

COMMISSIONERS JOURNAL NO. 66 - DELAWARE COUNTY
 MINUTES FROM REGULAR MEETING HELD JANUARY 19, 2017

THE BOARD OF COMMISSIONERS OF DELAWARE COUNTY MET IN REGULAR SESSION ON THIS DATE WITH THE FOLLOWING MEMBERS PRESENT:

Present:
 Jeff Benton, President
 Gary Merrell, Vice President
 Barb Lewis, Commissioner

1
 RESOLUTION NO. 17-32

IN THE MATTER OF APPROVING THE ELECTRONIC RECORD OF THE PROCEEDINGS FROM REGULAR MEETING HELD JANUARY 12, 2017:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

WHEREAS, the Board of Commissioners of Delaware County, Ohio (the "Board") met in regular session on January 12, 2017; and

WHEREAS, the Clerk of the Board has certified, pursuant to section 305.12 of the Ohio Revised Code, that the entire record of the proceedings at that meeting is completely and accurately captured in the electronic record of those proceedings;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the electronic record of proceedings at the previous meeting.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

2
 PUBLIC COMMENT

3
 ELECTED OFFICIAL COMMENT

4
 RESOLUTION NO. 17-33

IN THE MATTER OF APPROVING PURCHASE ORDERS, THEN AND NOW CERTIFICATES, AND PAYMENT OF WARRANTS IN BATCH NUMBERS CMAPR0118:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve Then And Now Certificates, payment of warrants in batch numbers CMAPR0118 and Purchase Orders as listed below:

PR Number	Vendor Name	Line Description	Line Account	Amount	Line
R1701287	VARIOUS JFS DAY CARE	VARIOUS JFS DAY CARE	22511607 - 5348	\$ 100,000.00	0001
R1701288	VARIOUS JFS BOARD AND CARE	VARIOUS JFS BOARD & CARE	22511607 - 5350	\$ 60,000.00	0001
R1701289	VARIOUS JFS ADOPTION ASSISTANCE	VARIOUS JFS ADOPTION ASSISTANCE	22511607 - 5350	\$ 18,000.00	0001
R1701291	VARIOUS JFS KPI	VARIOUS JFS KPI	22511607 - 5350	\$ 20,000.00	0001
R1701300	VERIZON	ACCT# 285554388 CELL PHONES	22511607 - 5330	\$ 7,500.00	0001
R1701300	VERIZON	EQUIPMENT	22511607 - 5201	\$ 100.00	0002
R1701301	DUDE SOLUTIONS INC	CAPITAL FORECAST MODULE	10011105 - 5320	\$ 5,310.00	0001
R1701307	ULTIMATE CARE SUPPORTED LIVING LLC	IN HOME RESPITE CARE	22511607 - 5342	\$ 19,000.00	0001
R1701312	PROFESSIONAL VISION CARE INC	PASSS PROFESSIONAL SERVICES	22511607 - 5350	\$ 7,460.00	0001
R1701313	ORICK,LINDA	PASSS PROFESSIONAL SERVICES	22511607 - 5350	\$ 16,950.00	0001
R1701315	ANDREE,PAULA	PASSS PROFESSIONAL SERVICES	22511607 - 5350	\$ 9,225.00	0001

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R1701351	NEW BEGINNINGS RESIDENTIAL	RESIDENTIAL CENTER	22511607 - 5342	\$ 136,080.00	0001
R1701363	H J UмбаUGH & ASSOCIATES	FINANCIAL ADVISOR	10011102 - 5301	\$ 35,000.00	0001
R1701412	STATUS CONTROL AND INTEGRATION INC	ANNUAL SERVICE CONTRACT FEE	66211903 - 5328	\$ 15,000.00	0001
R1701412	STATUS CONTROL AND INTEGRATION INC	ANNUAL SERVICE CONTRACT FEE	66211904 - 5328	\$ 15,000.00	0002
R1701412	STATUS CONTROL AND INTEGRATION INC	ANNUAL SERVICE CONTRACT FEE	66211905 - 5328	\$ 5,000.00	0003
R1701412	STATUS CONTROL AND INTEGRATION INC	ANNUAL SERVICE CONTRACT FEE	66211911 - 5328	\$ 5,000.00	0004
R1701415	BRICOR DEVELOPMENT CO	RETURN OF UNUSED INSPECTION FEES:	66211902 - 5319	\$ 19,393.00	0001
R1701466	INTERSTATE BILLING SERVICE INC	MEDIC 10 REPAIR -- LABOR	10011303 - 5328	\$ 2,352.80	0001
R1701466	INTERSTATE BILLING SERVICE INC	MEDIC 10 REPAIR -- PARTS	10011303 - 5228	\$ 3,360.99	0002
R1701467	JOB & FAMILY SERVICES, OHIO DEPT OF	UNEMPLOYMENT COMPENSATION	10011108 - 5370	\$ 15,000.00	0001
R1701473	SOIL & WATER CONSERVATION DISTRICT	DRAINAGE REVIEW FEES	10011301 - 5301	\$ 12,000.00	0001
R1701478	EVERBRIDGE INC	EMERGENCY NOTIFICATION SOFTWARE	21411306 - 5320	\$ 20,000.00	0001
R1701502	HAZEN AND SAWYER PC	PROF SERV - TRANSFER STATION PS UPGRADES	68011916 - 5301	\$ 6,702.89	0001
R1701531	DELTA DENTAL PLAN OF OHIO	SINGLE DENTAL CONTRIBUTION	60211902 - 5370	\$ 156,000.00	0001
R1701532	LINCOLN NATIONAL LIFE INSURANCE CO	GROUP LIFE PREMIUM	60211902 - 5370	\$ 60,000.00	0001
R1701533	CEBCO	MEDICAL & PRESCRIPTION PREMIUM 2017	60211902 - 5370	\$14,000,000.00	0001
R1701536	NK VILLAS LLC	RETURN OF UNUSED INSPECTION FEES: VILLAS AT LOCH	66211902 - 5319	\$ 12,326.25	0001
R1701547	COUNTY RISK SHARING AUTHORITY	MILLER CLAIM SETTLEMENT	60111901 - 5370	\$ 85,483.38	0001
R1701559	SCHILLING PROPANE SVS	PROPANE FOR MEDIC STATIONS	10011303 - 5338	\$ 8,000.00	0001
R1701591	PASSAGES COUNSELING SERVICES	COURT TREATMENT SERVICES	10011202 - 5342	\$ 10,000.00	0001
R1701592	VERIZON	CELLULAR TELEPHONE & DATA	10011301 - 5330	\$ 9,000.00	0001
R1701592	VERIZON	COMMUNICATION EQUIPMENT	10011301 - 5201	\$ 1,000.00	0002
R1701595	UNION COUNTY BUILDING DEPT	BACKUP INSPECTIONS	10011301 - 5301	\$ 6,000.00	0001
R1701596	FEINKNOFF MACIOCE SCHAPPA ARCHITECTS	OUTSOURCE PLAN EXAMINATION	10011301 - 5301	\$ 10,000.00	0001
R1701597	LEFEVER, REBECCA C	PUBLIC DEFENDER TRANSCRIPTS	10011202 - 5301	\$ 15,000.00	0001
R1701598	ACLOCHE LLC	TEMP CLERICAL SUPPORT	10011301 - 5301	\$ 7,500.00	0001
R1701602	PNC BANK	SUPPLIES	20411305 - 5200	\$ 10,000.00	0001

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R1701602	PNC BANK	SERVICES	20411305 - 5300	\$ 25,000.00	0002
R1701603	PELEGRINO REPORTING SERVICES	PUBLIC DEFENDER TRANSCRIPTS	10011202 - 5301	\$ 10,000.00	0001
R1701633	ASSIST 4 DENTIST LLC	TUITION FEES BOOKS	22311611 - 5348	\$ 7,000.00	0001
R1701644	XYLEM WATER SOLUTIONS USA INC	BACKWASH PUMPS - ALUM CREEK	66211904 - 5260	\$ 9,341.80	0001
R1701646	HONDROS COLLEGE	TUITION FEES BOOKS	22311611 - 5348	\$ 10,000.00	0001
R1701650	NEW HORIZONS COMPUTER LEARNING CTR INC	TUITION FEES BOOKS	22311611 - 5348	\$ 15,000.00	0001
R1701657	TRI RIVERS	TUITION FEES BOOKS	22311611 - 5348	\$ 15,000.00	0001
R1701666	MS CONSULTANTS INC	PROF SERV - FUTURE WRF PROPERTY EVALUATION	66711904 - 5301	\$ 14,439.52	0001
R1701723	SMITH FEIKE MINTON INSURANCE INC	WORKERS' COMP EXCESS INSURANCE	61311923 - 5370	\$ 98,000.01	0001
R1701736	CARRIER CORPORATION	EQUIPMENT PARTS & SUPPLIES	10011105 - 5201	\$ 1,000.00	0001
R1701736	CARRIER CORPORATION	SERVICE AGREEMENT	10011105 - 5325	\$ 5,950.00	0002
R1701736	CARRIER CORPORATION	REPAIRS HVAC & AC	10011105 - 5328	\$ 5,000.00	0003

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

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RESOLUTION NO. 17-34

IN THE MATTER OF APPROVING TRAVEL EXPENSE REQUESTS:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

The Child Support Enforcement Agency is requesting that Wendy Shannon and Maren Aikey attend a Hearing Officer Roundtable in Mt. Vernon, OH on January 26, 2017 at no cost.

The Commissioners' Office is requesting that Ferzan Ahmed, Commissioner Barb Lewis, Commissioner Jeff Benton, Commissioner Gary Merrell, Jane Hawes attend the 2017 Third Thursday Chamber Meetings in Delaware, Ohio at the cost of \$825.00 (fund number 10011101).

The Economic Development Department is requesting that Jenna Jackson attend the Annual Economic Development Forecast Breakfast Meeting in Gahanna, Ohio February 3, 2017; at no cost.

The Auditor's Office is requesting that Jason Montgomery attend an On-Base Introduction to Workflow Class in Westlake, Ohio February 13-17, 2017; at the cost of \$1,109.60

The Regional Sewer District is requesting that Mike Frommer and Tiffany Maag attend a Government Affairs and Regulatory Workshop in Lewis Center, Ohio on March 9, 2017 at a total cost of \$320.00 (fund number 66211902).

The Code Compliance Department is requesting that Duane Matlack, Ross Bigelow, Joseph Amato, David Bean And Bill Johnson attend the annual Ohio Building Officials Association conference/training in Dublin, Ohio February 5-7, 2017, at the cost of \$1,215.00 (fund number 10011301)

The Administrative Services Department is requesting that Christine Shaw attend a Management Development program in Columbus, Ohio February 14, 2017, at the cost of \$280.00 (fund number 10011103).

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

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RESOLUTION NO. 17-35

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2017 TREE CLEARING:

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It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

Whereas, the Delaware County Engineer recommends and approves the Bid Specifications and the Bid Opening Date and Time for 2017 Tree Clearing;

Now Therefore Be It Resolved, that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for 2017 Tree Clearing

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00am on Tuesday, February 7, 2017, at which time they will be publicly received and read aloud, for the project known as:

**2017 Tree Clearing
Annual Contract**

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from www.bidexpress.com. All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at www.co.delaware.oh.us and may be accessed by selecting "Bids and Notices"

The prices of this contract shall be in effect from February 13, 2017 to December 31, 2017. The Board of Commissioners reserves the right to make a non-exclusive award and to issue purchase orders on an as needed basis.

Contract prices shall also be made available for cooperative purchasing by all townships within Delaware County, the Delaware County Preservations Parks District, and Delaware Soil and Water Conservation District.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
January 20, 2017

**SPECIFICATIONS
2017 Tree Clearing
Annual Contract
Delaware County, Ohio**

GENERAL

This contract is an agreement to perform tree and brush clearing and stump removal at various locations within Delaware County when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer (collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to perform all work ordered under this contract promptly as requested by the Owner. Failure to complete the requested work within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

COOPERATIVE PURCHASING PROGRAM

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- All Delaware County Departments
- All townships within Delaware County
- Delaware County Preservations Parks District
- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

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NON EXCLUSIVE AWARD

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

GENERAL REQUIREMENTS

The Owner shall mark the areas to be cleared and grubbed and/or mark the individual trees to be removed or saved. Marking shall be done using paint markings, stakes or other acceptable methods. The Contractor shall perform a field review of the work site and shall provide a written quotation for the work based on the unit prices in this contract.

Upon receiving authorization to proceed, the Contractor shall perform the work in an expeditious manner under the supervision of the Owner. The Contractor shall exercise caution in performing its work to avoid damage to real estate, personal property and utilities.

TRAFFIC CONTROL

The Contractor shall provide required work zone signing and temporary traffic control conforming to the ODOT CMS and the Ohio Manual of Uniform Traffic Control Devices (OMUTCD). All signs shall be placed on temporary sign supports at locations approved by the Engineer.

MINIMUM QUANTITIES

The bid blank provides minimum payment quantities for a single work order, which may include multiple locations when authorized under the same authorization. Payment shall be made for the minimum quantity for each item of work performed under a single work order if the quantity performed is less than the minimum amount listed.

CONSTRUCTION AND MATERIAL SPECIFICATIONS

The following items include all labor, equipment, materials, and incidentals necessary to complete the work.

The bid blank provides minimum payment quantities for a single work order, which may include multiple locations when authorized under the same authorization. Payment shall be made for the minimum quantity for each item of work performed under a single work order if the quantity performed is less than the minimum amount listed.

The 2016 ODOT Construction and Material Specifications (CMS) Item 201 shall govern the work except as follows:

Item 201, Clearing and Grubbing. This item shall consist of clearing and grubbing all trees 12 inches or smaller in diameter when measured as specified in 201.05 and all surface objects, brush, roots and other protruding obstructions not designated to remain by the Engineer. This item shall be measured by the number of acres cleared and grubbed to the satisfaction of the Owner. All other vegetative material removed shall be hauled away and properly disposed of off-site.

Item 201, Tree Removed. This item shall consist of clearing and grubbing all trees over 12 inches in diameter including hauling away and disposing off-site. Payment shall be made in accordance with the pay size table listed in Table 201.05-1 as measured in accordance with 201.05.

Item 201, Stump Removed. This item shall consist of grinding or removing stumps 6 inches below ground surface and off-site disposal of debris. Payment shall be made in accordance with the pay size table listed in Table 201.05-1 as measured in accordance with 201.05.

TABLE 201.05-1

Tree or Stump Diameter	Pay Item Designation
Over 12 inches to 24 inches	18-inch size
Over 24 inches to 36 inches	30-inch size
Over 36 inches to 60 inches	48-inch size
Over 60 inches	60-inch size
Over 0.3 m to 0.6 m	0.5 m size
Over 0.6 m to 0.9 m	0.8 m size
Over 0.9 m to 1.5 m	1.2 m size
Over 1.5 m	1.5 m size

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Item 624, Maintaining Traffic. This item shall consist of erecting work zone signing and any required temporary traffic control devices as necessary to comply with the Ohio Manual of Uniform Traffic Control Devices (OMUTCD). Payment shall be based on a lump sum and shall constitute full compensation for installation and prompt removal of all signing and traffic control devices.

Item 624, Maintenance of Traffic – One Lane Closure on a Two Lane Highway. This item shall consist of all labor, equipment, tools, flaggers, vehicles necessary to maintain one lane, two-way operation on a two lane highway. Payment shall be based on the number of hours of one lane, two-way operation control performed by the Contractor and accepted by the Engineer.

Item 624, Mobilization. Mobilize all equipment, tools and personnel to a specified site in Delaware County, Ohio. If additional sites are within 5 miles and they are to be worked on consecutively, no additional mobilization charge will be allowed.

MISCELLANEOUS TERMS AND CONDITIONS

Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Prohibited Interests: Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.

Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

Findings for Recovery: Bidder certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

Independent Contractor: The Contractor acknowledge and agrees that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Contractor and Delaware County. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor shall certify that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

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RESOLUTION NO. 17-36

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2017 STONE AGGREGATE:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

Whereas, the Delaware County Engineer recommends and approves the Bid Specifications and the Bid Opening

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Date and Time for 2017 Stone Aggregate;

Now Therefore Be It Resolved, that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for 2017 Stone Aggregate

**Public Notice
Advertisement for Bids**

Bids shall be submitted electronically through the www.bidexpress.com webservice until 10:00 am on Tuesday, February 7, 2017, at which time they will be publicly received and read aloud, for the project known as:

**2017 Stone Aggregate
Material Supply Contract**

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from www.bidexpress.com. All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at www.co.delaware.oh.us and may be accessed by selecting "Bids and Notices"

The Owner requires that all work associated with the project be completed before December 31, 2017. The estimated commencement of work date is February 13, 2017.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of Delaware County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates:
January 20, 2017

**SPECIFICATIONS
2017 Stone Aggregate
Material Supply Contract
Delaware County, Ohio**

GENERAL

This contract is an agreement to furnish the materials listed in the bid blank at stated unit prices when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer (collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to furnish any materials ordered under this contract promptly as requested by the Owner. Failure to furnish such materials within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

COOPERATIVE PURCHASING PROGRAM

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- All townships within Delaware County
- Delaware County Preservations Parks District
- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

NON EXCLUSIVE AWARD

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or before the

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specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

MATERIAL SPECIFICATIONS

2016 ODOT Construction and Material Specifications (CMS) 703.01, 703.05, 703.17, 703.18, 703.19

MISCELLANEOUS TERMS AND CONDITIONS

Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

Prohibited Interests: Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.

Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

Indemnification for Accidents: The Contractor shall hold harmless the Owner, its officers, agents and employees from any and all losses, claims, damages, lawsuits, costs, judgments, expenses or any other liabilities which they may incur as a result of bodily injury, sickness, disease or death, or injury to or destruction of tangible property including but not limited to the loss of use resulting therefrom or delay, acceleration, or loss of productivity caused in whole or part by the negligence of the contractor, any subcontractor, any person directly or indirectly employed by any of them or any person for whose acts any of them may be liable.

Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

Findings for Recovery: Bidder certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

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RESOLUTION NO. 17-37

IN THE MATTER OF APPROVING BID SPECIFICATIONS AND SETTING BID OPENING DATE AND TIME FOR 2017 CURB AND SIDEWALK CONSTRUCTION ANNUAL CONTRACT:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Whereas, the Delaware County Engineer recommends and approves the Bid Specifications and the Bid Opening Date and Time for 2017 Curb and Sidewalk Construction Annual Contract;

Now Therefore Be It Resolved, that the Board of Delaware County Commissioners approves the Bid Specifications and Bid Opening Date and Time for 2017 Curb and Sidewalk Construction Annual Contract

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**Public Notice
Advertisement for Bids**

Bid shall be submitted electronically through the www.bidexpress.com web service until 10:00 am on Tuesday, February 7, 2017, at which time they will be publicly received and read aloud, for the project known as

2017 Curb and Sidewalk Construction Annual Contract.

The Owner of the project is the Delaware County Board of Commissioners. Copies of the plans and specifications must be obtained from www.bidexpress.com. All bidders must register and be a member of the web service to bid on the project.

This notice is posted on the Delaware County website at www.co.delaware.oh.us and may be accessed by selecting "Bids and Notices."

The prices of this contract shall be in effect from February 13, 2017 to December 31, 2017. The Board of Commissioners reserves the right to make a non-exclusive award and to issue purchase orders on an as needed basis.

Contract prices shall also be made available for cooperative purchasing by all townships within Delaware County, the Delaware County Preservations Parks District, and Delaware Soil and Water Conservation District.

This is a prevailing wage contract in accordance with Ohio Revised Code Chapter 4111 and the requirements of the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau. Bidders shall comply with all applicable provisions.

No bids shall be withdrawn for a period of sixty (60) days after the opening thereof. Awarding of the contract shall be to the Lowest and Best bidder as determined by the Delaware County Board of Commissioners in the best interest of the County. The Board reserves the right to reject any or all bids.

Delaware Gazette Advertisement Dates: January 20, 2017

**SPECIFICATIONS
2017 Curb and Sidewalk Construction
Annual Contract
Delaware County, Ohio**

GENERAL

This contract is an agreement to perform construction of curbs, curb ramps and walks at various locations within Delaware County when requested by the Owner, defined as the Delaware County Board of Commissioners or the Delaware County Engineer (collectively known as "County") or any of its cooperative purchasing partners.

Bidder agrees to perform all work ordered under this contract promptly as requested by the Owner. Failure to complete the requested work within the time and manner specified by the Owner shall be documented by the County and may be cause to deny any future contract award under Lowest and Best bidder consideration.

The County reserves the right to award any or all or parts of this bid and make a non-exclusive award. Conditional bids with restrictions may be accepted or rejected at the discretion of the County.

COOPERATIVE PURCHASING PROGRAM

The Contractor shall extend bid prices to the cooperative purchasing partners listed below during the term of this agreement:

- All townships within Delaware County
- Delaware County Preservations Parks District
- Delaware Soil and Water Conservation District

Purchase orders issued by cooperative purchasing partners at the unit prices provided under this Contract shall be considered as separate agreements and the County shall not be considered bound by any such agreements. The Contractor shall deal with the cooperative purchasing partner directly when such purchase orders are made.

NON EXCLUSIVE AWARD

Due to the nature of the goods and services required in addition to not knowing in advance when materials will be needed or a specific job is to be performed, the County will accept all responsive bids submitted on or before the specified bid opening date and make an award to all responsive bidders.

As needs arise, the County will review a tabulated list of the multiple awarded vendors who submitted a bid, and

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select what vendor best meets its requirements and place an order with that awarded vendor. An award does not guarantee that your company will receive a purchase order during the term of this contract.

CONSTRUCTION AND MATERIAL SPECIFICATIONS

The 2016 ODOT Construction and Material Specifications (CMS) shall govern the work except as follows:

Item 253 Pavement Repair. The depth of the pavement repair shall be 8 inches or the full depth of the existing asphalt pavement, whichever is less.

Item 624 Mobilization. The requirements of Item 624 shall apply. Only one mobilization charge will be approved if several work sites are ordered at one time (single project), AND all are within 0.5 miles of one another.

Item 659 Topsoil, As Per Plan. Provide pulverized topsoil that is fertile, loose, friable, and loamy. The topsoil shall contain between 6 % and 20% organic material. Topsoil shall not contain more than 18 % moisture and shall be free of weeds and other deleterious material. If this cannot be met with topsoil onsite, commercial pulverized topsoil shall be purchased at no additional cost.

TRAFFIC CONTROL

Temporary traffic control shall conform to the Ohio Manual of Uniform Traffic Control Devices (OMUTCD). The Contractor shall provide necessary signing, drums, and works to protect the work area. Work on the shoulder shall be in conformance with typical application #3 (TA-3) or typical application #6 (TA-6). The cost of providing signing, drums and all other necessary labor, equipment and materials to conform to these typical applications shall be considered incidental to Item 624, Mobilization and no additional compensation shall be provided.

If the Engineer requires that one lane be closed to traffic, the Contractor shall provide flaggers in accordance with the OMUTCD. Payment shall be made at the contract price bid for Item 614, Maintenance of Traffic – One Lane Closure on a Two Lane Highway.

MINIMUM QUANTITIES

The bid blank provides minimum payment quantities for a single work order, which may include multiple locations when authorized under the same authorization. Payment shall be made for the minimum quantity for each item of work performed under a single work order if the quantity performed is less than the minimum amount listed.

OHIO DEPARTMENT OF TRANSPORTATION STANDARD CONSTRUCTION DRAWINGS

The following standard drawings shall govern the fabrication and installation of the various contract items.

1. **Curb Ramp** – BP-7.1
2. **Curb, Type 6 Backup** – BP-5.1
3. **Combination Curb and Gutter, Type 2** – BP-5.1
4. **Combination Curb and Gutter, DCEO** – R2010

PREVAILING WAGE RATES

The Contractor shall pay all laborers, workers and mechanics that are performing work directly related to the installation of the various items, a wage no less than the prevailing rate as determined by the Ohio Director of Commerce at the time the work is performed, in accordance with section 4115.05 of the Ohio Revised Code.

The Contractor shall request, no less than 7 days but not more than 30 days prior to commencement of work on the site, that Delaware County furnish the prevailing wage rates for the classifications of workers who will perform the work. The Contractor shall pay the laborers, workers and mechanics a wage not less than the prevailing wage for the class of work performed. Prevailing wage rates shall be obtained from the Ohio Department of Commerce, Bureau of Labor & Worker Safety website at <http://www.com.ohio.gov/laws>.

The Contractor shall furnish certified copies of the payroll for the laborers, workers and mechanics doing the work no more than 14 days after wages are paid. Delaware County reserves the right to perform audits of the payroll records and worker interviews to determine compliance with the requirements of the Ohio Revised Code and regulations of the Ohio Department of Commerce.

MISCELLANEOUS TERMS AND CONDITIONS

Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.

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Prohibited Interests: Bidder agrees that no agent, officer, or employee of the County during his/her tenure or for one year there after shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Bidder further agrees that it will not employ in any manner a current County employee for a minimum period of one (1) year from the completion date of this project, without the prior express written consent of County.

Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the County and the Bidder, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the parties.

Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Delaware County, Ohio.

Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.

Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

Findings for Recovery: Bidder certifies that it has no outstanding findings for recovery pending or issued against it by the State of Ohio.

Independent Contractor: The Contractor acknowledge and agrees that Contractor is acting as an independent contractor and that no agency, partnership, joint venture, or employment relationship has been or will be created between the Contractor and Delaware County. Contractor also agrees that, as an independent contractor, Contractor assumes all responsibility for any federal, state, municipal, or other tax liabilities along with workers compensation, unemployment compensation, and insurance premiums that may accrue as a result of compensation received for services or deliverables rendered hereunder. **Contractor shall certify that it has five or more employees and that none of the employees are public employees for purposes of Chapter 145 of the Ohio Revised Code.**

Vote on Motion Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye

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RESOLUTION NO. 17-38

IN THE MATTER OF AUTHORIZING THE SUBMITTING OF AN APPLICATION FOR A SUPREME COURT OF OHIO 2017 COURT TECHNOLOGY GRANT FOR THE DELAWARE COUNTY ADULT COURT SERVICES:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Grant #	2017 Court Technology Grant
Source:	The Supreme Court of Ohio
Grant Period:	2017
Grant Amount:	\$ 9,900.00
Local Match:	<u> 0</u>
Total Grant Amount:	\$ 9,900.00

This Grant funding opportunity will provide the funds to purchase a kiosk reporting system.

The Grant would not require that Delaware County provide matching funds for this grant from the general fund.

Vote on Motion Mrs. Lewis Aye Mr. Merrell Aye Mr. Benton Aye

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RESOLUTION NO. 17-39

IN THE MATTER OF APPROVING TRANSFER OF FUNDS FOR JOB AND FAMILY SERVICES:

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It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Fund Transfers

From	To	
22311611-5801 Workforce Investment Act/Transfers	22411603-4601 JFS Workforce/Interfund Revenues	\$ 77,508.68
22511607-5801 Children Services Fund/Transfers	22411604-4601 JFS Child Protection/Interfund Revenues	\$ 261,585.46
10011110-5801 Human Services	22411601-4601 JFS Income Maintenance	\$ 166,471.00
Vote on Motion	Mr. Benton Aye Mr. Merrell Aye Mrs. Lewis Aye	

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RESOLUTION NO. 17-40

IN THE MATTER OF ACCEPTING SANITARY SEWER IMPROVEMENTS FOR NELSON FARMS SOUTH, NORTH FARMS SECTION 4 & 8 AND THE VILLAS AT LOCH LOMOND:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

Whereas, the construction of new sanitary sewers at Nelson Farms South, North Farms Section 4 & 8 and The Villas at Loch Lomond have been completed to meet sewer district requirements; and

Whereas, the sewer district has received the necessary items required by the subdivider's agreements; and

Whereas, the Director of Environmental Services recommends accepting sanitary sewers for ownership, operation, and maintenance by Delaware County as follows:

Nelson Farms South	1865' of 8" sewer	\$51,910.00
	3 ea. manholes	\$ 6,525.00
North Farms Section 4 & 8	2310' of 8" sewer	\$156,335.25
	1765' of 15" sewer	\$ 52,111.75
	14 ec.- manholes	\$ 35,840.00
The Villas at Loch Lomond	1865' of 8" sewer	\$326,369.00
	13 ea.- manholes	\$ 37,000.00

Therefore be it resolved, that the Board of Commissioners approve and accept the above sanitary sewers for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 1. The Board hereby approves and accepts the above sanitary sewer improvements for ownership, operation, and maintenance by the Delaware County Sewer District.

Section 2. The Board hereby releases any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed to insure faithful performance for construction of the above sanitary sewer improvements, if applicable.

Section 3. The Board hereby accepts any Bond, certified check, irrevocable letter of credit, or other approved financial warranties executed per the requirements of the subdivider's agreement for the five-year maintenance period for the above sanitary sewer improvements.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

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RESOLUTION NO. 17-41

IN THE MATTER OF APPROVING THE SANITARY SEWER SUBDIVIDER'S AGREEMENT FOR VILLAGE AT BALE KENYON PHASE 2-6 (PHASE 4 OF THE SANITARY SEWER IMPROVEMENT PLAN FOR VILLAGE AT BALE KENYON PHASE 2-6):

It was moved by Mrs. Lewis, seconded by Mr. Merrell to approve the following:

WHEREAS, the Sanitary Engineer recommends approval of the Sanitary Subdivider's Agreement;

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THEREFORE, BE IT RESOLVED that the Board of Commissioners approve the Sanitary Sewer Subdivider's Agreement for Village at Bale Kenyon Phase 2-6 (Phase 4 of the Sanitary Sewer Improvement Plan for Village at Bale Kenyon Phase 2-6).

SUBDIVIDER'S AGREEMENT
DELAWARE COUNTY SANITARY ENGINEER

SECTION I: INTRODUCTION

THIS AGREEMENT executed on this 19th day of January, 2017 by and between **VILLAGE COMMUNITIES**, herein after called "SUBDIVIDER", and the BOARD OF COUNTY COMMISSIONERS of Delaware County, Ohio, as evidenced by the **Village At Bale Kenyon Phase 2-6 Sanitary Sewer Improvement Plan (Phase 4 of the Sanitary Sewer Improvement Plan for Village at Bale Kenyon Phase 2-6)** and its corresponding subdivision plat or condominium amendment on said development parcel filed or to be filed with the Delaware County Recorder, Delaware County, Ohio, is governed by the following considerations and conditions, to wit:

The SUBDIVIDER is to construct, install or otherwise make all public IMPROVEMENTS shown and set forth to be done and performed in compliance with the approved engineering drawings and specifications for **Village At Bale Kenyon (Phase 2-6) Sanitary Sewer Improvement Plan (Phase 4 of the Sanitary Sewer Improvement Plan for Village at Bale Kenyon Phase 2-6)** all of which are a part of this AGREEMENT. The SUBDIVIDER shall pay the entire cost and expense of said IMPROVEMENTS.

SECTION II: CAPACITY

There are **24** single family residential equivalent connections approved with this AGREEMENT. Capacity shall be reserved for one year from the date of this AGREEMENT, unless the COUNTY COMMISSIONERS grant an extension in writing. Capacity is not guaranteed until the final Subdivision Plat(s) or Condominium Amendment(s) are recorded. If the final Subdivision Plat(s) or Condominium Amendment(s), along with corresponding sanitary sewer easements for the development are not recorded prior to expiration of the reservation deadline as set forth herein, the SUBDIVIDER agrees and acknowledges that capacity shall not be guaranteed.

SECTION III: FINANCIAL WARRANTY

The SUBDIVIDER shall execute Bond, certified check, irrevocable letter of credit, or other approved financial warranties equal to the cost of construction (**\$27,395.00**) which is acceptable to the COUNTY COMMISSIONERS to insure faithful performance of this AGREEMENT and the completion of all improvements in accordance with the Subdivision Regulations of Delaware County, Ohio.

The SUBDIVIDER shall within thirty (30) days following completion of construction of each Section/Phase/Part and prior to final acceptance, furnish to the DELAWARE COUNTY SANITARY ENGINEER a five (5) year maintenance Bond, or other approved financial warranties, equal to ten percent (10%) of the construction cost. Construction costs shall be separated for each individual Section/Phase/Part that is submitted for final acceptance.

The SUBDIVIDER further agrees that any violations of or noncompliance with any of the provisions and stipulations of this AGREEMENT shall constitute a breach of contract, and the COUNTY shall have the right to stop work forthwith and act against the performance surety for the purpose of proper completion of the public IMPROVEMENTS within this Subdivision.

SECTION IV: FEES

It is further agreed that upon execution of this AGREEMENT, the SUBDIVIDER shall pay the DELAWARE COUNTY SANITARY ENGINEER three and one-half percent (3½%) of the estimated construction cost of the IMPROVEMENTS for plan review (**\$958.83**). The SUBDIVIDER shall also deposit with the DELAWARE COUNTY SANITARY ENGINEER the sum of **\$2,325.00** estimated to be necessary to pay the cost of inspection by the DELAWARE COUNTY SANITARY ENGINEER. The DELAWARE COUNTY SANITARY ENGINEER shall in his or her sole discretion inspect, as necessary, the IMPROVEMENTS being installed or constructed by the SUBDIVIDER and shall keep accurate records of the time spent by his or her employees and agents in such inspections for which the SANITARY ENGINEER shall be reimbursed from charges against said deposit. At such time as said fund has been depleted to a level of \$600.00 or less, as a result of charges against the same at the rate of:

INSPECTOR \$75.00 per hour
CAMERA TRUCK \$150.00 per hour

for time spent by said SANITARY ENGINEER or his or her staff, the SUBDIVIDER shall make an additional deposit of \$600.00 to said fund. On completion of all IMPROVEMENTS provided herein and acceptance of

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same by the COUNTY, any unused portions of the inspection fund shall be repaid to the SUBDIVIDER less an amount equal to \$0.75 per foot of sewer which will be deducted to cover re-inspection.

In addition to the charges above, the SUBDIVIDER shall pay the cost of any third party inspection services for **Village At Bale Kenyon (Phase 2-6) Sanitary Sewer Improvement Plan (Phase 4 of the Sanitary Sewer Improvement Plan for Village at Bale Kenyon Phase 2-6)** as required by the County.

Notwithstanding any other provision of this Agreement, the COUNTY shall have no obligation to construct any improvements contemplated herein, and any construction thereof on the part of the COUNTY shall be strictly permissive and within the COUNTY's sole discretion.

SECTION V: CONSTRUCTION

All public improvement construction shall be performed within one (1) year from the date of the approval of this AGREEMENT by the COUNTY COMMISSIONERS, but extension of time may be granted if approved by the COUNTY COMMISSIONERS.

The SUBDIVIDER shall indemnify and save harmless the County, Townships and/or Villages and all of their officials, employees and agents from all claims, suits, actions and proceedings which may originate from or on account of any death, injuries or damages to persons or property received or sustained as a consequence of any action, or omissions of the SUBDIVIDER, and any of its contractors or sub-contractors, or from any material, method or explosive used in said work or by or on account of any accident caused by negligence or any other act or omission of SUBDIVIDER, and any of its contractors or the contractors' agents or employees.

The SUBDIVIDER shall have a competent representative who is familiar with the project on site during construction. The representative shall be capable of reading the plans and specifications and shall have authority to execute the plans and specifications and alterations required by the COUNTY. The representative shall be replaced by the SUBDIVIDER, when in the opinion of the COUNTY, the representative's performance is deemed inadequate.

If, due to unforeseen circumstances during construction activities, the SUBDIVIDER must install the proposed sanitary sewer mains or service laterals to a different location than shown on the approved and signed construction plans, the SUBDIVIDER shall request a revision to the construction plans and the SANITARY ENGINEER shall evaluate this request. If the request for a revision is approved in writing by the SANITARY ENGINEER, SUBDIVIDER shall provide and record revised permanent, exclusive sanitary sewer easements prior to the COUNTY'S acceptance of the sewer. The language and dimensions of the revised permanent exclusive sanitary sewer easements shall be acceptable to the SANITARY ENGINEER.

The SUBDIVIDER shall during the construction and maintenance periods, comply with all rules and regulations and conform to all procedures established by the COUNTY regarding submission of shop drawings, construction schedules, operation of facilities and other matters incident hereto.

The SUBDIVIDER shall obtain all other necessary utility services incident to the construction of said IMPROVEMENTS AND FOR THEIR CONTINUED OPERATION. The SUBDIVIDER shall be responsible for all utility charges and installation costs. The utility user charges shall be paid by the SUBDIVIDER and maintained in continuous use throughout the construction and testing phases until accepted for operation and maintenance by the COUNTY.

SECTION VI: EASEMENTS

The SUBDIVIDER shall provide to the COUNTY all necessary easements or rights-of-way required to complete the IMPROVEMENTS, all of which shall be obtained at the expense of the SUBDIVIDER. All public sanitary sewers and private laterals to offsite properties shall have a recorded permanent, exclusive sanitary easement on file at the Delaware County Recorder's Office, the language of which shall be approved by the DELAWARE COUNTY SANITARY ENGINEER. The dimensions of all easements shall be as shown on the approved engineering drawings. If any onsite easement or necessary right of way is not to be recorded as part of a subdivision plat, such easements and rights-of-way shall be recorded and provided to the DELAWARE COUNTY SANITARY ENGINEER before a preconstruction meeting will be permitted and before construction may begin on the improvements. All offsite easements must be recorded prior to signing the plans unless otherwise permitted by the SANITARY ENGINEER.

SECTION VII: COMPLETION OF CONSTRUCTION

The COUNTY shall, upon certification in writing from the DELAWARE COUNTY SANITARY ENGINEER that all construction is complete according to the plans and specifications, by Resolution accept the IMPROVEMENTS described herein and accept and assume operations and maintenance of the same.

The SUBDIVIDER shall within thirty (30) days following completion of construction, and prior to final acceptance, furnish to DELAWARE COUNTY as required:

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- (1) "as built" drawings of the IMPROVEMENTS which plans shall become the property of the COUNTY and shall remain in the office of the DELAWARE COUNTY SANITARY ENGINEER and DELAWARE COUNTY ENGINEER. The drawings shall be on reproducible MYLAR (full size), two paper copies (one full size & one 11"x17"), and a Compact Diskette with the plans in DWG format & PDF format.
- (2) An excel spreadsheet, from a template as provided by the DELAWARE COUNTY SANITARY ENGINEER, shall accompany the plan submittal showing the locations of the manholes in Ohio State Plane North Coordinates NAD 1983 (NAVD 1988 datum) and other miscellaneous project data.
- (3) an itemized statement showing the cost of IMPROVEMENTS
- (4) an Affidavit or waiver of lien from all Contractors associated with the project that all material and labor costs have been paid. The SUBDIVIDER shall indemnify and hold harmless the COUNTY from expenses or claims for labor or materials incident to said construction of the IMPROVEMENTS.
- (5) documentation showing the required sanitary sewer easements

Should the SUBDIVIDER become unable to carry out the provisions of this AGREEMENT, the SUBDIVIDER'S heirs, successors or assigns shall complete and comply with all applicable terms, conditions, provisions, and requirements of this AGREEMENT.

The SUBDIVIDER, for a period of five (5) years after acceptance of the IMPROVEMENTS by the COUNTY, shall be responsible for defective materials and/or workmanship. All warranties for equipment installed as a part of the IMPROVEMENTS shall be the same as new equipment warranties and shall be assigned to the COUNTY upon acceptance of the IMPROVEMENTS.

After said acceptance, the capacity charge and any surcharges shall be paid by the applicant upon request to the DELAWARE COUNTY SANITARY ENGINEER for a tap permit to connect to the sanitary sewer.

SECTION VIII: SIGNATURES

IN CONSIDERATION WHEREOF, the DELAWARE COUNTY BOARD OF COMMISSIONERS hereby grants the SUBDIVIDER or its agent the right and privilege to make the IMPROVEMENTS stipulated herein and as shown on the approved plans.

Vote on Motion Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

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RESOLUTION NO. 17-42

IN THE MATTER OF APPROVING AN AGREEMENT BETWEEN THE DELAWARE COUNTY BOARD OF COMMISSIONERS AND THE HENRY P. THOMPSON COMPANY FOR THE FURNISHING OF GOODS FOR THE OLENTANGY ENVIRONMENTAL CONTROL CENTER (OECC) UV CHANNEL HYDRAULIC CONTROL IMPROVEMENT PROJECT:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to approve the following:

Whereas, the Sanitary Engineer recommends approval of the following Agreement;

Now Therefore Be It Resolved that the Delaware County Board of Commissioners approve the following Agreement with The Henry P. Thompson Company for the furnishing of goods for the OECC UV Hydraulic Control Improvement Project.

AGREEMENT

THIS AGREEMENT is by and between Delaware County Regional Sewer District ("Buyer") and The Henry P. Thompson Company ("Seller").

Buyer and Seller hereby agree as follows:

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ARTICLE 1 – GOODS AND SPECIAL SERVICES

1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows: Olentangy Environmental Control Center (OECC) UV Channel Hydraulic Control Improvements.

ARTICLE 3 – ENGINEER

3.01 The Contract Documents for the Goods and Special Services have been prepared by Hazen and Sawyer ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

ARTICLE 4 – POINT OF DESTINATION

4.01 The Point of Destination is designated as: Olentangy Environmental Control Center, 10333 Olentangy River Rd, Powell, OH 43065.

ARTICLE 5 – CONTRACT TIMES5.01 *Time of the Essence*

A. All time limits for Milestones, if any, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Contract Documents, are of the essence of the Contract.

5.02 *Milestones*

A. Days for Submittal of Shop Drawings and Samples: Seller shall submit all Shop Drawings and Samples required by the Contract Documents to Buyer for Engineer's review and approval within fourteen (14) days after the date when the Contract Times commence to run as provided in Paragraph 2.04 of the General Conditions. It is the intent of the parties that (1) Engineer conduct such review and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within fourteen (14) days of Seller's submittal of such Shop Drawings and Samples; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.

A. *Date for Delivery of Goods:* The Goods are to be delivered to the Point of Destination and ready for Buyer's receipt of delivery on or before **April 1, 2017**.

B. *Days for Furnishing Special Services:* The furnishing of Special Services to Buyer will commence within fourteen (14) days after Buyer's acknowledgement of receipt of delivery of the Goods, and shall be completed within thirty (30) days thereafter.

5.03 *Buyer's Final Inspection*

A. *Date for Final Inspection:* Buyer shall make its final inspection of the Goods pursuant to Paragraph 8.01.C of the General Conditions on or before May 31, 2017. This date shall be adjusted equitably if Seller fails to deliver the Goods or furnish Special Services in compliance with the Milestones established in Paragraphs 5.02.B and 5.02.C of this Agreement.

5.04 *Liquidated Damages*

A. Buyer and Seller recognize that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified in Paragraph 5.02 above, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the requirements of Paragraph 5.02. Further, they recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Accordingly, instead of requiring such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer **\$1,000** for each day that expires after the time specified in Paragraph 5.02.B for delivery of acceptable Goods.

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ARTICLE 6 – CONTRACT PRICE

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:
- A. A Lump Sum of \$117,600.00.

ARTICLE 7 – PAYMENT PROCEDURES7.01 *Submittal and Processing of Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

7.02 *Progress Payments; Retainage*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
1. Upon receipt of the first Application for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, an amount equal to ten percent (10%) of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.
 2. Upon receipt of the second such Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.01.A.2 of the General Conditions, an amount sufficient to increase total payments to Seller to ninety percent (90%) of the Contract Price, less such amounts as Engineer may determine in accordance with Paragraph 10.02.A.3 of the General Conditions.

7.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Buyer shall pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the statutory rate.

ARTICLE 9 – SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:

- A. Seller has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
- B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
- C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and

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the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.

- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages __ to __, inclusive);
 - 2. Performance Bond (pages __ to __, inclusive);
 - 3. ~~Payment Bond (pages _____ to _____, inclusive);~~
 - 4. ~~Other bonds~~
 - a. _____ (pages __ to __, inclusive);
 - b. _____ (pages __ to __, inclusive);
 - e. _____ (pages __ to __, inclusive);
 - 5. General Conditions (pages __ to __, inclusive);
 - 6. Supplementary Conditions (pages __ to __, inclusive);
 - 7. Specifications as listed in table of contents of the Project Manual;
 - 8. ~~Drawings, consisting of a cover sheet and sheets numbered _____ through _____, inclusive, with each sheet bearing the following general title:~~
 - 9. ~~Addenda (Numbers __ to __, inclusive);~~
 - a. ~~Documentation submitted by Seller prior to Notice of Award (pages __ to __, inclusive);~~
 - 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Change Order(s);
 - c. Work Change Directive(s).
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

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11.02 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.03 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.04 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.05 *Limitations*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Contract. Upon assignment the terms of this Paragraph 11.06.A shall be binding upon the assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (c) intentional or reckless wrongful conduct, or (d) rights conferred by any bond provided by Seller under this Contract.

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement. Counterparts have been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

SECTION 00800
SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions for Procurement Contracts No. P-700, (2000 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.04 Commencement of Contract Times; Notice to Proceed:
2.04.A Delete in its entirety and substitute the following:

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The Contract Time will commence to run on the effective date of the Agreement. By mutual consent of the parties to the Contract, these time limits may be changed.

ARTICLE 4 - BONDS AND INSURANCE

Delete Article 4 in its entirety and substitute the following:

4.01 Performance and Payment Bonds:

4.01.A Concurrent with execution of the Agreement, Seller shall procure, execute and deliver to the Buyer and maintain, at his own cost and expense, the bonds as required in the Form of Bid Guaranty and Contract Bond submitted with the Bid.

4.01.B All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

4.01.C If the Surety on any Bond furnished by the Seller is declared bankrupt or becomes insolvent or its right to do business in the State of Ohio is revoked, the Seller shall within five (5) days thereafter substitute another Bond or Surety, both of which shall be acceptable to the Buyer.

4.02 Insurance Requirements:

4.02.A Wherever in this Article the terms "The Insured" and Buyer occurs with respect to coverage in a policy, it shall mean the Buyer and its agent and agencies, all municipalities where work is being performed under the Contract, the Engineer, and any other parties specifically designated herein, who shall be named as additional insured in each policy issued, except the Worker's Compensation and Employer's Liability policy. The insurance policies required herein shall not contain any Third Party Beneficiary Exclusion.

4.02.B The Buyer and the Engineer shall be named as an additional insured on all policies except Professional Liability and Worker's Compensation and Employer's Liability; and it is required that coverage be placed with "A" rated insurance companies acceptable to the Buyer. Statement should read "Delaware County Regional Sewer District and Hazen and Sawyer shall be added as an additional insured as evidenced by an endorsement attached to this certificate." The endorsement must be written on ISO Form CG20-10 and 20-37. Blanket coverage for general liability in lieu of being named as an additional insured is acceptable. Failure to maintain the required insurance in force may be cause for contract termination. In the event that the Seller fails to maintain and keep in force the insurance herein required, the Buyer has the right to cancel and terminate the contract without notice.

4.02.C An authorized representative of the insurance company(ies) shall certify that all of the required insurance coverages and amounts specified hereinafter are provided by the submitted policies. The certification shall be signed by the authorized representatives of the insurance company(ies) and notarized. The authorized representative of the insurance company(ies) shall specifically indicate with the submittal which of the policies submitted fulfills which specific coverage and amounts specified under Article 4.03 of the Supplementary Conditions. The certification statement and correlation shall be furnished and included with the insurance certificates.

4.02.D One (1) copy of each such insurance policy and certificates indicating each type of coverage mentioned, and the correlation between the insurance furnished and that required, shall be filed with each of the Insured.

4.02.E All policies relating to this Contract shall be so written that each of The Insured shall be notified by the carrier of cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change. Renewal certificates covering the renewal of all policies expiring during the life of the Contract shall be filed with each of The Insured not less than sixty (60) days before the expiration of such policies.

4.02.F The insurance carrier shall notify each of The Insured of the filing of any claims within thirty (30) days of the filing of such claim.

4.03 Seller's Liability Insurance

4.03.A The Seller shall, at his own cost, take out and maintain during the life of this Contract, such Bodily Injury and Property Damage Insurance as will protect him, The Insured, and any manufacturer furnishing Goods and Special Services covered by this Contract from claims of any character for property damage or bodily injury, including death, and demands, suits, actions, recoveries and judgments against The Insured therefor, for which The Insured shall be or may become liable; which may arise from operations under this Contract whether such operations be by himself or by a manufacturer or by anyone directly or indirectly employed by either of them, and as will also cover the contingent liability of the Insured, if any, which may arise from said operations under this Contract. The Seller may elect to require manufacturers to provide their own insurance coverage in lieu of covering them under his own policy(ies). In that event, the Seller shall certify to the Buyer, in writing, that all manufacturers are insured to the coverage and amounts specified herein. The Seller shall maintain copies of all manufacturers' insurance certificates. The amounts of such insurance shall be as follows and shall apply per project:

4.03.B Bodily Injury Liability - For liability for bodily injury, including accidental or wrongful death:

\$ 1,000,000	per occurrence
\$ 2,000,000	aggregate

4.03.C Property Damage Liability - For liability for property damage:

\$ 1,000,000	per occurrence
\$ 2,000,000	aggregate

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- 4.03.D Excess Liability (Umbrella Liability Insurance) – Umbrella Liability Insurance shall be provided that provides additional coverage for all protection provided under the Seller’s Commercial General Liability insurance. The coverage limit shall be for the Umbrella Liability Insurance shall be as follows:
- | | |
|------------------------------|-------------|
| Umbrella Liability Insurance | \$2,000,000 |
|------------------------------|-------------|
- 4.03.E Fire and Extended Coverage - For fire and extended coverage, including vandalism and malicious mischief, total Bid Price of the Contract.
1. Insurance policies shall provide for reinstatement of full coverage after payment of any claim.
- 4.03.F The following types of insurance shall be provided:
1. Workers' Compensation and Employer's Liability Insurance. The Seller shall take out and maintain during the life of this Contract, Workers' Compensation and Employer's Liability Insurance for all of his employees. The Seller shall also require manufacturers similarly to provide Workers' Compensation and Employer's Liability Insurance for all employees.
 2. Seller's Bodily Injury Insurance - Liability for Seller's Bodily Injury Insurance shall be in the amounts specified.
 3. Buyer's and Seller's Protective Bodily Injury Insurance - Liability for Buyer's and Seller's Protective Bodily Injury Insurance shall be \$2,000,000 per occurrence and \$2,000,000 aggregate.
 4. Seller's Contractual Bodily Injury Insurance - Liability for Seller's Contractual Bodily Injury Insurance shall be in the amounts specified.
 5. Seller's Property Damage Insurance - Liability for Seller's Property Damage Insurance shall be in the amounts specified.
 6. Buyer's and Seller's Protective Property Damage Insurance - Liability for Buyer's and Seller's Protective Property Damage Insurance shall be \$2,000,000 per occurrence and \$2,000,000 aggregate.
 7. Seller's Contractual Property Damage Insurance - Liability for Seller's Contractual Property Damage Insurance shall be in the amounts specified.
 8. Motor Vehicle Liability Insurance:
 - a. Bodily Injury Insurance covering the operation of all motor vehicles owned by the Seller, or used by the Seller in the prosecution of the work under the Contract, shall be in the amounts specified in Paragraph 4.03.B, hereinbefore.
 - b. Property Damage Insurance covering the operation of all motor vehicles owned by the Seller, or used by the Seller in the prosecution of the work under the Contract, shall be in the amounts specified in Paragraph 4.03.C, hereinbefore.
 9. Buyer's Fire and Extended Coverage Insurance - Builder's Risk (fire and extended coverage, including vandalism and malicious mischief) insurance for the life of the Contract upon all work in place, or materials at the site, or both, shall be in the amount specified in Paragraph 4.03.E, hereinbefore. The Seller shall submit to the Buyer documentation as to the cost of this insurance coverage prior to obtaining policy. The Buyer may, if deemed to be in his best interest, obtain this coverage separately and receive a credit from the Seller for the insurance cost.
 11. Completed Operations Hazards Insurance - Completed operations hazards insurance is to be provided for all the named insured in the greater of the amounts set forth in Paragraph 4.03.B, 4.03.C, and 4.03.D hereinbefore. The intent of this Section is to provide coverage to all of the named insureds, for the period of the applicable statute of limitation, for any and all claims which may arise from operations under this Contract.
- 4.03.G If any of the property and casualty insurance requirements are not complied with at their renewal dates, payments to the Seller will be withheld until these requirements have been met, or at the option of the Buyer, the Buyer may pay the renewal premiums and withhold such payments from any monies due to the Seller.
- 4.03.H In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the Contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the Seller until such time as the Seller shall furnish such additional security covering such claims as may be determined by the Buyer.
- 4.03.I All policies and certificates of insurance of the Seller shall contain the following clauses:
1. Insurers shall have no right of recovery or subrogation against the Buyer and its agents and agencies and the Engineer, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.
 2. The clause "other insurance provisions" in a policy in which the Buyer and its agents and agencies and the Engineer is named as an insured, shall not apply to these parties.
 3. The insurance companies issuing the policy or policies shall have no recourse against the Buyer and its agents and agencies and the Engineer, for the payment of any premiums or for assessments under any form of policy.
 4. Any and all deductibles in the above described insurance policies shall be assumed by and be for the amount of, and at the sole risk of the Seller.

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ARTICLE 5 – SELLER’S RESPONSIBILITIES

- 5.05 Taxes:
- 5.05.A After the second sentence, add the following:
“Buyer is exempt from Ohio state sales and use taxes. Such taxes shall not be requested for payment by the Seller.”
- 5.09 Indemnification:
- 5.09.A First sentence, after "...claims, costs" add the following:
", civil penalties, fines,"

ARTICLE 10 - PAYMENT

- 10.01.A.3 At the option of the Buyer, partial payment up to the estimated value, less retainage, may be allowed for any materials and equipment not delivered, pursuant to the following conditions:
 - a. Major equipment items stored off site shall be stored in a bonded warehouse and properly maintained during storage.
 - b. For any partial payment the Seller shall submit, with his monthly progress payment from each material or equipment manufacturer, bills or invoices indicating actual material cost.
- 10.02.A.1 Review of Applications for Progress Payments:
First sentence, delete "ten days", insert "thirty days".

ARTICLE 11 - CANCELLATION, SUSPENSION, AND TERMINATION

Add the following:

- 11.05 Assignment of Contract:
- 11.05.A Seller shall not assign, transfer, convey or otherwise dispose of the Contract, or of his legal right, title, or interest in or to the same or to any part thereof, without the prior written consent of the Buyer. Seller shall not assign by power of attorney or otherwise any monies due him and payable under this Contract without the prior written consent of the Buyer. Such consent, if given, will in no way relieve the Seller from any of the obligations of this Contract. Buyer shall not be bound to abide by or observe the requirements of any such assignment.

Add the following:

ARTICLE 15 - LIQUIDATED DAMAGES FOR FAILURE TO COMPLETE WORK ON TIME

- 15.01 Liquidated Damages
- 15.01.A If the Seller shall fail to deliver Goods and Special Services within the Contract Time, or extension of time granted by the Buyer in accordance with Article 7, then the Seller will pay to the Buyer the amount for liquidated damages as specified in the Contract for each calendar day that the Seller shall be in default after the time stipulated in the Contract Documents.
- 15.01.B The Seller shall not be charged with liquidated damages or any excess cost when delay in completion of the Work is due to the following and the Seller has promptly given written notice of such delay to the Buyer or Engineer:
- 15.01.C To any preference, priority or allocation order duly issued by the Buyer.
- 15.01.D To unforeseeable causes beyond the control and without the fault or negligence of the Seller, including but not restricted to, acts of God, or of the public enemy, acts of the Buyer, acts of another Seller in the performance of a contract with the Buyer, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes; and abnormal and unforeseeable weather; and
- 15.01.E To any delays of Subcontractors occasioned by any of the causes specified in Paragraphs 15.01.C and 15.01.D of this Article.

**STANDARD GENERAL CONDITIONS
FOR PROCUREMENT CONTRACTS**

Prepared by



and

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**STANDARD GENERAL CONDITIONS
FOR PROCUREMENT CONTRACTS**

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Whenever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument signed by both Buyer and Seller covering the Goods and Special Services and which lists the Contract Documents in existence on the Effective Date of the Agreement.
 3. *Application for Payment*—The form acceptable to Buyer which is used by Seller in requesting progress and final payments and which is accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer or proposal of a Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
 5. *Bidder*—The individual or entity that submits a Bid directly to Buyer.
 6. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
 8. *Buyer*—The individual or entity purchasing the Goods and Special Services.
 9. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Contract Documents or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
 10. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents*—Those items so designated in the Agreement. Shop Drawings and other Seller submittals are not Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.

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13. *Contract Price*—The moneys payable by Buyer to Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as stated in the Agreement.
14. *Contract Times*—The times stated in the Agreement by which the Goods must be delivered and Special Services must be furnished.
15. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Drawings as so defined.
16. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
17. *Engineer*—The individual or entity designated as such in the Agreement.
18. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services but which does not involve a change in the Contract Price or Contract Times.
19. *General Requirements*—Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
20. *Goods*—The tangible and movable personal property that is described in the Contract Documents, regardless of whether the property is to be later attached to realty.
21. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to the Contract Times.
24. *Notice of Award*—The written notice by Buyer to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Buyer will sign and deliver the Agreement.
25. *Notice to Proceed*—A written notice given by Buyer to Seller fixing the date on which the Contract Times commence to run and on which Seller shall start to perform under the Contract.
26. *Point of Destination*—The specific address of the location where delivery of the Goods shall be made, as stated in the Agreement.
27. *Project*—The total undertaking of which the Goods and Special Services may be the whole, or only a part.
28. *Project Manual*—The documentary information prepared for bidding and furnishing the Goods and Special Services. A listing of the contents of the Project Manual is contained in its table of contents.
29. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
30. *Seller*—The individual or entity furnishing the Goods and Special Services.
31. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods and Special Services.
32. *Special Services*—Services associated with the Goods to be furnished by Seller as required by the Contract Documents.
33. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
34. *Successful Bidder*—The Bidder submitting a responsive Bid, to whom Buyer makes an award.
35. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
36. *Work Change Directive*—A written statement to Seller issued on or after the Effective Date of the Agreement and signed by Buyer ordering an addition, deletion, or other revision in the Contract Documents with respect to the Goods and Special Services. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work

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Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Contract Documents.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Contract Documents.
2. The word "non-conforming" when modifying the words "Goods and Special Services," "Goods," or "Special Services," refers to Goods and Special Services that fail to conform to the Contract Documents.
3. The word "receipt" when referring to the Goods, shall mean the physical taking and possession by the Buyer under the conditions specified in Paragraph 8.01.B.3.
4. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
5. The word "furnish," when used in connection with the Goods and Special Services shall mean to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Contract Documents.

C. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller also shall deliver such bonds as Seller may be required to furnish.

2.02 Evidence of Insurance

- A. When Seller delivers the executed counterparts of the Agreement to Buyer, Seller shall deliver to Buyer, with copies to each additional insured identified by name in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Seller is required to purchase and maintain in accordance with Article 4.

2.03 Copies of Documents

- A. Buyer shall furnish Seller up to five printed or hard copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.04 Commencement of Contract Times; Notice to Proceed

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.05 Designated Representatives

- A. Buyer and Seller shall each designate its representative at the time the Agreement is signed. Each representative shall have full authority to act on behalf of and make binding decisions in any matter arising out of or relating to the Contract.

2.06 Progress Schedule

- A. Within 15 days after the Contract Times start to run, Seller shall submit to Buyer and Engineer an acceptable progress schedule of activities, including at a minimum, Shop Drawing and Sample submittals, tests, and

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deliveries as required by the Contract Documents. No progress payment will be made to Seller until an acceptable schedule is submitted to Buyer and Engineer.

- B. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the submittals, tests, and deliveries to completion within the specified Milestones and the Contract Times. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the work nor interfere with or relieve Seller from Seller's full responsibility therefor. Such acceptance shall not be deemed to acknowledge the reasonableness and attainability of the schedule.

2.07 Preliminary Conference

- A. Within 20 days after the Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedule referred to in Paragraph 2.06.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.08 Safety

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT AND AMENDING

3.01 Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Clarifications and interpretations of, or notifications of minor variations and deviations in, the Contract Documents, will be issued by Engineer as provided in Article 9.

3.02 Standards, Specifications, Codes, Laws and Regulations

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. No provision of any such standard, specification, manual or code, or any instruction of a supplier shall be effective to change the duties or responsibilities of Buyer or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to Buyer or Engineer, or any of their consultants, agents, or employees any duty or authority to supervise or direct the performance of Seller's obligations or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies:*

1. *Seller's Review of Contract Documents Before the Performance of the Contract:* Before performance of the Contract, Seller shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Seller shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Seller discovers or has actual knowledge of and shall obtain a written interpretation or clarification from Engineer before proceeding with the furnishing of any Goods and Special Services affected thereby.
2. *Seller's Review of Contract Documents During the Performance of the Contract:* If, during the performance of the Contract, Seller discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Contract, any standard, specification, manual or code, or of any instruction of any Supplier, Seller shall promptly report it to Engineer in writing. Seller shall not proceed with the furnishing of the Goods and Special Services affected thereby until an amendment to or clarification of the Contract Documents has been issued.

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3. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Seller had actual knowledge thereof.

B. *Resolving Discrepancies*: Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Clarifying Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions to the Goods and Special Services or to modify contractual terms and conditions by a Change Order.

B. Buyer may issue a Work Change Directive providing for additions, deletions, or revisions to the Goods and Special Services, in which case (1) the Contract Price shall be equitably adjusted to account for any reasonable and necessary credits to Buyer for any such deletion, or for costs (including reasonable overhead and profit) incurred by Seller to accommodate such an addition or revision and (2) the Contract Times shall be equitably adjusted to account for any impact on progress and completion of performance. Such adjustments subsequently shall be duly set forth in a Change Order.

C. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Goods and Special Services may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 5.06.D.3); or
3. Engineer's written interpretation or clarification.

ARTICLE 4 – BONDS AND INSURANCE

4.01 Bonds

A. Seller shall furnish to Buyer performance and payment bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Seller's obligations under the Contract Documents. These bonds shall remain in effect until 1) one year after the date when final payment becomes due or 2) completion of the correction period specified in Paragraph 8.03, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Seller shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Seller is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 4.01.B, Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 4.01.B and 4.02.

4.02 Insurance

A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.

B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Seller's obligation to maintain such insurance.

C. Upon assignment of this Contract, Seller shall comply with the written request of assignee to provide certificates of insurance to assignee.

D. Buyer does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Seller.

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- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Seller's liability under the indemnities granted to Buyer in the Contract Documents.

4.03 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Buyer or Seller shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 5 – SELLER'S RESPONSIBILITIES

5.01 Supervision and Superintendence

- A. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Contract Documents. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Contract Documents. Seller shall not be responsible for the negligence of Buyer or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure that is shown or indicated in and expressly required by the Contract Documents.

5.02 Labor, Materials and Equipment

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, shall be as specified, and unless specified otherwise in the Contract Documents, shall be:
1. new, and of good quality;
 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer's instructions; and
 3. shop assembled to the greatest extent practicable.

5.03 Laws and Regulations

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller's compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such performance. It shall not be Seller's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this provision shall not relieve Seller of Seller's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance shall be the subject of an adjustment in Contract Price or Contract Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 9.06.

5.04 Or Equals

- A. Whenever the Goods, or an item of material or equipment to be incorporated into the Goods, are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier or manufacturer, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or-equal" item.
 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if:

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- a. in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and
 - b. Seller certifies that if approved: 1) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and 2) the proposed item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraph 5.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or submittal. No "or-equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Contract Documents.
- C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data:* Seller shall provide all data in support of any such proposed "or-equal" at Seller's expense.
- 5.05 Taxes
- A. Seller shall be responsible for all taxes and duties arising out of the sale of the Goods and the furnishing of Special Services. All taxes are included in the Contract Price, except as noted in the Supplementary Conditions.
- 5.06 Shop Drawings and Samples
- A. Seller shall submit Shop Drawings and Samples to Buyer for Engineer's review and approval in accordance with the schedule required in Paragraph 2.06.A. All submittals will be identified as required and furnished in the number of copies specified in the Contract Documents. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide.
- B. Where a Shop Drawing or Sample is required by the Contract Documents, any related work performed prior to Engineer's approval of the pertinent submittal will be at the sole expense and responsibility of Seller.
- C. *Submittal Procedures:*
- 1. Before submitting each Shop Drawing or Sample, Seller shall have determined and verified:
 - a. all field measurements (if required), quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto; and
 - b. that all materials are suitable with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the furnishing of Goods and Special Services.
 - 2. Seller shall also have reviewed and coordinated each Shop Drawing or Sample with the Contract Documents.
 - 3. Each submittal shall bear a stamp or include a written certification from Seller that Seller has reviewed the subject submittal and confirmed that it is in compliance with the requirements of the Contract Documents. Both Buyer and Engineer shall be entitled to rely on such certification from Seller.
 - 4. With each submittal, Seller shall give Buyer and Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both in a written communication separate from the submittal and by specific notation on each Shop Drawing or Sample.
- D. *Engineer's Review:*
- 1. Engineer will provide timely review of Shop Drawings and Samples.
 - 2. Engineer's review and approval will be only to determine if the Goods and Special Services covered by the submittals will, after installation or incorporation in the Project, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole.
 - 3. Engineer's review and approval shall not relieve Seller from responsibility for any variation from the requirements of the Contract Documents unless Seller has complied with the requirements of Paragraph 5.06.C.4 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Seller from responsibility for complying with the requirements of Paragraph 5.06.C.1.
- E. *Resubmittal Procedures:*

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1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Seller shall direct specific attention in writing to any revisions other than the corrections called for by Engineer on previous submittals.
- 5.07 Continuing Performance
- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06.A., and the Goods shall be delivered and the Special Services furnished within the Contract Times specified in the Agreement.
 - B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraphs 11.03 or 11.04, or as Buyer and Seller may otherwise agree in writing.
- 5.08 Seller's Warranties and Guarantees
- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed shall be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
 - B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods shall comply with the requirements of Paragraph 5.02.B.
 - C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller; or
 2. corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Contract Documents and the Contract Documents required the Goods to withstand such conditions;
 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 4. normal wear and tear under normal usage.

D. Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Contract Documents:

 1. observations by Buyer or Engineer;
 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 3. use of the Goods by Buyer;
 4. any acceptance by Buyer (subject to the provisions of Paragraph 8.02.D.1) or any failure to do so;
 5. the issuance of a notice of acceptance by Buyer pursuant to the provisions of Article 8;
 6. any inspection, test or approval by others; or
 7. any correction of non-conforming Goods and Special Services by Buyer.
 - E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.
 - F. Seller makes no implied warranties under this Contract.
- 5.09 Indemnification
- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer and Engineer, and the officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the Contract Documents, provided that any such claim, cost, loss, or damages attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent cause by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.
 - B. In any and all claims against Buyer or Engineer or any of their respective assignees, consultants, agents, officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for

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whose acts any of them may be liable, the indemnification obligation under Paragraph 5.09.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Seller under Paragraph 5.09.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

5.10 Delegation of Professional Design Services

- A. Seller will not be required to provide professional design services unless such services are specifically required by the Contract Documents or unless such services are required to carry out Seller's responsibilities for furnishing the Goods and Special Services. Seller shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to the Goods and Special Services are specifically required of Seller by the Contract Documents, Buyer and Engineer will specify all performance and design criteria that such services must satisfy. Seller shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Goods and Special Services designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Buyer and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Buyer and Engineer have specified to Seller all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 5.10, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 5.06.D.2.
- E. Seller shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 6 – SHIPPING AND DELIVERY

6.01 Shipping

- A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling and any other costs associated with shipment and delivery.

6.02 Delivery

- A. Seller shall deliver the Goods F.O.B. the Point of Destination in accordance with the Contract Times set forth in the Agreement, or other date agreed to by Buyer and Seller.
- B. Seller shall provide written notice to Buyer at least 10 days before shipment of the manner of shipment and the anticipated delivery date. The notice shall also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods during the Contract Times for delivery set forth in the Agreement, or another date agreed by Buyer and Seller.
- E. No partial deliveries shall be allowed, unless permitted or required by the Contract Documents or agreed to in writing by Buyer.

6.03 Risk of Loss

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 6.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods shall remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

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6.04 Progress Schedule

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.06 as it may be adjusted from time to time as provided below.
 - 1. Seller shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.06) proposed adjustments in the progress schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the progress schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 7. Adjustments in Contract Times may only be made by a Change Order.

ARTICLE 7 – CHANGES: SCHEDULE AND DELAY

7.01 Changes in the Goods and Special Services

- A. Buyer may at any time, without notice to any surety, make an addition, deletion, or other revision to the Contract Documents with respect to the Goods and Services, within the general scope of the Contract, by a Change Order or Work Change Directive. Upon receipt of any such document, Seller shall promptly proceed with performance pursuant to the revised Contract Documents (except as otherwise specifically provided).
- B. If Seller concludes that a Work Change Directive issued by Buyer affects the Contract Price or Contract Times, then Seller shall notify Buyer within 15 days after Seller has received the Work Change Directive, and submit written supporting data to Buyer within 45 days after such receipt. If Seller fails to notify Buyer within 15 days, Seller waives any Claim for such adjustment. If Buyer and Seller are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 9.06.
- C. Seller shall not suspend performance while Buyer and Seller are in the process of making such changes and any related adjustments to Contract Price or Contract Times.

7.02 Changing Contract Price or Contract Times

- A. The Contract Price or Contract Times may only be changed by a Change Order.
- B. Any Claim for an adjustment in the Contract Price or Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 9.06.
- C. If Seller is prevented from delivering the Goods or performing the Special Services within the Contract Times for any unforeseen reason beyond its control and not attributable to its actions or inactions, then Seller shall be entitled to an adjustment of the Contract Times to the extent attributable to such reason. Such reasons include but are not limited to acts or neglect by Buyer, inspection delays, fires, floods, epidemics, abnormal weather conditions, acts of God, and other like matters. If such an event occurs and delays Seller's performance, Seller shall notify Buyer in writing within 15 days of knowing or having reason to know of the beginning of the event causing the delay, stating the reason therefor.
- D. Seller shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Seller. Delays attributable to and within the control of Seller's subcontractors or suppliers shall be deemed to be delays within the control of Seller.
- E. If Seller is prevented from delivering the Goods or furnishing the Special Services within the Contract Times due to the actions or inactions of Buyer, Seller shall be entitled to any reasonable and necessary additional costs arising out of such delay to the extent directly attributable to Buyer.
- F. Neither Buyer nor Seller shall be entitled to any damages arising from delays which are beyond the control of both Buyer and Seller, including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, and other like matters.

ARTICLE 8 – BUYER'S RIGHTS

8.01 Inspections and Testing

- A. *General:*
 - 1. The Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
 - 2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.

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3. Buyer shall bear all expenses of inspections and tests that are not specified in the Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 8.01.A.2 immediately above); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
 4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Contract Documents specify are to be observed by Buyer prior to shipment.
 5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination.
 6. If, on the basis of any inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of said inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 8.02.
 7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections shall constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Contract.
- B. Inspection on Delivery:
1. Buyer or Engineer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods and general verification of quantities and observation of apparent condition in order to provide a basis for a progress payment. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
 2. Within ten days of such visual inspection, Buyer shall provide Seller with written notice of Buyer's determination regarding conformity of the Goods. In the event Buyer does not provide such notice, it will be presumed that the Goods appear to be conforming and that Buyer has acknowledged their receipt upon delivery.
 3. If, on the basis of the visual inspection specified in Paragraph 8.01.B.1, the Goods appear to be conforming, Buyer's notice thereof to Seller will acknowledge receipt of the Goods.
- C. Final Inspection:
1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as indicated, Buyer or Engineer will make a final inspection.
 2. If, on the basis of the final inspection, the Goods are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods.
 3. If, on the basis of the final inspection, the Goods are non-conforming, Buyer will identify the non-conformity in writing.

8.02 Non-Conforming Goods and Special Services

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 8.03, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.
- B. Buyer's Rejection of Non-Conforming Goods:
1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Contract Times, remove and replace the rejected Goods.
 2. Seller shall bear all costs, losses and damages attributable to the removal and replacement of the non-conforming Goods as provided in Paragraph 8.02.E.
 3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- C. Remedying Non-Conforming Goods and Special Services:
1. If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.

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2. If Buyer notifies Seller in writing that any of the Special Services are non-conforming, Seller shall promptly provide conforming services acceptable to Buyer. If Seller fails to do so, Buyer may delete the Special Services and reduce the Contract Price a commensurate amount.

D. Buyer's Acceptance of Non-Conforming Goods:

Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods as provided in Paragraph 8.02.E.

- E. Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations shall include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.

F. Buyer's Rejection of Conforming Goods:

If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

8.03 Correction Period

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the earlier of the date on which Buyer has placed the Goods in continuous service or the date of final payment, or for such longer period of time as may be prescribed by Laws or Regulations or by the terms of any specific provisions of the Contract Documents.

ARTICLE 9 – ROLE OF ENGINEER

9.01 Duties and Responsibilities

- A. The duties and responsibilities and the limitations of authority of Engineer are set forth in the Contract Documents.

9.02 Clarifications and Interpretations

- A. Engineer will issue with reasonable promptness such written clarifications or interpretations of the Contract Documents as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such written clarifications and interpretations will be binding on Buyer and Seller. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Contract Price or Contract Times, either may make a Claim therefor.

9.03 Authorized Variations

- A. Engineer may authorize minor deviations or variations in the Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 5.06.C.4, or 2) a Field Order.

9.04 Rejecting Non-Conforming Goods and Special Services

- A. Engineer will have the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer will also have authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 8.01 whether or not the Goods are fabricated or installed, or the Special Services are completed.

9.05 Decisions on Requirements of Contract Documents

- A. Engineer will be the initial interpreter of the Contract Documents and judge of the acceptability of the Goods and Special Services. Claims, disputes and other matters relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to Seller's performance will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph.
- B. When functioning as interpreter and judge under this Paragraph 9.05, Engineer will not show partiality to Buyer or Seller and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant to this Paragraph 9.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 10.07) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.06 Claims and Disputes

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- A. *Notice*: Written notice of each Claim relating to the acceptability of the Goods and Special Services or the interpretation of the requirements of the Contract Documents pertaining to either party's performance shall be delivered by the claimant to Engineer and the other party to the Agreement within 15 days after the occurrence of the event giving rise thereto, and written supporting data shall be submitted to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data.
- B. *Engineer's Decision*: Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- C. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 9.06.B., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- D. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 9.06.C, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Article 13.
- E. If Article 13 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 13, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 9.06.
- G. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the time periods established in this Paragraph 9.06; if so, a written record of such mutual agreement should be made and jointly executed.

ARTICLE 10 – PAYMENT

10.01 Applications for Progress Payments

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Contract Documents and also as Buyer or Engineer may reasonably require. The timing and amounts of progress payments shall be as stipulated in the Agreement.
 - 1. The first application for Payment will be submitted after review and approval by Engineer of all Shop Drawings and of all Samples required by the Contract Documents.
 - 2. The second Application for Payment will be submitted after receipt of the Goods has been acknowledged in accordance with Paragraph 8.01.B and will be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights. In the case of multiple deliveries of Goods, additional Applications for Payment accompanied by the required documentation will be submitted as Buyer acknowledges receipt of additional items of the Goods.

10.02 Review of Applications for Progress Payments

- A. Engineer will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Seller may make the necessary corrections and resubmit the Application.
 - 1. Engineer's recommendation of payment requested in the first Application for Payment will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data, that the Shop Drawings and Samples have been reviewed and approved as required by the Contract Documents and Seller is entitled to payment of the amount recommended.
 - 2. Engineer's recommendation of payment requested in the Application for Payment submitted upon Buyer's acknowledgment of receipt of the Goods will constitute a representation by Engineer, based on Engineer's review of the Application for Payment and the accompanying data Seller is entitled to payment of the amount recommended. Such recommendation will not constitute a representation that Engineer has made a final inspection of the Goods, that the Goods are free from non-conformities, acceptable or in conformance with the Contract Documents, that Engineer has made any investigation as to Buyer's title to the Goods, that exhaustive or continuous inspections have been made to check the quality or the quantity of the Goods beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle Seller to additional payments by Buyer or Buyer to withhold payment to Seller.

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3. Engineer may refuse to recommend that all or any part of a progress payment be made, or Engineer may nullify all or any part of any payment previously recommended if, in Engineer's opinion, such recommendation would be incorrect or if on the basis of subsequently discovered evidence or subsequent inspections or tests Engineer considers such refusal or nullification necessary to protect Buyer from loss because the Contract Price has been reduced, Goods are found to be non-conforming, or Seller has failed to furnish acceptable Special Services.

10.03 Amount and Timing of Progress Payments

- A. Subject to Paragraph 10.02.A., the amounts of the progress payments will be as provided in the Agreement. Buyer shall within 30 days after receipt of each Application for Payment with Engineer's recommendation pay Seller the amount recommended; but, in the case of the Application for Payment upon Buyer's acknowledgment of receipt of the Goods, said 30-day period may be extended for so long as is necessary (but in no event more than 60 days) for Buyer to examine the bill of sale and other documentation submitted therewith. Buyer shall notify Seller promptly of any deficiency in the documentation and shall not unreasonably withhold payment.

10.04 Suspension of or Reduction in Payment

- A. Buyer may suspend or reduce the amount of progress payments, even though recommended for payment by Engineer, under the following circumstances:
 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Contract Documents, and
 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

10.05 Final Application for Payment

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer, furnished all Special Services, and delivered all documents required by the Contract Documents, Engineer will issue to Buyer and Seller a notice of acceptance. Seller may then make application for final payment following the procedure for progress payments. The final Application for Payment will be accompanied by all documentation called for in the Contract Documents, a list of all unsettled Claims, and such other data and information as Buyer or Engineer may reasonably require.

10.06 Final Payment

- A. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Contract Documents, and that Seller's has fulfilled all other obligations under the Contract Documents, then Engineer will, within ten days after receipt of the final Application for Payment, recommend in writing final payment subject to the provisions of Paragraph 10.07 and present the Application to Buyer. Otherwise, Engineer will return the Application to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the Application for payment. If the Application and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages to which Buyer is entitled.

10.07 Waiver of Claims

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Buyer against Seller, except Claims arising from unsettled liens from non-conformities in the Goods or Special Services appearing after final payment, from Seller's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Seller's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Seller against Buyer (other than those previously made in accordance with the requirements herein and listed by Seller as unsettled as required in Paragraph 10.05.A, and not resolved in writing).

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ARTICLE 11 – CANCELLATION, SUSPENSION, AND TERMINATION

11.01 Cancellation

- A. Buyer has the right to cancel the Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph shall not constitute a breach of contract by Buyer. Upon cancellation:
 - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Contract Price of such Goods.

11.02 Suspension of Performance by Buyer

- A. Buyer has the right to suspend performance of the Contract for up to a maximum of ninety days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Contract Times and Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

11.03 Suspension of Performance by Seller

- A. Subject to the provisions of Paragraph 5.07.B, Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
 - 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Contract; and,
 - 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

11.04 Breach and Termination

- A. Buyer's Breach:
 - 1. Buyer shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including but not limited to:
 - a. wrongful rejection or revocation of Buyer's acceptance of the Goods,
 - b. failure to make payments in accordance with the Contract Documents, or
 - c. wrongful repudiation of the Contract.
 - 2. Seller shall have the right to terminate the Contract for cause by declaring a breach should Buyer fail to comply with any material provisions of the Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
 - a. In the event Seller believes Buyer is in breach of its obligations under the Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have seven days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
- B. Seller's Breach:
 - 1. Seller shall be deemed in breach of the Contract if it fails to comply with any material provision of the Contract Documents, including, but not limited to:
 - a. failure to deliver the Goods or perform the Special Services in accordance with the Contract Documents,
 - b. wrongful repudiation of the Contract, or
 - c. delivery or furnishing of non-conforming Goods and Special Services.
 - 2. Buyer may terminate Seller's right to perform the Contract for cause by declaring a breach should Seller fail to comply with any material provision of the Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
 - a. In the event Buyer believes Seller is in breach of its obligations under the Contract, and except as provided in Paragraph 11.04.B.2.b, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have seven days from receipt of the written notice declaring the breach (or such longer period of

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time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

- b. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 4.01, the notice and cure procedures of that bond, if any, shall supersede the notice and cure procedures of Paragraph 11.04.B.2.a.

ARTICLE 12 – LICENSES AND FEES

12.01 Intellectual Property and License Fees

- A. Unless specifically stated elsewhere in the Contract Documents, Seller is not transferring any intellectual property rights, patent rights, or licenses for the Goods delivered. However, in the event the Seller is manufacturing to Buyer's design, Buyer retains all intellectual property rights in such design.
- B. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Contract Documents.

12.02 Seller's Infringement

- A. Subject to Paragraph 12.01.A, Seller shall indemnify and hold harmless Buyer, Engineer and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright by any of the Goods as delivered hereunder.
- B. In the event of suit or threat of suit for intellectual property infringement, Buyer will promptly notify Seller of receiving notice thereof.
- C. Seller shall promptly defend the claim or suit, including negotiating a settlement. Seller shall have control over such claim or suit, provided that Seller agrees to bear all expenses and to satisfy any adverse judgment thereof.
1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound in any subsequent suit or claim against Seller by Buyer by any factual determination in the prior suit or claim.
2. If Buyer fails to provide Seller the opportunity to defend such suit or claim after written notice by Seller, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon intellectual property rights of another, Seller may obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction as necessary to avoid the infringement at Seller's own expense.

12.03 Buyer's Infringement

- A. Buyer shall indemnify and hold harmless Seller, and its officers, directors, partners, employees, agents, consultants, contractors, and subcontractors from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any United States or foreign patent or copyright caused by Seller's compliance with Buyer's design of the Goods or Buyer's use of the Goods in combination with other materials or equipment in any process (unless intent of such use was known to Seller and Seller had reason to know such infringement would result).
- B. In the event of suit or threat of suit for intellectual property infringement, Seller must after receiving notice thereof promptly notify Buyer.
- C. Upon written notice from Seller, Buyer shall be given the opportunity to defend the claim or suit, including negotiating a settlement. Buyer shall have control over such claim or suit, provided that Buyer agrees to bear all expenses and to satisfy any adverse judgment thereof.
1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound in any subsequent suit or claim against Buyer by Seller by any factual determination in the prior suit or claim.
2. If Seller fails to provide Buyer the opportunity to defend such suit or claim after written notice by Buyer, Seller shall be barred from any remedy against Buyer for such suit or claim.

12.04 Reuse of Documents

- A. Neither Seller nor any other person furnishing any of the Goods and Special Services under a direct or indirect contract with Seller shall: (1) acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions; or (2) reuse any of such Drawings, Specifications, other documents, or copies thereof on any other project without written consent of Buyer and Engineer and specific written

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verification or adaptation by Engineer. This prohibition will survive termination or completion of the Contract. Nothing herein shall preclude Seller from retaining copies of the Contract Documents for record purposes.

12.05 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions, copies of data furnished by Buyer or Engineer to Seller, or by Seller to Buyer or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 13 - DISPUTE RESOLUTION

13.01 Dispute Resolution Method

- A. Either Buyer or Seller may initiate the mediation of any Claim decided in writing by Engineer under Paragraph 9.06.B or 9.06.C before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the Engineer's decision from becoming final and binding.
- B. Buyer and Seller shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the Claim, then Engineer's written decision under Paragraph 9.06.B or a denial pursuant to Paragraph 9.06.C shall become final and binding 30 days after termination of the mediation unless, within that time period, Buyer or Seller:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process, or
 - 3. if no dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

ARTICLE 14 - MISCELLANEOUS

14.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if: 1) delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or 2) if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

14.02 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Point of Destination is located.
- B. In the case of any conflict between the express terms of this Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Contract shall apply.

14.03 Computation of Time

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

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14.04 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

14.05 Survival of Obligations

- A. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Goods and Special Services and termination or completion of the Agreement.

14.06 Entire Agreement

- A. Buyer and Seller agree that this Agreement is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

Vote on Motion Mr. Merrell Aye Mrs. Lewis Aye Mr. Benton Aye

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ADMINISTRATOR REPORTS

Ferzan Ahmed, County Administrator

- The State of the City presentation will be this afternoon at SourcePoint
- The County every years presents rockers to add to the County label pin for every five years of service. This year we are pleased to announce that three of the Commissioners’ employee are receiving rockers this year: Jennifer Walraven and Brian Galligher are receiving their 15 year; Si Kille is receiving his 20 year rocker.

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COMMISSIONERS’ COMMITTEES REPORTS

Commissioner Lewis

- Attended the Martin Luther King, Jr. annual breakfast at Ohio Wesleyan on Monday along with our County Administrator. Would like to see the county have an official resolution for them next year.
- Yesterday attended a meeting at Rev1 Ventures. They are a warehouse where businesses can start and grow.

Commissioner Merrell

- Attended the Rev1 meeting yesterday. Learned a lot. There are around fifty businesses in that building now.
- This Saturday will be representing the county at the Ohio Wesleyan Community Day
- There are 26 hours left until the inauguration

Commissioner Benton

- There are five delegates from the local 4-H attending the inauguration tomorrow
- Ran into Warren Hyer at the Strand Theatre last weekend. He mentioned that the symphony will be putting on a “Hear Ohio” music featuring only Ohio composers and singers
- Met with the Assistant County Administrator to discuss putting together a monthly financial report
- The Delaware County Board of Developmental Disabilities will be swearing in new board members this evening
- There will be a CCAO Board meeting tomorrow
- The Senior Citizens Awards are coming up in May

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RESOLUTION NO. 17-43

IN THE MATTER OF ADJOURNING INTO EXECUTIVE SESSION FOR CONSIDERATION OF APPOINTMENT OF A PUBLIC EMPLOYEE OR PUBLIC OFFICIAL; FOR PENDING OR IMMINENT LITIGATION:

It was moved by Mrs. Lewis, seconded by Mr. Merrell to adjourn into Executive Session at 9:58 AM.

Vote on Motion Mr. Merrell Aye Mr. Benton Aye Mrs. Lewis Aye

RESOLUTION NO. 17-44

IN THE MATTER OF ADJOURNING OUT OF EXECUTIVE SESSION:

It was moved by Mr. Merrell, seconded by Mrs. Lewis to adjourn out of Executive Session at 11:33 AM.

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Vote on Motion Mrs. Lewis Aye Mr. Benton Aye Mr. Merrell Aye

There being no further business, the meeting adjourned.

Gary Merrell

Barb Lewis

Jeff Benton

Jennifer Walraven, Clerk to the Commissioners