dollar amount of the bid submitted by the principal to the obligee on _____ to undertake the project known as **Oxford-Millville Road Waterline Extension**. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal on the date referred to above to the obligee, which are accepted by the obligee. In no case shall the penal sum exceed the amount of \$_____. *(If the foregoing blank is not filled in, the penal sum will be the full amount of the principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.)* For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this _____ day of _____, 20_____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for **Oxford- Millville Road Wateline Extension**.

NOW, THEREFORE, if the obligee accepts the bid of the principal and the principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material; and in the event the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into a proper contract in accordance with the bid, plans, details, specifications, and bills of material, which said contract is made a part of this bond the same as though set forth herein;

NOW ALSO, if the said obligee shall well and faithfully do and perform the things agreed by the principal to be done and performed according to the terms of said contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefor shall in any wise affect the obligations of said surety on its bond.

Executed this _____ day of _____, 20____.

Principal Signature

*Surety (Proper Power-of-Attorney **must be attached**)*

IMPORTANT - Surety companies executing BONDS or BID GUARANTIES must be authorized to execute bonds in the state of Ohio; the liability incurred by the surety on this Bond must be within the limits of section 3929.02 of the Ohio Revised Code.

Notices concerning this Bid Guaranty shall be addressed to:

Owner:	Shaunna Tafelski, Treasurer/CFO	Talawanda City School District 131 West Chestnut St. Oxford, OH 45056
Principal (Bidder)		
Surety		
Surety's Agent		

Bid Guaranty

(For use with certified check, cashier's check, or letter of credit)

[R.C. §§ 153.54(A)(2) & (C); R.C. § 153.57]

Know All Men By These Presents, that the undersigned, as principal, is hereby held and firmly bound unto the Talawanda City School District in the penal sum of

\$ _____ (*not less than 10% of bid amount*), for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

Signed this ____ day of _____, 20____.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named principal has submitted a bid for as **Oxford- Millville Road Waterline Extension**.

NOW, THEREFORE, if the obligee accepts the bid of the principal, the principal, after the awarding or the recommendation for the award of the contract, whichever the obligee designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. If for any reason, other than as authorized by section 9.31 of the Revised Code or division (G) of R.C. §153.54, the principal fails to enter into the contract, and the obligee awards the contract to the next lowest bidder, the principal is liable to the obligee for the difference between the principal's bid and that of the next lowest bidder, or for a penal sum not to exceed ten per cent of the amount of the bid, whichever is less. If the obligee does not award the contract to the next lowest bidder but resubmits the project for bidding, the principal failing to enter into the contract, except as provided in division (G) of R.C. §153.54, is liable to the obligee for a penal sum not to exceed ten per cent of the amount of the bid or the costs in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less.

Executed this ____ day of _____, 20____.

Principal

AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20____, by and between **Talawanda City School District**, hereinafter called "OWNER" and _____, hereinafter called "CONTRACTOR," whose form of business entity is:
_____ sole proprietor
_____ partnership organized under the laws of the state of _____
_____ corporation organized under the laws of the state of _____
_____ limited liability company organized under the laws of the state of _____
_____ other: _____ organized under the laws of the state of _____

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of **Oxford-Millville Road Waterline Extension**.
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 10 days after the date of the NOTICE TO PROCEED and will fully complete the PROJECT within the time specified in the contract documents.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$ _____, or as shown in the BID schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - a. INVITATION FOR BIDS
 - b. INFORMATION FOR BIDDERS
 - c. BID FORM
 - d. BID GUARANTY
 - e. AGREEMENT
 - f. GENERAL CONDITIONS
 - g. SUPPLEMENTARY GENERAL CONDITIONS
 - h. PERFORMANCE AND PAYMENT BOND (IF SEPARATELY REQUIRED)
 - i. NOTICE OF AWARD
 - j. NOTICE TO PROCEED
 - k. CHANGE ORDER
 - l. SPECIFICATIONS prepared and issued by Southwest Regional Water District, included in the document titled "Contract Documents and Specifications **Oxford-Millville Road Wateline Extension** for the Talawanda City School District" dated December 2020.
 - m. DRAWINGS sheets 1 through 7 entitled Oxford-Millville Road Waterline Extension and dated _____.
 - n. ADDENDA;
 - No. ____, dated _____, 20__
 - No. ____, dated _____, 20__
 - No. ____, dated _____, 20__

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. All work is to be substantially complete no later than **60 calendar days** following issuance of the Notice to Proceed. TIME IS OF THE ESSENCE OF THIS AGREEMENT. In the event of an unjustified delay in completion of the work, Contractor shall be responsible for all damages (including loss of net revenue from the sale of water) suffered by the Owner as a direct and proximate result of such delay. In view of the difficulty in determining the exact amount of such damages, the parties agree that Contractor shall, in lieu of actual damages caused by such delay, pay liquidated damages to Owner in the amount of \$200.00 per calendar day. Owner may deduct such liquidated damages from any sums remaining unpaid under the Agreement, or from any retainage.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in one (1) copy, which shall be deemed an original on the date first above written.

OWNER

TALAWANDA CITY SCHOOL DISTRICT

BY _____
Chris Otto, Board President

CONTRACTOR

BY _____

Name and Title

CERTIFICATE REGARDING AVAILABILITY OF FUNDS

The undersigned as Treasurer/CFO of the Talawanda City School District, hereby certifies that the funds necessary to meet the obligations of the Talawanda City School District under the terms of this Contract have been lawfully appropriated for the purpose of the Contract and are in the Treasury of the Talawanda City School District, or are in the process of collection to the credit of the appropriate fund free from prior encumbrance.

Shaunna Tafelski, Treasurer/CFO

The foregoing Agreement and the attached Bond(s) are approved as to form.

Chris Otto, Board President

Performance and Payment Bond

(To be executed after award of contract by Bidder submitting 10% Bid Guaranty)

[R.C. § 153.54(C)(1); R.C. § 153.57]

Know All Men By These Presents, that we, the undersigned _____ as principal, and _____, as sureties, are hereby held and firmly bound unto The Talawanda City School District, as obligee, in the penal sum of \$_____, the dollar amount of the contract executed between the principal and the obligee on the _____ day of _____, 20____, to undertake the project known as **Oxford-Millville Road Waterline Extension**.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal and the obligee have executed a contract for the project known as **Oxford-Millville Road Waterline Extension**.

NOW, THEREFORE, if the principal shall perform the contract according to its provisions and in accordance with the plans, details, specifications, and bills of material thereafter; and shall indemnify the obligee against all damage suffered by any failure of the principal to perform such contract; and shall pay all lawful claims of subcontractors, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said contract; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said contract or in or to the plans or specifications therefore shall in any wise affect the obligations of said surety on its bond.

Executed this _____ day of _____, 20_____.

By _____
Principal

By _____
Surety
(Proper Power-of-Attorney documentation must be attached)

IMPORTANT - Surety companies executing BONDS or BID GUARANTIES must be authorized to execute bonds in the state of Ohio; the liability incurred by the surety on this Bond must be within the limits of section 3929.02 of the Ohio Revised Code.

Notices concerning this Bond shall be addressed to:

Owner:	Shaunna Tafelski, Treasurer/CFO	Talawanda City School District 131 West Chestnut St. Oxford, OH 45056
Principal (Bidder)		
Surety		
Surety's Agent		

NOTICE OF AWARD

To: _____

Date: _____

PROJECT: Oxford-Millville Road Waterline Extension

The Talawanda City School District (“Owner”) has considered your Bid dated _____, submitted by you for the above described PROJECT in response to its Advertisement for Bids. You are hereby notified that your Bid has been accepted in the amount of \$ _____.

You are required by the Information for Bidders to execute the Agreement and furnish the Contractor’s Performance and Payment Bond (if required) and certificates of insurance within ten (10) calendar days from the date of this notice to you.

If you fail to execute said Agreement, furnish any required Bond or provide the required certificates of insurance within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner’s acceptance of your Bid as abandoned and as a forfeiture of your Bid Guaranty. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner.

TALAWANDA CITY SCHOOL DISTRICT

BY _____

Chris Otto, Board President

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE of AWARD is hereby acknowledged.

BY _____

(signature)

(printed name and title)

NOTICE TO PROCEED

To: _____

Date: _____

Project: **Oxford-Millville Road Waterline Extension**

You are hereby notified to commence Work in accordance with the Agreement dated _____, 20____ on or before _____, 20____, and you are to substantially complete the Work no later than _____, 20____. The date of completion of all Work is therefore _____, 20____.

TALAWANDA CITY SCHOOL DISTRICT

BY _____
Chris Otto, Board President

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE of AWARD is hereby acknowledged.

BY _____
(signature)

(printed name and title)

CONTRACT CHANGE ORDER NO. _____	PURCHASE ORDER NO.: _____ DATE OF CONTRACT: _____ DATE OF COMPLETION: _____ JOB NO.: <u>18305</u>
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Name of Project:
Oxford-Millville Road Waterline Extension

Name and Address of Contractor:	Owner: Talawanda City School District 131 West Chestnut St. Oxford, OH 45056
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TO CONTRACTOR: You are hereby requested to comply with the following changes from the Contract Plans and Specifications.

JUSTIFICATION:

Changes to Contract Documents	DECREASE in Contract Price	INCREASE in Contract Price
	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____
NET CHANGE IN CONTRACT PRICE THIS CHANGE ORDER	\$ _____	\$ _____

Original Contract Amount Including Previous Change Orders	\$ _____
Amount of Decrease or Increase for this Change Order	\$ _____
Contract Amount to Date Including this and Previous Change Orders	\$ _____

The Contract Period Provided for Completion will be
 (Increased) (Decreased) (Unchanged): _____ Days

This document will become a supplement to the Contract and all provisions will apply hereto.

ACCEPTED BY: _____	_____	_____	
	Contractor	Title	Date
RECOMMENDED BY: _____	_____	_____	
	Engineer	Title	Date
APPROVED BY: _____	_____	_____	
	Owner	Title	Date

GENERAL CONDITIONS

1. **Definitions**
2. **Additional Instructions and Detail Drawings**
3. **Schedules, Reports and Records**
4. **Drawings and Specifications**
5. **Shop Drawings**
6. **Materials, Services and Facilities**
7. **Inspection and Testing**
8. **Substitutions**
9. **Patents**
10. **Surveys, Permits, Regulations**
11. **Protection of Work, Property, Persons**
12. **Supervision by Contractor**
13. **Changes in the Work**
14. **Changes in Contract Price**
15. **Time for Completion and Liquidated Damages**
16. **Correction of Work**
17. **Subsurface Conditions**
18. **Suspension of Work, Termination and Delay**
19. **Payments to Contractor**
20. **Acceptance of Final Payment as Release**
21. **Insurance**
22. **Contract Security**
23. **Assignments**
24. **Indemnification**
25. **Separate Contracts**
26. **Subcontracting**
27. **Engineer's Authority**
28. **Land and Rights-of-Way**
29. **Guarantee**
30. **Arbitration**
31. **Taxes**

1. **DEFINITIONS:** Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural hereof:

1.1. **ACCEPTANCE** – Final action adopted at a public meeting of the OWNER'S Board of Education, based upon certification by the ENGINEER, approving the date of SUBSTANTIAL COMPLETION.

1.2. **ADDENDA** - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3. **BID** - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4. **BIDDER** - Any person, firm, corporation or other form of business entity submitting a BID for the WORK.

1.5. **BONDS** - Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6. **CHANGE ORDER** - A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7. **CONSTRUCTION AREA** - the area delineated on the DRAWINGS and SPECIFICATION for the PROJECT within which the WORK provided for in the CONTRACT DOCUMENTS will be performed. Such area(s) may also be referred to in the CONTRACT DOCUMENTS as the Work Site(s).

1.8. **CONTRACT DOCUMENTS** - The contract, including Advertisement For Bids, Information For Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, GENERAL CONDITIONS, SUPPLEMENTAL GENERAL CONDITIONS, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.9. **CONTRACT PRICE** - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.10. **CONTRACT TIME** - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.11. **CONTRACTOR** - The person, firm or corporation with whom the OWNER has executed the Agreement.

1.12. **DRAWINGS** - The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.13. **ENGINEER** - The person, firm or corporation designated by the OWNER in the CONTRACT DOCUMENTS. If the designated ENGINEER is an employee of the OWNER, the functions of the ENGINEER shall be performed by the OWNER.

1.14. **FIELD ORDER** - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.15. **NOTICE OF AWARD** - The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.16. **NOTICE TO PROCEED** - Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.17. **OWNER**—The Talawanda City School District, a political subdivision of the state of Ohio organized under Title 33 of the Ohio Revised Code.

1.18. **PROJECT** - The undertaking to be performed as provided in the CONTRACT DOCUMENTS. Notwithstanding that multiple Divisions may be described in, referred to or covered by these CONTRACT DOCUMENTS, any such Divisions shall collectively constitute a single PROJECT.

~~1.19. **RESIDENT PROJECT REPRESENTATIVE** - The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.~~

1.20. **SHOP DRAWINGS** - All drawings, diagrams, illustrations, brochures, schedules and other data which

are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.21. SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.22. SUBCONTRACTOR - An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.23. SUBSTANTIAL COMPLETION - That date, as certified by the ENGINEER and approved by the OWNER, when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.24. SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions required by a Federal or State agency, or other funding source, for participation in the PROJECT, or such requirements that may be imposed by applicable state laws.

1.25. SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but how does not perform labor at the site.

1.26. WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.27. WRITTEN NOTICE - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1. The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2. The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

3.1. The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2. If the PROJECT is identified in the CONTRACT DOCUMENTS as being subject to the Ohio Prevailing

Wage Law, the CONTRACTOR shall timely submit to the OWNER'S prevailing wage coordinator all wage schedules and other documents as may be required by law, or as otherwise requested by the prevailing wage coordinator.

3.3. Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.3.1. The dates at which special detail drawings will be required; and

3.3.2. Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.4. The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. DRAWINGS AND SPECIFICATIONS

4.1. The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2. In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3. Any discrepancy found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SHOP DRAWINGS

5.1. The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2. When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3. Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

6.1. It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2. Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.2.1. To be eligible to receive payment for stored materials, such materials must be stored at the work site, or at a site approved, in advance, by the OWNER.

6.2.2. When an estimate is allowed and paid on account of material and equipment delivered and stored as provided herein under the control of the CONTRACTOR but not yet incorporated into the WORK, such material and equipment shall become the property of the OWNER under the contract, but if such material is stolen, destroyed, or damaged by casualty before being used, the CONTRACTOR shall be required to replace it at his own expense.

6.3. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4. Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5. Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

7.1. All materials and equipment incorporated into the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2. The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.2.1. From time to time during the course of CONTRACTOR'S performance of the WORK, the OWNER may provide an inspector to determine whether CONTRACTOR has completed the WORK to

the OWNER'S satisfaction in accordance with requirements of the CONTRACT DOCUMENTS.

7.2.2. Although the OWNER'S inspector may be present at the worksite, the inspector's responsibility is merely to determine whether CONTRACTOR has completed the WORK to the OWNER'S satisfaction, and the inspector shall have no authority or responsibility to direct the procedures or methods used by the CONTRACTOR to perform the WORK except where specific procedures or methods are expressly required by the CONTRACT DOCUMENTS, or are a necessary component of performing the WORK in accordance with CONTRACTOR'S standard of care as described herein.

7.3. The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4. If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the contractor will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5. Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6. The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7. If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8. If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

8.1. Whenever a material, article or piece of equipment is identified on the DRAWINGS and SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its submission and use by the CONTRACTOR.

8.2. No substitution for specified material, article or piece of equipment shall be made without the express, advance, written approval of the ENGINEER.

8.3. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER.

8.4. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1. Any license or royalty fees required by the WORK under these contracts shall be the responsibility of the CONTRACTOR.

10. SURVEYS, PERMITS, REGULATIONS

10.1. The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2. The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3. Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith,

he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1. The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2. The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction over the WORK and any worksite connected with the PROJECT. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. Prior to commencing any excavations in connection with the PROJECT, the CONTRACTOR shall notify the Ohio Underground Protective Service (OUPS) and comply with all requirements of Ohio law concerning such excavations.

11.3. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.4. In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

12.1. The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all

communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

13.1. The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2. The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within five (5) business days after the receipt of the ordered change. Thereafter, the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within ten (10) business days. The CONTRACTOR shall not execute such change pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1. The CONTRACT PRICE may be changed only by a CHANGE ORDER approved by the OWNER, ENGINEER and CONTRACTOR in advance of the performance of the additional WORK subject to the CHANGE ORDER.

14.1.1. Due to exceptional circumstances, at the request of the CONTRACTOR and upon the recommendation of the ENGINEER, the OWNER may, in its discretion, approve a CHANGE ORDER after the performance of the WORK subject to the CHANGE ORDER.

14.1.2. *No claim for additional work shall be recognized without an executed CHANGE ORDER. The CONTRACTOR hereby waives any claim for any additional WORK not covered by a CHANGE ORDER approved by the OWNER.*

14.2. A change in the CONTRACT PRICE as provided in a CHANGE ORDER shall be determined by one or more of the following methods in the order of precedence listed below:

14.2.1. Unit prices previously approved.

14.2.2. An agreed lump sum.

14.2.3. The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1. The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2. The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3. If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4. The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1. To any preference, priority or allocation order issued by the OWNER.

15.4.2. To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and

15.4.3. To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2. All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1. In accordance with section 153.64(B) of the Ohio Revised Code, the OWNER:

17.1.1. Prior to the preparation of the DRAWINGS and SPECIFICATIONS for the PROJECT, contacted the Ohio Underground Utility Protection Service (OUPS), and the owners of underground utility facilities that are not members of OUPS, for the existence and location of all underground utility facilities within the CONSTRUCTION AREA.

17.1.2. Has included in the DRAWINGS AND SPECIFICATIONS for the PROJECT, or in the CONTRACT DOCUMENTS, the identity and location of the existing underground utility facilities located in the CONSTRUCTION AREA as provided to the OWNER by the owner of each underground utility facility and the name, address, and telephone number of each owner of any underground utility facilities in the CONSTRUCTION AREA that does not subscribe to a registered underground utility protection service.

17.1.3. Will, within ten (10) calendar days after the award of the CONTRACT for the PROJECT, notify in writing all owners of underground utility facilities known to be located in the CONSTRUCTION AREA of the name and address of the CONTRACTOR.

17.2. Except as noted herein, or an otherwise noted in the CONTRACT DOCUMENTS, the OWNER has not conducted any excavation, soil testing, core sampling or other investigation concerning subsurface conditions within the CONSTRUCTION AREA.

17.3. The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.3.1. Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.3.2. The OWNER shall promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment may be made and the CONTRACT DOCUMENTS modified by a CHANGE ORDER in accordance with section 14 hereof.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1. The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2. If the CONTRACTOR is adjudged a bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if

he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK, or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3. Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4. After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT.

18.5. After ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, CONTRACTOR may terminate the CONTRACT if, through no act or fault of the CONTRACTOR, any of the following occurs:

18.5.1. the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority;

18.5.2. the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted;

18.5.3. the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or in accordance with Section 30 hereof within thirty (30) days of its approval and presentation, then the CONTRACTOR may,

In lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon then (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due.

18.6. In the event of termination of the CONTRACT in accordance with either section 18.4 or section 18.5 hereof,

the CONTRACTOR shall be paid for the WORK performed in compliance with the CONTRACT based upon either:

18.6.1. the unit price established in the CONTRACT DOCUMENTS; or

18.6.2. in the event no unit price has been established, a pro rata portion of the CONTRACT PRICE in accordance with the percentage of work completed as determined by the ENGINEER.

18.7. If, without fault of the CONTRACTOR, the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure, without just cause, of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. PAYMENTS TO CONTRACTOR

19.1. Not later than the 10th day of any calendar month during the period commencing with the issuance of the Notice to Proceed and ending with the month immediately following completion of the WORK, the CONTRACTOR may submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the prior calendar month and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and stored in accordance with section 6.2 of these General Conditions, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect his interest therein, including applicable insurance.

19.2. The ENGINEER will, within six (6) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate.

19.3. The OWNER will, within fourteen (14) days of presentation to him of a partial payment estimate approved by the ENGINEER, either approve or reject the partial pay estimate; CONTRACTOR understands that the OWNER'S Board of Trustees must approve any partial pay estimate at a public meeting and that such meetings are regularly held on the second and fourth Tuesdays of each month.

19.4. In the event OWNER rejects a partial payment request, OWNER will immediately provide CONTRACTOR with a written statement of the reasons for his rejection.

19.5. Within ten (10) days after OWNER'S approval of a partial payment request, OWNER will pay the CONTRACTOR a progress payment in accordance with sections 153.12-14 of the Ohio Revised Code as follows:

19.5.1. Partial payments to the CONTRACTOR for labor performed under either a unit or lump sum price contract shall be made at the rate of ninety-two per cent of the estimates prepared by the CONTRACTOR and approved by the ENGINEER. All labor performed after the job is fifty per cent completed shall be paid for at the rate of one hundred per cent of the estimates submitted by the CONTRACTOR and approved by the ENGINEER.

19.5.2. Partial payments to the CONTRACTOR for materials stored in accordance with the CONTRACT shall be at the rate of ninety-two per cent of the invoice costs, not to exceed the bid price in a unit price contract, provided such materials have been inspected and found to meet the specifications. The balance of such invoiced value shall be paid when such material is incorporated into and becomes a part of the WORK. If materials are not billed until after they have been incorporated into the WORK, partial payments for incorporated material shall be at the rate of one hundred per cent of invoice cost.

19.5.3. From the date the CONTRACT is fifty per cent complete, as evidenced by payments in the amount of at least fifty per cent of the CONTRACT to CONTRACTOR, except in the case of contracts the total cost of which is less than fifteen thousand dollars, all funds retained pursuant to sections 153.12 and 153.14 of the Ohio Revised Code for the faithful performance of work shall be deposited in an escrow account as described in section 153.63 of the Ohio Revised Code.

19.5.4. After the CONTRACT is fifty per cent complete, no further funds shall be retained.

19.5.5. When the major portion of the PROJECT is substantially completed and occupied, or in use, or otherwise accepted, and there exists no other reason to withhold retainage, the retained percentages held in connection with such portion shall be released from escrow and paid to the CONTRACTOR, withholding only that amount necessary to assure completion. Funds in the escrow account not heretofore paid, with accumulated interest, shall be paid to the CONTRACTOR thirty days from the date of completion or either acceptance or occupancy by the OWNER.

19.6. Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.7. The OWNER shall have the right to enter the premises for the purposes of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.8. Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by

him under the conditions of the CONTRACT DOCUMENTS.

19.9. The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.10. Upon the failure of the OWNER to make payments as provided herein or in accordance with Ohio law, or upon an unauthorized withholding of retainage, there shall be allowed to the CONTRACTOR, in addition to any other remedies allowed by law, interest on such moneys not timely paid in accordance with section 153.14 of the Ohio Revised Code.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1. The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK.

20.2. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the BOND provided by CONTRACTOR to OWNER to secure CONTRACTOR'S performance under the CONTRACT DOCUMENTS.

21. INSURANCE

21.1. The CONTRACTOR shall procure and maintain, at his own expense, during all times from issuance of the NOTICE TO PROCEED through OWNER'S final acceptance of the WORK,

21.1.1. Liability insurance as hereinafter specified:

21.1.1.1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined

single limit of liability of \$1,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have an aggregate products/completed operations liability limit of not less than \$2,000,000 and a general aggregate limit of not less than \$2,000,000. The policy shall be endorsed to name CONTRACTOR and OWNER, including their respective affiliates, the financing parties and the respective officers, directors and employees of each, as additional insureds.

21.1.1.2. Automobile Liability Insurance covering use of all owned, non-owned and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Company and Owner, including their respective affiliates, directors and employees, as additional insureds.

21.1.1.3. At a minimum, such liability insurance shall provide coverage against the following:

21.1.1.3.1. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.1.3.2. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.1.3.3. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.1.3.4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.1.2. Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.1.3. "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

21.1.4. Workers Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require

such SUBCONTRACTOR similarly to provide Workers Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workers Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.2. Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least thirty (30) days prior WRITTEN NOTICE has been given to the OWNER.

21.3. CONTRACTOR shall require sub-contractors, if any, not protected under CONTRACTOR'S insurance policies, to procure and maintain insurance as specified herein. OWNER may require CONTRACTOR to provide satisfactory evidence of such insurance.

22. CONTRACT SECURITY

22.1. CONTRACTOR shall provide to OWNER such bid and performance security as required by section 153.54 of the Ohio Revised Code.

22.2. In the event that CONTRACTOR'S Bid Guaranty was provided in the form of cash, cashier's check or letter of credit equal to 10% of the Bid price, the CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance and Payment Bond, in the form set forth in section 153.57 of the Ohio Revised Code, in the penal sum equal to the full amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BOND(S) shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state of Ohio and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570.

22.3. The expense of all BONDS, or other form of bid or performance security approved by OWNER, shall be borne by the CONTRACTOR.

22.4. If at any time a surety on any BOND, provided by CONTRACTOR under the terms of the CONTRACT DOCUMENTS, is declared a bankrupt or loses its right to do business in the state of Ohio or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed

due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

23.1. Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, nor of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1. The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claim, damage, loss or expense is:

24.1.1. attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and

24.1.2. caused in whole or in part by any negligent or willful act or omission of, or any failure to comply with the terms of the CONTRACT DOCUMENTS by, the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2. In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workers compensation acts, disability benefit acts or other employee benefits acts.

24.3. The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. SEPARATE CONTRACTS

25.1. The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2. The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties in such Contracts (or the OWNER, if he is

performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3. If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. SUBCONTRACTING

26.1. The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2. The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3. The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5. Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. ENGINEER'S AUTHORITY

27.1. The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2. The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3. The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4. The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. LAND AND RIGHTS-OF-WAY

28.1. Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2. The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3. The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. WARRANTY

29.1. CONTRACTOR shall perform the WORK in a workmanlike manner. CONTRACTOR warrants and guarantees for a period of one (1) year from the date of OWNER'S final ACCEPTANCE of the PROJECT that the completed WORK shall be free from all defects due to defective materials or workmanship.

29.2. The OWNER will give notice of observed defects with reasonable promptness.

29.3. The CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the PROJECT resulting from such defects. In the event that the CONTRACTOR should fail to promptly make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and hold CONTRACTOR accountable for the cost thereby incurred.

29.4. In addition to the obligation to make repairs as specified herein, CONTRACTOR shall indemnify OWNER against any other damages or loss (including, but not limited to, loss of use of the PROJECT and any other incidental or consequential damages, and reasonable attorney fees) which OWNER may suffer as a result of the breach of CONTRACTOR'S warranty as set forth in section 29.1 hereof.

29.5. The BOND provided by CONTRACTOR as performance and payment security pursuant to section 22 hereof, and section 153.54 of the Ohio Revised Code, shall remain in full force and effect through the warranty period to secure CONTRACTOR'S warranty obligations hereunder.

30. DISPUTE RESOLUTION

30.1. Claims, disputes or other matter in question between the parties arising out of or relating to the CONTRACT DOCUMENTS, or a breach thereof, shall be resolved pursuant to the terms hereof.

30.2. Any party who claims that a dispute exists between the parties shall submit a written explanation of the dispute to the other party. Such explanation shall describe the facts which gave rise to the dispute, the specific section(s)

of the CONTRACT DOCUMENTS which are at issue in the dispute, and a specific description of the resolution of the dispute which the party desires.

30.3. Upon a party providing the explanation of the dispute to the other party, the parties shall mutually select a mediator to attempt to resolve the dispute through mediation. All mediation proceedings shall be in the nature of settlement discussions and shall be confidential. Neither party may call the mediator as a witness in any subsequent legal proceedings for the purpose of disclosing any statement by, communication from, any party during the course of the mediation.

30.4. In the event that the parties are unable to resolve their dispute through mediation, any party may commence in an action in the Court of Common Pleas of Butler County, Ohio, for the purpose of resolving such dispute. No such action may be commenced until either:

30.4.1. The parties were unable to agree upon a mediator within 14 days after the service of the explanation of dispute; or

30.4.2. The mediator concludes that further attempts at mediation would not be productive and terminates the mediation.

30.5. This Contract shall be deemed to have been made in Butler County, Ohio, and all parties hereto expressly consent to the exclusive jurisdiction of the Court of Common Pleas of Butler County, Ohio, over any legal proceedings arising out of or relating to the CONTRACT DOCUMENTS, or a breach thereof.

30.6. The CONTRACT DOCUMENTS shall be interpreted in accordance with the law of the state of Ohio.

30.7. The CONTRACTOR will carry on the WORK and maintain the progress schedule during any dispute resolution proceedings, unless otherwise mutually agreed in writing.

31. TAXES

31.1. The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

32. PLANS AND SPECIFICATIONS

32.1. The OWNER will provide six (6) sets of Construction Specifications and Plans to the awarded CONTRACTOR free of charge.

32.2. The awarded CONTRACTOR will not receive a refund for any plans he purchased.

33. PRONOUNS GENDER NEUTRAL. Unless the context clearly requires otherwise, all pronouns used in the CONTRACT DOCUMENTS are intended to be gender neutral, and the pronoun actually used shall not affect the meaning of any provision of the CONTRACT DOCUMENTS