

General Conditions, Division 100, for the City of Marietta, an Ohio City, located in Washington County.

CITY OF MARIETTA GENERAL CONDITIONS DIVISION 100

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ITEM 101 DEFINITIONS AND TERMS

101.01 General

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101.01 General. These Construction and Material Specifications are written to the Bidder before award of the Contract and to the Contractor after award of the Contract. The sentences that direct the Contractor to perform Work are written as commands. For example, a requirement to provide cold-

weather protection would be expressed as, "Provide cold-weather protection for concrete," rather than "The Contractor shall provide cold-weather protection for concrete." In the imperative mood, the subject "the Bidder" or "the Contractor" is understood.

All requirements to be performed by others have been written in the active voice. Sentences written in the active voice identify the party responsible for performing the action. For example, "The Engineer will determine the density of the compacted material." Certain requirements of the Contractor may also be written in the active voice, rather than the active voice and imperative mood, if the sentence includes requirements for others in addition to the Contractor. For example, "If the Contractor, at any time, fails to comply with the provisions of 105.14, the Engineer will immediately notify the Contractor of such non-compliance."

Sentences that define terms, describe a product or desired result, or describe a condition that may exist are written in indicative mood. These types of sentences use verbs requiring no action. For example, "The characteristics of the soils actually encountered in the subgrade may affect the quality of the cement and depth of treatment necessary."

101.02 Abbreviations. The following abbreviations, when used in the Contract Documents, represent the full text shown below.

AAN	American Association of Nurserymen
ASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
ASA	American Standards Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BMP	Best Management Practice (erosion)
BUSTR	Bureau of Underground Storage Tank Regulations (Division of Fire Marshal)
CCC	City OF MARIETTA Codified Ordinances
CCRL	Cement and Concrete Reference Laboratory
CFR	Code of Federal Regulations

CMSC Construction and Material Specifications - **Error! Reference source not found.** (excluding Division 100)

CPESC Certified Professional in Erosion and Sediment Control

CRSI Concrete Reinforcing Steel Institute

EEI Edison Electric Institute

EIA Electronic Industries Alliance

EPA Environmental Protection Agency

FEMA Federal Emergency Management Agency

FHWA Federal Highway Administration, Department of Transportation

FSS Federal Specifications and Standards, General Services Administration

ICEA Insulated Cable Engineers Association

IEEE Institute of Electrical and Electronic Engineers

IES Illuminating Engineering Society

IME Institute of Makers of Explosives

IMSA International Municipal Signal Association

IPCEA Insulated Power Cable Engineering Association

IPS International Pipe Standard

ISSA International Slurry Seal Association

ITE Institute of Transportation Engineers

JMF Job Mix Formula

MSDS Material Safety Data Sheets

NACE National Association of Corrosion Engineers

NCHRP National Cooperative Highway Research Program

NEMA National Electrical Manufacturers Association

NHI National Highway Institute

NIST National Institute of Standards and Technology

NOI Notice of Intent

NPDES National Pollutant Discharge Elimination System

OAC Ohio Administrative Code

ODNR Department of Natural Resources

ODOT Ohio Department of Transportation

ODOTCMS Ohio Department of Transportation, Construction and Material Specifications

OEPA Ohio Environmental Protection Agency

OMUTCD Ohio Manual of Uniform Traffic Control Devices

ORC Ohio Revised Code

ORDC Ohio Rail Development Commission
OSHA Occupation Safety & Health Act
OWPCA Ohio Water Pollution Control Act
PCC Portland Cement Concrete
PCI Precast/Prestressed Concrete Institute
QA Quality Assurance
QC Quality Control
QPL Qualified Products List
RACP Reclaimed Asphalt Concrete Pavement
RAP Recycled Asphalt Pavement
RH Relative Humidity
RPCC Recycled Portland Cement Concrete
SAE Society of Automotive Engineers
SI International System of Units (Metric)
SSPC Society for Protective Coatings
SWPPP Storm Water Pollution Prevention Plan
UL Underwriters' Laboratories, Inc.
USACE United States Army Corps of Engineers
VECP Value Engineering Change Proposal

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

Addendum or Addenda. Written instructions issued by the City before the Bid opening for the purpose of varying, modifying, rescinding or adding to portions of the Contract Documents.

Advertisement (or Invitation for Bids). The public announcement, as required by law, inviting Proposals for Work to be performed or materials and equipment to be furnished. Such Proposal will indicate with reasonable accuracy the type, quantity and location of the Work to be done or the character and quality of the materials to be furnished and the time and place of the opening of Proposals.

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

Bid. Same as Proposal.

Bid Documents. The Bid Documents are those documents distributed by the City to the Bidders for soliciting bids for the project.

Bidder. Any individual, firm, partnership, corporation, or other legal entity submitting a Proposal for the advertised work, acting directly or through a duly authorized representative.

Borrow Area. The term borrow area refers to locations outside the right-of-way from which natural materials are removed for use in the Work.

Bridge. A structure, including supports, erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of roadway of more than 10 feet (3.0 m) between the center line of bearing of abutments or extreme limits of openings for multiple boxes.

A. The length of a bridge structure is the over-all length measured between centerline of abutments.

B. The roadway width of a bridge structure is the clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guardrails or, in the case of multiple heights of curbs, between the bottoms of the lower risers. For curb widths of one foot (0.3 m) or less, the roadway width shall be measured between parapets or railings.

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

Certified Test Data. A test report from a manufacturer's laboratory or independent laboratory listing actual test data for the specified City requirements for the samples tested and a statement by a person having legal authority to act for the supplier and/or manufacturer of the material that the test report furnished represents the material delivered to the City **OF MARIETTA** project. The certification shall include the Laboratory Report No. and the name of the project to which the material is delivered. Laboratory reports signed by a Registered Professional Engineer and those signed by other personnel and notarized will be accepted for this purpose.

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

City. The City **OF MARIETTA**, acting through its Director or properly authorized agents thereof, such agents acting severally within the scope of the particular duties entrusted to them.

Claim(s). A claim is a request, by the Contractor or the City, for adjustment in Contract Sum or Time, or both, when resolution is not reached using other provisions in the Contract.

Clean Hard Fill. Construction and demolition debris which consists only of reinforced or nonreinforced concrete, asphalt concrete, brick, block, tile, and/or stone which can be reutilized as construction material. Brick in clean hard fill includes but is not limited to refractory brick and mortar. Clean hard fill does not include materials contaminated with hazardous wastes, solid wastes, or infectious wastes. (OAC 3745-400-01(E))

Clean Soil. Clean soil consists of soil, rock, sand, and other unaltered nontoxic geological materials that are not contaminated with petroleum, PCB's, hazardous wastes (as defined in ORC 3734.01(J)), raw sewage, trash or other solid wastes (as defined in ORC 3734.01(E)), or mixed with vegetative debris, asphalt, concrete, scrap metal, bricks, pavement, or other man-made materials constituting construction and demolition debris.

Completion Date. The date on which the Work shall be completed.

Conduit. Any pipe or similar passageway for electricity, gas, water or other utility.

Construction Limits (Work Limits). The farthest boundary of the project where the Contractor shall not proceed and is restricted from working beyond the limits shown on the Drawings without approval by the City.

Construction and Demolition Debris consists of materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any physical structure that is built by humans, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways. "Construction and Demolition Debris" includes particles and dust created during demolition activities. "Materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure," are those structural and functional materials comprising the structure and surrounding site improvements, such as brick, concrete and other masonry materials, stone, glass, wall coverings, plaster, drywall, framing and finishing lumber, roofing materials, plumbing fixtures, heating equipment, electrical wiring and components containing no hazardous fluids or refrigerants, insulation, wall-to-wall carpeting, asphaltic substances, metals incidental to any of the above, and weathered railroad ties and utility poles. "Materials resulting from the alteration, construction, destruction, rehabilitation, or repair" do not include materials whose removal has been required before demolition, and materials that are otherwise contained within or exist outside the structure such as solid wastes, yard wastes, furniture, and appliances. Also excluded in all cases are liquids including containerized or bulk liquids, fuel tanks, drums and other closed or filled containers, tires, and batteries. (ORC 3714.01(C))

Contract Documents. The Contract Documents consist exclusively of the City/Contractor Agreement, Invitation for Bids, Instructions to Bidders, Addenda (if applicable), Prevailing Wage Rates (if Applicable), Proposal, Bid Schedule, Performance and Payment Bonds, Delinquent Personal Property Tax Affidavit, Declaration of Material Assistance, Non Collusion Affidavit, Affidavit of Authority (if applicable), List of Subcontractors, Contractor Qualification Statement, CITY OF MARIETTA General Conditions Division 100, Supplemental General Conditions, the current version of the ODOT CMS, excluding ODOT' s Division 100, Specifications, Supplemental Specifications, Notice of Award to Bidder, Notice to Proceed, Final Affidavit of Compliance with Prevailing Wages (if applicable), Plans, Plan Notes, Drawings, Change Orders, Contract Modifications, and any other document included by reference by the as a Contract Document, all of which constitute one instrument.

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

Contract Modification. A change to the terms and conditions of the executed Contract Documents beyond that approved by the City at the time of Contract award. A Contract Modification must be authorized by the City.

Contract Performance and Payment Bond(s). The approved form of security, executed by the Contractor and its surety or sureties, guaranteeing complete execution of the Work as required by the Contract Documents and the payment of all legal debts pertaining to the construction of the Project.

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

Contract Sum. The Contract Sum is stated in the City/Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the City to the Contractor for the performance of the Work under the Contract Documents. The Contract Sum may include a contingency amount; however, the contingency amount is not due to the Contractor unless approved by Change Order.

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

Contract. The written agreement between the City and the Contractor setting forth the obligations of the parties, including, but not limited to, legal terms and conditions, the performance of the Work, the furnishing of labor and materials, and the basis of payment comprised solely of the Contract Documents.

Contractor. The individual, firm, partnership, corporation, or other entity contracting with the City for performance of prescribed Work, acting directly or through a duly authorized representative and qualified under the requirements of the Contract Documents.

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

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

Department. The department of the City **OF MARIETTA** under which the Project is being performed.

Director. The Director of the City department under which the Project is being funded or the department that is holding the Contract.

Engineer. The Engineer, Architect, Planner, or other authorized representative of the City working under the supervision of the Administrator of the Division under which the project is being performed. The Engineer, or the Engineer's authorized representative, is the duly authorized agent of the City acting within the scope of its authority for purposes of engineering and administration of the Contract.

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

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

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

Field Order. A written order to the Contractor directing a minor change in the Work but that does not involve an adjustment in the Contract Sum or an extension of the Contract Time and is not inconsistent with the intent of the Contract Documents.

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

Laboratory. The testing laboratories of the City or a reputable testing laboratory that is designated by or acceptable to the Director for rendering testing and inspection services.

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

Metrication. Throughout these specifications, the English units are used as the primary unit with the metric equivalents shown in parentheses. The metric equivalents were arrived at using "soft conversion" where the metric equivalent to the standard English unit is a straight mathematical conversion. The conversions shown are for information and training purposes only, and should not be regarded as the standards. Industry standard metric values have not been used in these specifications.

National Holidays. New Year's Day, January 1; Martin Luther King's Birthday - the Third Monday in January; Presidents' Day, the Third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the First Monday in September; Thanksgiving Day, the fourth Thursday in November; Christmas Day, December 25.

Notice of Award. Written notice by the City to the apparent successful bidder stating that upon compliance with the conditions enumerated therein, within the time specified, the City intends to enter into a Contract.

Notice of Commencement. Legal notice by the City indicating the beginning of construction on a public improvement.

Notice to Proceed. Written notice to the Contractor, by the Director or the Director's authorized representative, authorizing the beginning of Work and setting forth the Completion Date.

Owner. The Department or Division of the City **OF MARIETTA** that invited Bids and is financially responsible for the Project.

Plans. The general and detailed plans, profiles, typical cross-sections, standard drawings, contract drawings and supplemental drawings, approved by the Director, or exact reproductions thereof, which show the location, character, dimensions and details of the Work. Plans do not include any electronic data provided as information to the Bidder and expressly identified as "for informational purposes only".

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

Profile Grade. The trace of a vertical plane intersecting the top of curb, centerline of roadway, or as indicated on the plans. Profile grade means either elevation or gradient of such trace according to the context.

Project. The Work together with all appurtenances and construction to be performed thereon under the Contract.

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

Proposal Form. The approved form on which the City requires Proposals to be prepared and submitted for the Work, which may include a Bid Schedule in the case of a contract that requires unit pricing.

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

Proposal (or Bid). The offer of a Bidder, on the prescribed forms properly signed and guaranteed, to perform the Work and to furnish the labor and materials at the prices quoted. Throughout the Contract, the terms Proposal and Bid are used interchangeably.

Reasonably Close Conformity. Reasonably close conformity means compliance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformity means compliance with such working tolerances and the completed Work or portion of Work functions or performs as intended.

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

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

Request for Information (RFI). Request from Contractor seeking interpretation or clarification of the Contract Documents.

Right-of -Way. A general term denoting land, property, or interest therein, acquired for or devoted to Project purposes and extending to the limits under the control of the state or local authority.

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

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

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

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

Sewer. Pipe or conduit intended for carrying storm or sanitary flow.

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

Sidewalk. The facility within the public Right-of-Way primarily constructed for the use of pedestrians.

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

Specialty Items. Work specified by the Contract Documents that requires specialized knowledge and/or equipment and materials to perform.

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

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

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

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

Subcontractor. The individual, firm, partnership or corporation to which the Contractor sublets part of the Contract to be performed on the job site.

Subgrade. The surface upon which a structure or work and appurtenances are to be constructed.

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

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

Superstructure. The entire structure except the Substructure.

Supplement. A list of requirements for fabrication plants, methods of test, or other miscellaneous requirements that are maintained on file with either the City (CS) or the Ohio Department of Transportation (OS).

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

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

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

Waste Area. The term waste area refers to locations outside the right-of-way upon which materials from the Work are to be deposited as waste.

Water Line. Conduit for carrying public water supply.

Work. The furnishing of all labor, services, materials, equipment, and other incidentals necessary or convenient to the successful completion of the Project and the carrying out of all duties and obligations imposed by the Contract Documents.

Work Days. Wherever indicated inside these specifications, workdays are defined as: Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday, excluding National Holidays and, if applicable, the day that a National Holiday is observed.

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

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

ITEM 102 BIDDING REQUIREMENTS AND CONDITIONS

102.01 Pre-qualification of Bidders

102.02 Availability and Contents of Bid Documents

102.03 Preparation of Proposals

102.04 Interpretation of Quantities in Proposal

102.05 Examination of Contract Documents and Work Site

102.06 Duty to Notify of Errors in Bid Documents

102.07 Bid Award Determination

102.08 Non-Responsive Proposals

102.08 Rejection of Unbalanced Bid

102.10 Proposal Guaranty

102.11 Delivery of Proposal

102.12 Withdrawal of Proposals Before Bid Opening

102.13 Withdrawal of Proposals after Bid Opening (Mistake in Bid)

102.14 Public Opening of Proposals

102.15 Material Standards

102.16 Declaration of Material Assistance

102.17 Bidder Certifications Affirming Compliance With Applicable Laws

102.01 Pre-qualification of Bidders. Prequalification requirements, if any, shall be set forth in the Instructions to Bidders.

In addition, if any Work includes work on any water or sanitary main line or service, Bidders must have in effect at the time of Bid and at the time of Work, effective sewer or water tapper's license(s).

102.02 Availability and Contents of Bid Documents. Bid Documents are available to prospective bidders at the location stated in the Advertisement. The Bid Documents will state the location and description of the contemplated Work and will show the approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished, and will have a schedule of items for which unit bid or lump sum prices are invited. The Bid Documents will state the Contract Time, the amount of the Proposal Guaranty, and the date, time and place of the opening of Proposals. The Plans, Specifications, Supplemental Specifications, Special Provisions, standard drawings or other documents designated in the Bid Documents, will be considered a part of the Proposal whether attached or not.

102.03 Preparation of Proposals. Prepare a Proposal according to this subsection and the requirements found in the Bid Documents.

A. General. Provide prices for each item listed in the Proposal.

When an item in the Proposal contains a choice to be designated by the Bidder, the Bidder shall indicate that choice in accordance with the Specifications for that particular item, and thereafter no further choice will be permitted.

The Proposal shall include all documents, duly executed as applicable, that are required to be submitted as directed in the Advertisement. The Proposal shall be executed as follows.

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

Anyone signing a Proposal in a representative capacity must provide evidence of his or her authority to bind the bidder by Affidavit using the form included with the Contract Documents.

Before a contract will be awarded to a foreign corporation or an individual or partnership non-resident of the State of Ohio, such foreign corporation, individual, or partnership non-resident shall file with the Secretary of State a power of attorney designating them or their agent or the Secretary of State, as agent, for the purpose of accepting service of summons, in any action in law or equity, or both, brought in the State of Ohio.

B. Submitting Bids Electronically. In instances where the City accepts electronic bids, properly complete the electronic file and submit it using the software specified in the Bid Documents rather than completing it by handwriting, typing, or using unauthorized computer-generated forms. Properly execute the Proposal by completing all of the required fields and attaching the required signatures in the spaces provided in the electronic file.

C. Submitting Paper Bids. When submitting a paper Bid, submit the Proposal upon the forms furnished by the City or on an acceptable form that matches the City's form exactly.

Specify a unit price in figures for each proposal item for which a quantity is given in the "Unit Price" column. Calculate and place the products for the respective unit prices and quantities in the "Bid Amount" column. For a lump sum item, place the same price in the "Unit Price" column and in the "Bid Amount" column pertaining to that item. Indicate the total Proposal amount by adding the values entered in the "Bid Amount" column for the listed items. All the words shall be in ink or typed.

The Bidder's TOTAL is only for reference at the bid opening. The City will verify that the TOTAL price and the individual unit and/or lump sum prices correspond. If there is a discrepancy, the unit and/or lump sum prices shall govern. For unit prices—and referencing the columns on the Bid Schedule part of the Proposal—the City will consider the bidder's bid to be the numbers in the "Labor" column added to the

numbers in the "Material" column, with that total multiplied by the numbers in the "Quantity" column. The City will correct errors based on this methodology. See below for an example:

1	2	3	4	5	6	7	8
ITEM	DESCRIPTION	QUANTITY	UNIT	LABOR \$	MATERIAL \$	5 + 6	Extended Price 3 X 7
Correct	Construction Fence	300	L.F.	\$2.00	\$2.00	\$4.00	\$1,200
Mistake	Construction Fence	300	L.F.	\$2.00	\$2.00	\$4.00	\$12,000

In the "Mistake" row above, the City would correct the math error so that the price for that line item was \$1,200 and City would adjust the bidder's Total Bid accordingly.

Be advised further that the Bidder is solely responsible to prepare its computerized bid sheets in accordance with the above requirements and the remaining requirements of this Section. Failure to fully comply with the designated format may result in the rejection of the Bidder's bid.

102.04 Interpretation of Quantities in Proposal. The quantities appearing in the Proposal are approximate only and are prepared for the comparison of Bids. Payment to the Contractor will be made only for the actual quantities of Work performed and accepted or materials furnished and accepted in accordance with the Contract Documents. The scheduled quantities of Work to be done and materials to be furnished may each be increased, decreased, or omitted as hereinafter provided.

The description of unit price items in the Proposal that are identified as "increase or decrease" items are identified for establishing a unit price for payment for increases or decreases in the particular item during performance of the Work. For the purpose of Proposal preparation and evaluation, all such "increase or decrease items" shall be computed as increases. Any amount noted as "increase or decrease" will not be used to determine the percentage of work provided by the Contractor and its subcontractors.

102.05 Examination of Contract Documents and Work Site. The Bidder is expected to conduct a careful and diligent Project site investigation of the proposed Work and examine carefully the Bid Documents, and all other documents furnished or referenced by the City in the Bid Documents, before submitting a Proposal. When available, the City may include in the Bid Documents or make available to Bidders for review at the designated City location one or more of the following: as-built drawings, subsurface investigations, borings, soundings, water levels, elevations or profiles and results of preliminary investigations. The Contractor's reasonable site investigation shall also include (1) review of these documents (but this is not substitute for Bidder's own investigation, interpretation, or judgment), and (2) investigation of the Project site, borrow sites, site access, hauling routes and all other locations related to the performance of the Work. The City reserves the right to direct that the Contractor perform a mandatory site inspection.

The Bidder shall as and to the extent necessary make additional investigations of the Project site and existing and subsurface conditions, as it deems necessary before submitting the Proposal. The Bidder

must obtain approval of the City before conducting any boring or subsurface exploration testing that may disturb existing field conditions.

Submitting the Proposal is an affirmative statement that the Bidder has made a reasonable investigation of the proposed Work, the Project site, and the Contract Documents and is satisfied as to the character, quality, quantities, and conditions to be encountered in performing all Work and as to the requirements of the Contract Documents.

The Bidder's investigation and examination shall be at the Bidder's expense and at no cost to the City. Any physical variance at the Project site from that indicated by the Contract Documents, discovered by the Bidder during any investigation or examination conducted by the Bidder shall be called to the attention of the City in writing before submitting a Proposal as provided in 102.06.

The Bidder may rely upon the general accuracy of any technical data included in the Contract Documents in preparing its Bid, but such technical data are not part of the Contract Documents. Except for the limited reliance described in the preceding sentence, Bidder may not, if awarded a contract for the Work, rely upon or make any Claim against the City, or any of their agents or employees, with respect to any of the following:

1. the completeness of such reports and drawings for Bidder's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the successful Bidder and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any interpretation by the successful Bidder of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Bidder to estimate locations or quantities of subsurface strata are independent factual assumptions, which City does not warrant.
4. Each Bidder will be deemed to have actual knowledge of all information provided or discussed at the pre-Bid meeting.

No claims of ignorance of any requirements of the Contract Documents or of any available data shall be accepted as a basis for any Claim for any extra compensation, extra work, or extension of time.

102.06 Duty to Notify of Errors in Bid Documents. The Bidder shall promptly notify the City of errors and omissions in the Bid Documents that the Bidder discovers in the exercise of ordinary and reasonable care. The Bidder's notification shall be made by submitting a question in writing and in accordance with the Bid Documents before submitting a Proposal. The Bidder's duty to disclose errors and omissions is not only a bidding requirement but is also a legal requirement that cannot be ignored.

Failure to provide the required notification before the opening of Proposals shall constitute a waiver by the Contractor and shall not obligate the City for any costs based upon any apparent or patent ambiguity arising from insufficient data or obvious errors in the Bid Documents. Knowingly withholding information regarding an error or omission in the Bid Documents, or intentionally misrepresenting an item of Work for financial or competitive gain, may result in civil or criminal penalties.

102.07 Bid Award Determination. The City reserves the right to reject any, part of any, or all Bids and to waive any informalities and irregularities. The Bidder expressly acknowledges this right of the City to reject any or all Bids or to reject any incomplete or irregular Bid. The City will award a single contract for each of the Bid packages as indicated on the Bid Documents, unless it determines to reject one or more Bid packages. Bidders must furnish all information requested. Failure to do so may result in disqualification of the Bid. Subject to the right of the City to reject any or all Bids, the City will award the Contract for the Work to the Bidder submitting the lowest and best Bid, taking into consideration accepted alternates.

102.08 Non-Responsive Proposals. The City reserves the right to disqualify or refuse to consider a Proposal for any of the following reasons:

1. More than one Proposal for the same work from an individual, firm, or corporation under the same or different name, or corporation under the same name or corporations with one or more of the same persons as officers or directors of such corporations, or corporations which are holding companies, parent companies or holding companies that are subsidiaries of such corporations.

2. Bid prices are materially unbalanced as defined by 102.09.

3. Bidder failed to comply with pre-qualification requirements of 102.01.

4. Proposal contains conditions or qualifications not provided in the Bid Documents.

5. Either the Bidder fails to acknowledge addenda; or, the Proposal does not contain properly completed forms required to be included with the Proposal and/or the City determines that the Bidder's Proposal does not respond to the Bid Documents in all material respects and contains irregularities or deviations which affects the amount of the bid or otherwise gives the bidder a competitive advantage.

6. Bidder adds any provision reserving the right to accept or reject an award.

7. Bidder fails to submit a unit price for each Contract item listed.

8. Bidder fails to submit lump sum price where required.

9. Bidder fails to furnish Proposal Guaranty or Bid Bond for the amount required.

10. Proposal contains other alteration, omission, or error that in the judgment of the City does not respond to the Bid Documents in all material respects and contains irregularities or deviations from the Bid Documents that affect the amount of the Bid or otherwise gives the Bidder a competitive advantage.

However, should the City accept a non-responsive Proposal, the Bidder must meet all remaining requirements set forth in the Bid Documents.

102.09 Rejection of Unbalanced Bid. The Bidder is required to bid each item as indicated in the Bid Documents. The City reserves the right to reject any materially unbalanced bid. A "materially unbalanced bid" is a Bid that contains lump sum or unit prices that do not reflect reasonable labor, equipment, and material costs plus a reasonable proportionate share of overhead and other indirect costs and anticipated profit, and the City determines that the Bid may not result in the lowest ultimate cost to the City.

102.10 Proposal Guaranty. Each Bidder shall submit one of the statutorily required forms of bid security as set forth in O.R.C. Section 153.54. If the Bidder submits a certified check, cashier's check, or letter of

credit pursuant to Chapter 1305 of the Revised Code, the instrument must be conditioned to provide that if the bid is accepted, the bidder, after the awarding or the recommendation for the award of the contract, whichever the City **OF MARIETTA** designates, will enter into a proper contract in accordance with the bid, plans, details, specifications, and bills of material. Any letter of credit shall be revocable only at the option of the City. The amount of the certified check, cashier's check, or letter of credit shall be equal to ten per cent of the bid. Any of the foregoing instruments shall be submitted with the CITY OF MARIETTA listed as the payee or beneficiary.

With any Bond required here, the Bidder shall submit or ensure:

Ohio Department of Insurance Certificate. Proof that the bond is issued by a surety company ("Surety") authorized by the Ohio Department of Insurance to transact business in the State of Ohio and acceptable to the City in the form of a certificate.

A Financial Statement. Proof that the bond is issued by a Surety capable of demonstrating a record of competent underwriting, efficient management, adequate reserves, and sound investments. These criteria will be deemed to be met if the Surety currently has an A.M. Best Company Policyholders rating of "A" or better and has or exceeds the Best Financial Size Category of Class VI. Other Sureties may be acceptable to the City, in its sole discretion.

Proper signatures, credentials, and Power of Attorney. The bond shall be signed by an authorized agent of an acceptable Surety and by the Bidder; and, include credentials showing the Power of Attorney of the agent.

102.11 Delivery of Proposal. The City will accept Proposals until the time and date designated in the Advertisement. If a paper bid is provided, the City will return Proposals received after the designated time to the Bidders unopened, at the Bidder's expense.

102.12 Withdrawal of Proposals Before Bid Opening. Before the opening of Proposals, a Bidder may withdraw its Proposal. If a paper bid is provided, the Bidder must make a written request that is received by the Director before the time of Proposal opening. The Proposal will be returned to the Bidder unopened.

102.13 Withdrawal of Proposal after Bid Opening (Mistake in Bid). Bids may be withdrawn with permission of the City or in strict accordance with O.R.C. Section 9.31 which generally commands that Bidders may withdraw their bids from consideration if the price of the bid was substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the price bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, or material made directly in the compilation of the bid. Notice of a claim of right to withdraw such bid must be made in writing filed with the City within two business days after the conclusion of the bid opening procedure.

102.14 Public Opening of Proposals. Proposals will be opened and read aloud at the time and place designated in the Bid Documents. Bidders, their authorized agents, and other interested parties are invited to be present.

102.15 Material Standards. The equipment, items, devices, materials, forms of construction, fixtures, etc., named specifically in the Contract Documents, including any approved materials lists provided by

an individual Department or Division, have been selected by the City to establish a standard for the type and equality of article to be furnished. The Bid evaluation shall be based upon the Contractor furnishing these specified standards.

Before any Contract is awarded, the Bidder may be required to furnish a complete statement of the origin, composition, and manufacture of any or all materials to be used in the construction of the Work together with samples, which samples may be subjected to the tests provided for in these Specifications to determine their quality and fitness for the Work.

When a standard is specified accompanied by the words "or equal," the product of any source may be submitted for review and consideration during the course of construction provided that the product furnished is equal in all respects to the specified standard and the Contractor certifies that the item is equal in quality and all aspects of performance and appearance to that specified. The Engineer may request additional information and documents as deemed necessary to make the determination that the item is "equal".

The City shall be the sole judge of the fitness of all items submitted for approval as "or equals." The City alone shall determine the extent of any special features or modifications required to render an "or equal" item acceptable in all respects to be considered "an equal" to a specified standard, the "or equal" item must not detract from the quality of performance which would have been provided by the use of the specified standard. Determination of equality will consider materials of construction, design features, construction features, compatibility with adjacent items of work, performance parameters, maintainability, durability, operability, finish and workmanship, quality of service representation, maintenance and operation documentation, financial ability of the manufacturers, locations of successful installations, compliance with the Contract Documents and other qualities that may affect the determination.

Should special features or modifications be required upon the substitution or modifications to the adjacent features of the Work are required to accommodate the product, such features or modifications shall be made at no additional cost to the City. If the City is not satisfied that the "or equal" item is an acceptable replacement to the specified standard, the specified standard shall be furnished by the Contractor at no additional cost to the City.

102.16 Declaration of Material Assistance. Bidders shall submit with their bids a properly completed Declaration of Material Assistance/Non-assistance Form using the form included with the Bid Documents. Failure to submit the form may result in the City declaring the Bidder's bid not responsive to the Bid solicitation.

102.17 Bidder Certifications Affirming Compliance With Applicable Laws. By submitting a Bid for Work on the Project, the Bidder acknowledges that it is in compliance with applicable federal, state, and local laws and regulations, including, but not limited to, the following:

A. Equal Employment Opportunity/Nondiscrimination. In addition to the applicable Federal Law requirements, the Bidder agrees that if it is awarded a contract that in the hiring of employees for performance of work under the contract or any subcontract, neither it nor any subcontractor, or any person acting on its behalf or its subcontractor's behalf, by reason of race, creed, sex, disability as defined in Section 4112.01 of the Ohio Revised Code, or color, shall discriminate against any citizen of

the state in the employment of labor or workers who are qualified and available to perform work to which the employment relates. The Bidder further agrees that neither it nor any subcontractor nor any person on its behalf nor on behalf of any subcontractor, shall discriminate against or intimidate any employees hired for the performance of the work under the contract on account of race, creed, color, sex, or disability as defined in Section 4112.01 of the Ohio Revised Code.

B. Ethics Laws. The Bidder represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

C. Findings for Recovery. By submitting its Bid, each Bidder certifies for reliance of the Owner that it has no unresolved finding for recovery against it issued by the Auditor of the State of Ohio on or after January 1, 2001, except as permitted by Section 9.24(F) of the Ohio Revised Code.

D. OPWC Funding. For projects funded in whole or in part by the Ohio Public Works Commission, the State of Ohio Equal Employment Opportunity Requirements and Bid Conditions for OPWC-Assisted Construction Projects shall apply and Bidders must conform to its requirements, including but not limited to furnishing the required certifications with Bidder's Bid. These requirements, if applicable, are included in the Contract Documents.

ITEM 103 AWARD AND EXECUTION OF CONTRACT

103.01 Consideration of Proposals

103.02 Award of Contract

103.03 Cancellation of Award

103.04 Return of Proposal Guaranty

103.05 Contract Performance and Payment Bond

103.06 Execution of Contract

103.07 Failure to Execute Contract and Furnish Performance and Payment Bond(s).

103.08 Responsibility to General Public

103.09 Contractor's Insurance

103.01 Consideration of Proposals. After the Proposals are opened and read, the City will compare the Bidders' proposed prices. The proposed price is the summation of the products of the estimated quantities shown in the Proposal and the unit prices and, if applicable, lump sum bid prices. In the event of a discrepancy between unit bid prices and extensions, the unit price shall govern.

The City reserves the right, without any liability, to reject any or all Proposals, to waive minor technicalities, or to advertise for new Proposals.

103.02 Award of Contract. The City reserves the right to reject any, part of any, or all Bids and to waive any informalities and irregularities. The Bidder expressly acknowledges this right of the City to reject any or all Bids or to reject any incomplete or irregular Bid. The City will award a single contract for each of the Bid packages as indicated on the Bid Documents, unless it determines to reject one or more Bid packages. Bidders must furnish all information requested. Failure to do so may result in disqualification of the Bid. Subject to the right of the City to reject any or all Bids, the City will award the Contract for the Work to the Bidder submitting the lowest and best Bid, taking into consideration accepted alternates.

103.03 Cancellation of Award. The City reserves the right to rescind the award of any Contract at any time before the execution of the Contract without any liability.

103.04 Return of Proposal Guaranty. The City will return all Proposal Guaranties, except that of the winning Bidder within a reasonable time after the Bid Opening. The City will return the retained Proposal Guaranty of the winning bidder within a reasonable time after the award of Contract; unless the winning bidder has submitted the combined Bid/Performance/Payment bond form from the Contract Documents to satisfy its proposal guaranty requirement.

103.05 Contract Performance and Payment Bond. The successful Bidder that did not submit the combined Bid/Performance/Payment bond on the form in the Contract Documents must, before execution of the Contract by the City, furnish a Contract performance and payment bond(s) in the full amount of the Proposal and using the form provided in the Contract Documents. Said bond(s) shall cover the entire Contract. The successful Bidder's failure to return the signed Contract and the Contract

performance and payment bond(s) shall be deemed a failure by the Contractor to enter into the Contract and shall release the City from all obligations to the Bidder.

103.06 Execution of Contract. The successful Bidder shall sign and return the Contract, together with the contract performance and payment bond(s)—if not using the combined form—and other required Contract Documents, within ten business days after receiving the Notice of Award and the Contract Documents for signature. No Proposal shall be considered binding upon the City until the City executes the Contract and it is approved by all required City Agencies and City Council.

The Contractor must obtain one copy of the Specifications (CMSC) at its own cost and keep available one copy of the CMSC, and one set of the Contract Documents at the Project site at all times. The City will supply the Contractor with up to five sets of Plans. Any extra sets of Contract Documents required by the Contractor may be purchased from the appropriate City Division.

103.07 Failure to Execute Contract and Furnish Performance and Payment Bond(s). Failure of the Bidder to execute the Contract and file acceptable performance and payment bond(s) within ten business days after receiving the Contract Documents for signature shall be cause for the cancellation of the award. Thereafter, depending on the form of Proposal Guaranty, the City may either take as property of the City the Proposal Guaranty or file a claim under the Bid Bond. Award may then be made to the next lowest and best bidder, the Project may be re-advertised, or any other action may be taken as the City may decide.

103.08 Responsibility to General Public. The Contractor shall defend, indemnify and hold harmless the City **OF MARIETTA** and any of its agents or representatives, employees, assigns and successors in interest, from and against any lawsuits and causes of action, claims, losses, demands and expenses, including but not limited to reasonable attorney fees and the cost of litigation, damages or liability of any nature whatsoever, for death or injury to any person, including employees or agents of the Contractor, or for damage to or destruction of property of either party hereto or any third party, which arise in any manner from the negligent acts, errors, omissions or willful misconduct of the Contractor and any of its agents, employees or representatives, including any of its subcontractors, in the performance of the Contract for the City **OF MARIETTA**.

The Contractor shall procure and maintain during the term of the Contract and any applicable warranty period insurance for the liability of damages, which are imposed by law or assumed under Contract with the City **OF MARIETTA**, in the kind and minimum amounts as specified hereinafter, from insurance companies which are authorized to transact business under the laws of the State of Ohio. The insurance shall protect the Contractor and any Subcontractor performing work under the Contract with the City **OF MARIETTA** from claims for damages which may arise from operations under the Contract, whether such operation is performed by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them. The cost of such insurance shall be incidental to all Contract items. The City **OF MARIETTA** shall be listed as an "Additional Insured" on the Commercial General Liability and Comprehensive Automobile liability insurance policies.

Before the execution of the Contract, the Contractor shall provide the City **OF MARIETTA** with a "Certificate of Insurance", in a satisfactory form, which demonstrates compliance with the requirements of this subsection. The "Certificate of Insurance" will also reference the Contract and or Project Number

for which the work is being performed. The Contractor shall also be responsible for providing a "Certificate of Insurance" within ten business days after the insurance is renewed. If the insurance is subject to cancellation, then the insurance company shall immediately notify the City of Marietta of such cancellation in accordance with the policy terms for affording such notice. In addition, if the insurance is cancelled, then the Contractor will immediately cease all operations until the required kind and limits of insurance have been restored. Upon request, the Contractor shall furnish the City **OF MARIETTA** with a certified complete copy of each policy of insurance.

DRUG FREE WORKPLACE: The Contractor(s) acknowledges and certifies that it understands that the following acts by the Contractor, its employees and/or agents performing services on City property are prohibited: The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs, and; Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes). Upon request of the City, the Contractor shall make available proof of drug screening results in a manner so as not to violate state or federal privacy laws. The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by the City in addition to any criminal penalties that may result from such conduct.

103.09 Contractor's Insurance. For purposes of complying with 103.08, the Contractor shall furnish evidence of procuring the following types of insurance before the execution of the Contract:

A. Commercial General Liability Insurance. This policy shall provide coverage for bodily injury or property damage that may arise from the operations of the Contractor and any of its subcontractors. The policy shall include coverage for premises and operations; independent contractors; products and completed operations; broad form property damage; hazards of explosion, collapse, and underground damage; and contractual liability as applicable to any indemnification hold harmless agreements in the Contract. The minimum limits of liability shall be \$1,000,000 for each occurrence subject to an aggregate liability for products and completed operations of \$2,000,000 and a general aggregate liability of \$2,000,000.

B. Comprehensive Automobile Liability Insurance. This policy shall provide coverage for owned, non-owned, and hired automobiles for all damages arising from bodily injury and property damage with limits of liability of not less than \$1,000,000 per accident with respect to bodily injury, property damage, or death.

C. Worker's Compensation Insurance. The Contractor shall comply with all provisions set forth by the Ohio Bureau of Workers' Compensation during the term of the Contract for the benefit of all employees employed at the Project site. If the Contractor shall engage the services of Subcontractors, then it shall require all such Subcontractors to provide Worker's Compensation insurance for its employees who are employed at the Project site. In order to comply with this requirement, the Contractor shall provide the City with a copy of the Workers' Compensation Certificate as evidence that it's insurance premium and that of any Subcontractor has been paid. In the event any class of employees engaged in hazardous work under the Contract at the site of the project is not protected under the Worker's Compensation statute, the Contractor shall provide and cause each Subcontractor to provide suitable insurance for the protection of their employees not otherwise protected.

D. Employers Liability Insurance. This policy shall provide coverage for accident or disease that is incurred by an employee of the Contractor in an amount of not less than \$100,000 for bodily injury by Accident for each accident, \$100,000 for bodily injury by Disease for each employee, and a policy limit of \$500,000 for bodily injury by disease.

E. Builders Risk Insurance. When required, the Contractor shall procure and maintain during the term of the Contract Builders Risk insurance to protect the work being performed under the Contract from loss because of fire, hail, lightning, theft, windstorm, and vandalism in the full amount of the Contract. The cost for this insurance shall be included in the unit price for "Item Special – Builders Risk Insurance".

F. Railroad Protective Liability Insurance. When required, the Contractor shall procure and maintain during the term of the Contract a Railroad Protective Liability insurance policy, for the benefit of the named railroad as respect the operations of the Contractor and its Subcontractors, with limits of liability as specified by the railroad, for damages arising from bodily injury, death, or property damages combined in any one occurrence. The cost for this insurance shall be included in the unit price for "Item Special – Railroad Protective Insurance".

G. Professional Liability Insurance. When required, the Contractor shall furnish evidence that it or any of its Sub-consultants maintain Professional Liability insurance, for liability that may arise from the negligent acts, errors, or omissions of operations performed under the Contract, in an amount not less than \$ 1,000,000 for each claim. If such policy is written on a "claims- made" form, then it shall have a retroactive date of no later than the effective date of the Contract, and such policy shall be maintained for a period of not less than two years after the project has been accepted by the City.

An excess liability insurance policy may be utilized to satisfy the requirements of insurance for Commercial General Liability and Comprehensive Automobile Liability insurance. If such a policy is utilized, then the City shall be listed as an 'Additional Insured'. If the insurance required of this Section is not renewed or if the available insurance is less than the required minimum amounts specified herein as a result of a change or modification in coverage or if the limits of liability are impaired by claims so as to reduce the amount of available insurance, then the Contractor shall so notify the City in which case the City may at its sole discretion consider the Contractor in default of its Contract, refuse to make any further payment to the Contractor until such time the deficiency in insurance is satisfactorily resolved, or use any retained funds which are due the Contractor in order to remedy the deficiency. If any part of the Contract is let to a Subcontractor, then the Contractor is responsible for the part subcontracted work being adequately covered by insurance herein above described.

ITEM 104 SCOPE OF WORK/CHANGES

104.01 Intent of Contract

104.02 Modifications of the Contract Documents

104.03 Contractor Notification, Continuation of Work, and Claims

104.04 Maintenance of Traffic and Accessibility to Utilities

104.05 Rights In and Use of Materials Found on the Work Site

104.06 Right of Property in Materials

104.07 Final Cleaning Up

104.08 Recordkeeping/Audit

104.01 Intent of Contract. The intent of the Contract is to provide for the construction, execution and completion of every detail and element of the Work in accordance with the Contract Documents. The Contractor shall perform all items of work covered and stipulated in the Proposal, perform altered and extra work, and furnish all labor, materials, equipment, tools, transportation and supplies required to complete the Work in accordance with the Contract Documents. Should any dispute or misunderstanding arise as to the intent or meaning of any of the Contract Documents, or any discrepancy therein, the decision of the City shall be final and conclusive as to the requirements for performance of the Work; provided, however, if the Contractor disagrees with such decision, it may dispute the decision in accordance with 104.03.

The price for items of work or materials shown or provided for in the Contract Documents for which no separate line item unit price is given shall be distributed among the various Bid items. Submission of a Proposal shall be considered evidence and acknowledgement that the Bidder is satisfied with the Contract Documents and the conditions as shown therein. No additional compensation shall be paid or time given to the Contractor for compliance with the Contract Documents, except as and to the extent expressly provided in the Contract Documents.

104.02 Modifications of the Contract Documents.

A. General. The City may at any time, without invalidating the Contract and without notice to or release of the sureties, by written Change Order or Contract Modification, as applicable, make any change or modification in the Work or add to the Work within the general scope of the Contract, including, but not limited to, changes in the Contract Documents; in the sequence of the Work; or in the City-furnished facilities, equipment, materials, services, or site. The Contractor shall ensure that the amount of the surety bonds is modified as necessary from time to time to be consistent with any changed Contract scope, Sum, or Time in accordance with any Change Order(s) or Contract Modification(s).

The Contractor shall have no right to compensation above the original Contract Sum until the extra work is included in a written Contract Modification approved by the City. The Contractor agrees that each Change Order or Contract Modification shall constitute a full and final settlement of all matters related to the Change Order or Contract Modification that it the subject thereof, including but not limited to all direct, indirect, and cumulative costs associated with such Change Order or Contract Modification and all adjustments to the Contract Sum and the Completion Date.

To be effective against the City, any Change Order or Contract Modification must be executed by the City as statutorily required; and, no such change shall have effect until the price to be paid for the work and material or both, under the altered or modified contract, has been agreed upon in writing and signed by the City and the contractor, and approved by the City Council or Board of Control as the case may be. No contractor may recover anything for Work or material because of any such alteration or modification unless the change is made in such manner, nor shall it be allowed or recover for such Work and material, or either, more than the agreed price.

B. Differing Site Conditions. If subsurface or latent physical conditions are encountered at the Project site that (i) differ materially from those indicated in the Contract Documents AND (ii) if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents are encountered at the Project site, the Contractor shall notify the City, in accordance with the process and timeline set forth in 104.03, before the conditions are disturbed or the affected Work is performed. Failure of the Contractor to provide such notice is an irrevocable waiver of all of its claims related to the Differing Site Conditions

Upon notification, the City will investigate the conditions to determine whether

(i) the conditions meet the requirements of a differing site condition as defined herein, and (ii) cause an increase or decrease in the cost and/or time required for the performance of any Work under the Contract.

If the City determines that there is a differing site condition as defined herein, the may take one of the following actions:

1. Terminate the Contract for convenience.
2. Suspend the Contract so that the City may redesign the Project to account for the Unforeseen Site Condition and then, if it decides to proceed with construction, the City will adjust the Contract as specified in 108.06 and 109.05.
3. Proceed immediately with construction, and adjust the Contract as specified in 108.06 and 109.05.

If the Contractor disagrees with the City's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

C. Written Delay or Suspension of Work. The City may direct the Contractor, in writing, to delay its start of operations or to suspend its operations for the length of time that the City deems necessary.

If the performance of all or any portion of the Work is delayed or suspended by the City, in writing, for an unreasonable period of time (i.e. a period of time not originally anticipated, customary, or inherent to the construction industry or the Work involved) and the Contractor believes that additional compensation or time is due as a result of such delay or suspension, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

The City will evaluate the Contractor's request in accordance with 104.03. If the City agrees that the cost and/or time required for the performance of the Work has increased as a result of an unreasonable delay or suspension and such delay or suspension was caused by conditions beyond the control of and not the fault of the Contractor, its subcontractors at any tier, or its suppliers, the City will notify the Contractor in writing and the City will adjust the Contract as specified in 108.06 and 109.05; provided, however, the City will not make an adjustment under this Section in the event that the Contractor's performance is delayed or suspended by any other cause or for which a Contract adjustment is provided or excluded under any other term or condition of the Contract.

If the Contractor disagrees with the City's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

D. Significant Changes in Character of the Work. The City may alter the Work as necessary or desirable to complete the Project.

The City will make appropriate adjustments to the Contract in accordance with 108.06, 109.04, and 109.05, if such alterations constitute a significant change in the character of the Work. A "significant change" as used in this Section is defined as:

1. When the character of the Work as altered differs materially in kind or nature from that involved or included in the original Contract, or

2. Where the quantity of a Unit Price pay item in the Contract is an estimated quantity and when the actual quantity of such pay item varies more than twenty-five percent above or below the estimated quantity stated in the Contract. An adjustment in the Contract Price for such a pay item may be made in accordance with 109.04 upon demand of either party.

If a quantity variation in excess of 125% of the estimated quantity also causes an increase in the Contract Time(s), the Contractor shall demonstrate the time impact, if any, by an analysis in accordance with 108.03 and in accordance with the requirements of 108.06. If the City concludes that the Contract Time(s) should be adjusted because of such quantity overrun, the City will issue a Change Order to adjust the Contract Time(s) as the City determines.

The Contractor shall give the City prompt written notice when it is aware, or has reason to believe, that quantities will overrun or underrun by 25% or more of the estimated quantity so that the City will have the opportunity to mitigate the effect, if any, on the scope, cost, or time of the Project. This notice obligation shall be in addition any notice of claim for additional compensation or time pursuant to 104.03.

If the Contractor believes that an alteration constitutes a significant change as defined by this Section, the Contractor must provide notice and bring a claim in accordance with the process and timeline set forth in 104.03. If the City believes that there has been a significant change as defined by this Section, the City shall provide written notice to the Contractor that it is seeking an adjustment of the Contract Sum or Time, which shall be determined in accordance with 109.04.

E. Eliminated Items. Should any items contained in the Contract be found unnecessary for the proper completion of the Work, the City may, upon written deductive Change Order to the Contractor, eliminate such items from the Contract, and such action shall in no way invalidate the Contract.

The pricing adjustment for any eliminated items of Work shall be determined according to 109.04.

If the Contractor disagrees with the City's determination, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

F. Extra Work. The Engineer may direct the Contractor to perform Extra Work.

If the Extra Work will result in an increase in the Contract Sum or Time, the City shall have the right to require the performance thereof on a lump sum basis.

If the City elects to have the Extra Work performed on a lump sum basis, the Contractor shall submit to the City a proposal for such change within ten days of the Contractor's receipt of a Request for Proposal

(RFP). The Contractor's response to the City's RFP shall be itemized and segregated by labor, materials, equipment, subcontractors, supplies and appurtenances for various components of the change in the Work and shall be accompanied by signed proposals of any subcontractors that will perform any portion of the change in the Work and of any suppliers that will furnish materials or equipment for incorporation therein. Pricing of the Extra Work shall be done in accordance with 109.05.C. The proposal shall also include the Contractor's estimate of any impact to the Project's critical path as shown on the last accepted progress schedule at the time of the proposal or any non-critical path changes to the accepted progress schedule that may be required to perform the proposed change.

The Contractor, subcontractors and suppliers shall assure that the costs, pricing and schedule data submitted for evaluation with the Contractor's proposal are based on current, accurate and complete data supported by their books and records. If the City later determines that any cost or time negotiated in connection with the Extra Work decreased by any material amount because the data provided was incomplete, inaccurate or not current at the time of submission, then such price or time shall be reduced accordingly and the Engineer shall issue a written Change Order to reflect such action. Failure to agree on a reduction shall be subject to the Unilateral Change Order provisions of this Contract.

In the event that the Contractor fails to submit its proposal in response to the City's RFP within the designated ten day period, or in the event that the parties are unable to agree as to the reasonable cost and time to perform the change, the City shall either direct the Contractor to perform the Extra Work on a Force Account Basis in accordance with 109.05.C, or shall make a determination of the reasonable cost and time to perform the Extra Work, based upon its own estimate, the Contractor's submission (if any), or a combination thereof.

Failure of the parties to reach agreement regarding the cost and time of performing the Change Order or any pending Claim shall not relieve the Contractor from performing the Extra Work promptly and expeditiously as directed by the Engineer.

The City will determine whether a time extension related to Extra Work is warranted in accordance with 108.06.

If the Contractor believes that any Work it is performing is Extra Work as defined by the Contract, the Contractor must provide notice and bring a Claim in accordance with the process and timeline set forth in 104.03.

G. Unilateral Change Orders. In the event that the City and Contractor are unable to agree as to the reasonable cost and time to perform Extra Work, the City has the authority to direct the Contractor to perform the Extra Work. The City will issue a Unilateral Change Order to the Contractor for any cost or time it determines to be due to Contractor in connection with the Extra Work performed on the Project.

The issuing of a Unilateral Change Order by the City will not preclude or limit the rights of City and Contractor to negotiate and agree to the amounts to be paid or time extension given to the Contractor.

If the City issues a Unilateral Change Order directing a change for the amounts of cost and time determined by the City, it shall become binding upon the Contractor unless the Contractor submits a Claim in accordance with the process and timeline set forth in 104.03. If the Contractor does not submit a timely Notice of Claim, the Contractor shall be deemed to be in agreement with the Unilateral Change

Order as issued and the Contractor expressly waives its right to contest such Change Order, including the amount of cost and time provided therein.

H. Minor Changes/Clarifications to the Work. The Engineer shall have authority to issue Field Orders for minor changes or clarifications to the Work. The Contractor shall carry out such Field Orders promptly and as directed by the Engineer. Such Field Orders shall be considered incidental to the Work.

104.03 Contractor Notification, Continuation of Work, and Claims.

A. General. The Contractor shall provide timely notice and complete the Claim resolution process as provided in this Section as a condition precedent to filing an action in the **Washington** County Court of Common Pleas seeking additional compensation or time. The Contractor's failure to provide timely notice or meet any of the timeframes set forth below, or to request and receive written agreement from the City for an extension of such timeframes, shall terminate further review of the Claim and shall be deemed to be a waiver and release of the Contractor's right to pursue the Claim. Without limiting the generality of the foregoing, the City will not make the adjustments allowed by 104.02.B through 104.02.F if the Contractor did not give notice as specified in this Section; provided, further, no Claim may be made after final payment under this Contract unless properly preserved as set forth in the Contract Documents.

In addition to any specific notice requirements set forth elsewhere in the Contract, if the Contractor believes that any event or circumstance or action or inaction of the City gives the Contractor the right to additional compensation or time, it shall provide timely notice and complete the Claim resolution process as provided in this Section.

B. Notice

1. Initial Oral Notification. The Contractor shall provide immediate oral notification to the Engineer upon discovering an event or circumstance that may require a modification to the Contract Documents or may result in a claim for additional compensation and/or time. Upon such notification, the Engineer will attempt to resolve the identified issue as quickly as possible. The Contractor is advised that oral notice must be followed up by a written notice as provided in 104.03.B.2 in order for the Contractor to preserve its right to make and pursue a Claim; if the Contractor fails to do so, it shall be a waiver and release of the Claim.

2. Written Notice. If the issue is not been resolved, the Contractor must submit Written Notice no later than five working days after the Initial Oral Notification stating that the event or circumstances may require a modification to the Contract Documents or may result in a Claim for additional compensation and/or time. The written notice shall contain:

- a. A description of the circumstance giving rise to the Claim or the potential Claim, including the time, date and location the event or circumstance was first identified.
- b. An explanation why the event or circumstance represents a change to the Contract, with reference to the pertinent sections or parts of the Contract Documents.
- c. An estimate of the revisions considered necessary to the Contract Sum or Time.
- d. An estimate of the time within which the City needs to respond to the notice in order to minimize or mitigate additional cost or delay to the Project.

e. As to any Claim on which the Contractor has provided written notice, it shall from the date of the written notice keep books and records of labor, equipment and materials detailing any costs or delays associated with such claim or the circumstances giving rise to the claim or potential claim. The keeping of such books and records shall be done in accordance with 109.05.C.8 and the Contractor acknowledges and agrees that the City's participation in this recordkeeping process and acceptance of those records is solely for recording costs incurred and not an acknowledgment of the merit, if any, of a Claim for additional compensation or time, which shall be determined in accordance with the process set forth in this Section. Because of its preliminary nature, the City will require only the Contractor's best estimate based on available information at the time of first written notice; provided, however, the Contractor shall keep the Engineer regularly informed in writing of any on-going cost or time issues and shall, within thirty days after the end of the Claim event or circumstances, supplement its prior submissions identified as its final cost and time information, as applicable.

C. Continuation of Work. The Contractor shall continue with all Work, including the Work that is the subject of a Claim or potential Claim, unless specifically directed otherwise by the Engineer. The City shall continue to pay Contractor for all non-disputed work performed during the pendency of any Claim.

D. Claims. Claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers if and to the extent the Contractor is entitled to relief under the Contract. Any Claims brought by the Contractor, on behalf of itself or any subcontractor or supplier, shall be subject to all requirements of this Section.

The Contractor shall provide with each Claim a Certification of Claim that:

1. The Claim is made in good faith and is fully documented and supported in accordance with the terms of the Contract.
2. The supporting data is accurate and complete to the best of the Contractor's knowledge and belief after appropriate inquiry and review.
3. The Claim amount or time requested accurately reflects the Contractor's actual incurred costs or additional time, or its best estimate of costs or additional time to be incurred if it is not known at the time the Claim is made. (In the event an estimate is provided initially, the Contractor will be required to re-certify, as provided herein, the accuracy of the Claim when the final costs and time are presented to the City.)
4. Acknowledgement by the signatory that the Certification is signed under penalty of law for perjury or falsification with specific reference to the City's False Claim provision in Section 335.05 of City Code.

E. Dispute Resolution Process

1. Step 1 (On-Site Determination). Within five calendar days of receipt of the Contractor's Written Notice, the Engineer will meet with the Contractor's representative(s) to review all pertinent information and contract provisions and negotiate in an effort to reach a resolution in accordance with the Contract Documents. Within fourteen calendar days of the Step 1 meeting, the Engineer will issue a written Step 1 decision describing the decision and reasoning for it. If the dispute is not resolved at Step

1, the Contractor must either abandon the Claim or continue pursuing the Claim by proceeding to Step 2 within the required timeframe.

These periods may be extended by the Engineer, in writing, as needed for the Contractor to provide merit, cost and time information regarding the dispute, as requested by the Engineer.

2. Step 2 (Claim Resolution Committee). Within seven calendar days of receipt of the Step 1 decision, the Contractor must submit a written request for a Step 2 meeting to the Director. The Director will promptly establish within the applicable City Department, and Division if applicable, a Claim Resolution Committee (CRC). Within fourteen calendar days after the Director's receipt of the Contractor's request for a Step 2 meeting, the Contractor shall submit (or supplement) documentation that describes the Claim, the monetary amount or time extension sought, the basis for Contractor's Claim under the Contract Documents, and copies of any applicable parts of the Contract Documents and project records, all in accordance with 104.03.B.2.

Within fourteen calendar days after receipt of the Contractor's documentation, the Engineer will send to the Contractor and the CRC his/her written response. Within fourteen calendar days after receipt of all documentation, the CRC will meet with Contractor and the Engineer (or designee) to discuss the Claim.

If the Claim is not resolved at the meeting, within fourteen calendar days after the meeting, the Director will issue to Contractor a written decision.

The time periods under this Section may be revised by written approval of the Director.

3. Alternative Dispute Resolution (ADR). If the Contractor does not accept the Director's Step 2 decision, within fourteen calendar days of its receipt of the Step 2 decision, the Contractor may submit to the Director a written Notice of Intent to Pursue a Claim.

The Contractor's Notice of Intent to Pursue Claim shall advise the Director whether the Contractor wishes to resolve the Claim using either mediation or arbitration.

If the Contractor proposes mediation, within thirty calendar days after receipt of Contractor's Notice of Intent to Pursue Claim, the Director shall advise the Contractor in writing whether the City accepts the Contractor's proposal.

If the Contractor proposes arbitration, it shall be subject to approval of the City Council or such other conditions that are necessary to comply with City Code. Within thirty calendar days after either the City Council acts on the matter or the Contractor advises the Director that it will accept any conditions that are necessary to comply with City Code, the Director shall advise the Contractor in writing whether the City accepts the Contractor's proposal to arbitrate.

If the City accepts using mediation or arbitration, the parties will use the then applicable International Institute for Conflict Prevention and Resolution Mediation Procedure or the International Institute for Conflict Prevention and Resolution Rules for Expedited Arbitration of Construction Disputes, as applicable. The parties will enter into such further agreement as is necessary to implement the ADR process selected and may make modifications to such processes as they mutually agree.

4. Filing of Lawsuit in Washington County Court of Common Pleas. If the Claim is not resolved at Step 2 and the Contractor does not elect to request ADR pursuant to 104.03.E.3 or the City declines the Contractor's request for an ADR process pursuant to 104.03.E.3, the Contractor must either

abandon the Claim or file a lawsuit in the **Washington** County Court of Common Pleas within one hundred twenty calendar days after receipt of the Director's Step 2 decision. The Contractor's failure to file a lawsuit within that period shall be deemed a waiver and release of the Claim against City. The period to file a lawsuit may be extended by mutual written agreement of the City and the Contractor.

104.04 Maintenance of Traffic and Accessibility to Utilities. The Contractor shall at all times provide and maintain access to fire hydrants, water valves, water service boxes, gas valves, gas service boxes, manholes and other similar appurtenances.

When so stated in the Contract Documents, maintain public traffic during construction, including cross traffic at intersections. Maintenance of traffic may be required only at certain stages of construction or at all times, if so noted.

At locations on the Project where sewer or water line construction only is called for and a part of the existing pavement will remain in place, maintain traffic and provide ingress and egress to all public and private entrances.

In the event of the complete closure of any street, alley or private drive, the Contractor shall give written notification to the occupants of all premises affected by such closure as per 614.05.

Whenever the Contractor, for any reason, ceases operations on this Contract for a period of fourteen or more calendar days, the Contractor, if so directed by the Engineer, shall construct a temporary roadway to provide access to any premises affected by Project operations. The temporary roadway shall be constructed of cinders, gravel, crushed stone or other acceptable materials and of suitable width and thickness to carry anticipated vehicles, as directed by the Engineer. The Contractor shall maintain the temporary road in serviceable condition until such time that the Work is resumed. The Contractor shall bear the cost of constructing and maintaining any temporary roadway.

Failure of the Contractor to perform the operations stated in this Section when directed by the Engineer, within the timeframe provided by the Engineer, will give the City authority to perform the work and back charge such cost to the Contractor.

The Contractor shall furnish, erect, maintain and remove all traffic control devices in accordance with the OMUTCD. All traffic control devices shall be paid for in accordance with the provisions of Section 614 - Maintaining Traffic. When the Contract Documents do not include Section 614, the cost of this work shall be included in the price bid for various items in the Proposal. The provision of these items and this Section shall not in any way relieve the Contractor of any of its legal responsibilities or liabilities for the safety of the public. The attention of the Contractor is also directed to the provisions of 107.02 and 107.07 of the Specifications.

104.05 Right In and Use of Materials Found on the Work Site. If the Contractor proposes that existing raw or recycled Materials Found on the Work Site are compliant with the specifications for the Work, Contractor may submit an add/deduct cost proposal to the Engineer for consideration. Contractor shall also indicate if there are also add/deduct time adjustments to the contract completion time associated with the use of these materials. All portions of suitable or unsuitable excavation material removed, which was needed for use in the embankments, backfills, approaches, or otherwise, shall be replaced with other acceptable material, at the expense of the Contractor. Excavate or remove material only from within the grading limits, as indicated by the slope and grade lines.

104.06 Right of Property in Materials. All materials attached, fixed or incorporated into the Work or the soil shall thereupon become property of the City and the Contractor shall have no property rights thereto.

104.07 Final Cleaning Up. Before Final Acceptance, remove all rubbish, layout stakes, monitoring wells, settlement instrumentation devices, sediment control devices as directed by the Engineer, excess material, temporary structures, and equipment, including stream channels and banks within the Right-of-Way at drainage structures, and all borrow and waste areas, storage sites, temporary plant sites, haul roads, and other property occupied by the Contractor in connection with the Work. Establish suitable vegetative cover in these areas by seeding and mulching or sodding according to Items or 660, except for cultivated fields. Leave the Project site in an acceptable condition as determined by the Engineer. Unless a separate bid item is provided in the Proposal, the cost of cleanup is incidental to all Contract Items.

104.08 Recordkeeping/Audit. The Contractor, subcontractor(s) and supplier(s) shall cooperate with the City and shall produce, compile, maintain and keep all cost, time and schedule records sufficient to substantiate all requests for payment, Claims for additional compensation, and requests for time extensions. The Contractor shall keep the following records, including, but not limited to, daily time sheets and foreperson's daily reports, union agreements if any, payroll register, earnings records, payroll tax returns, material invoices, purchase orders, cancelled checks, equipment records, vendor rental agreements, subcontractor payment certificates, job cost report, general ledgers and subsidiary ledgers, cash disbursement journals, complete bid estimate and worksheets, financial statements, worksheets used to prepare the Claim and establish cost components for Claim items, and schedule information and updates.

Upon reasonable written notice to the Contractor, the City or its designated agents shall be provided access to, and the right to inspect and audit, all of the Contractor's and its subcontractors' and suppliers' records pertaining to the Project. If and to the extent that the Contractor fails to maintain and keep proper Project records, fails to provide the City or its designated agents access to such Project records, or fails to provide the documentation required by 108 or 109, the City may deny any requests for payment, additional compensation, and/or requests for time extensions if and to the extent they have not been or cannot be substantiated by the Contractor or by inspection/audit of the City.

ITEM 105 CONTROL OF WORK

105.01 Authorities and Duties

105.02 Plans and Working Drawings

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105.01 Authorities and Duties

A. Authority of the Director. The Director has the authority to enter into a Contract or execute a Contract Modification subject to the applicable provisions of the City **OF MARIETTA** Codified Ordinances and O.R.C. The Director has the authority, on behalf of the City, to delay or terminate the Contract, and to suspend Work wholly or in part. The Director has the ultimate decision making authority over all items included under the authority and duties of the Engineer.

Any action or inaction of the Director does not constitute a waiver of the City's right to pursue any and all remedies under the Contract or otherwise, including, but not limited to, defective work or Work performed by the Contractor in an unworkmanlike manner.

B. Authority and Duties of the Engineer. The Engineer has immediate charge of the engineering details of the Project and is responsible to ensure that the Contractor satisfactorily administers and completes the Work. The Engineer will decide all questions that may arise as to: the quantity, quality and acceptability of materials furnished; work performed and rate of progress; conformity with Plans, Specifications and other Contract Documents; acceptable fulfillment of the Contract on the part of the Contractor; interpretation of the Plans, Specifications and other Contract Documents; and Contractor compensation or time extensions.

The Engineer may suspend all or part of the Work pursuant to 104.02.C. In addition, the Engineer may also suspend all or part of the Work when the Contractor fails to correct conditions that are unsafe for the workers or the general public, fails to comply with the Contract Documents, or fails to comply with the Engineer's orders. The Engineer may suspend the Work due to adverse weather conditions, conditions considered adverse to the prosecution of the Work, or other conditions or reasons in the public interest. The suspension of the Work for the reasons specified in this paragraph shall not relieve the Contractor of the responsibility to take appropriate actions to protect the Project site, adjacent property owners, and general public. In the event the Engineer orders the Work suspended for conditions under this paragraph, the expense and time, whether direct or indirect, for such suspension shall be borne solely by the Contractor and shall not be considered a suspension of work under 104.02.C.

Any action or inaction of the Engineer shall not constitute a waiver of the City's right to pursue any and all legal remedies under the Contract or otherwise, including, but not limited to, defective or non-conforming work or work performed by the Contractor in an unworkmanlike manner.

C. Authority and Duties of the Inspector. Inspectors employed by the City are authorized to judge the acceptability of the Work. Such activities may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to alter or waive the provisions of the Contract Documents, but shall have the authority to notify the Contractor of Work that does not conform to the Contract Documents or reject materials that do not conform to the Specification requirements. The Inspector is not authorized to issue instructions contrary to the Plans and Specifications, or to act for the Contractor. The presence of or actions by the Inspector shall not relieve the Contractor of the responsibility to complete the Work under the terms and conditions of the Contract Documents.

Any action or inaction of the Inspector does not constitute a waiver of the City's right to pursue any and all legal remedies under the Contract or otherwise, including, but not limited to, defective or non-conforming work or work performed by the Contractor in an unworkmanlike manner.

105.02 Plans and Working Drawings. The Contractor shall be responsible for the furnishing of copies of Plans, Specifications, Supplemental Specifications, and Special Provisions, or the necessary portions thereof, to subcontractors and parties furnishing labor, materials and equipment for the Project.

The Contractor shall prepare Working Drawings and submittals when required by the Contract Documents and after verifying applicable field and plan elevations, dimensions, geometries, and conditions. Working Drawings shall be detailed as required to adequately control and complete the Work. When specified, Working Drawings must be stamped by a Registered Professional Engineer in the State of Ohio. Where Work consists of repairs, extension, or alteration of existing structures, the Contractor shall take measurements of existing structures to accurately join old and new Work. Any measurements that may appear upon the Plans to indicate the extent and nature of such repair or extension shall not relieve the Contractor of this responsibility.

Unless otherwise indicated, the Engineer will review submittals for the limited purpose of checking conformance with the Contract Documents and to provide the Contractor a written response to document the results of its review.

The Engineer's disposition shall not relieve the Contractor of responsibility to complete the Work according to the Contract Documents, including but not limited to, the accuracy and reliability of Working Drawings furnished by the Contractor. The Contractor shall include the cost of furnishing Working Drawings in the cost of the Work they cover.

105.03 Conformity with Contract Documents. All Work performed and all materials furnished shall be in reasonably close conformity, as decided in the sole discretion of the City, with the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the Plans or indicated in the Specifications.

Unless otherwise stated in Special Provisions or in a Plan note, the latest revision of any applicable Federal, State, City, or industry code, regulation, or standard at the time of bid opening shall apply. Codes and regulations shall take precedence over industry standards.

Without detracting from the complete and absolute discretion of the Engineer to insist upon such tolerances as establishing reasonably close conformity, the Engineer may accept variations beyond such tolerances as reasonably close conformity where they will not materially affect the value or utility of the Work and the interests of the City. In the event the Engineer finds the materials or the finished product in which the materials are used not within reasonably close conformity with the Plans and Specifications but that reasonably acceptable work has been produced, the Engineer shall then make a determination if the Work shall be accepted and remain in place. In this event, the Engineer will document the basis of acceptance by deductive Change Order, which will provide for an appropriate adjustment in the Contract Sum for such work or materials as is deemed necessary to conform to the determination based on the Engineer's judgment.

In the event the Engineer finds the materials of the finished product in which the materials are used or the Work performed are not in reasonably close conformity with the Plans and Specifications and has resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor. Failure of the Contractor to follow such order of the Engineer, shall give the City the unqualified right to remove and replace the unsatisfactory Work, supply the materials for the finished Work, and perform the Work or cause it to be performed, and any and all expense chargeable thereto, directly or indirectly, shall be deducted or billed to the Contractor at the option of the Engineer pursuant to 109.14.

105.04 Coordination of the Contract Documents. The various documents included in the Contract Documents are essential parts of the Contract Documents, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work.

The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. In the event the Contractor discovers such an error or omission, it shall immediately be made known to the Engineer in writing. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract Documents.

105.05 Cooperation by Contractor. The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate in every possible way with the Engineer, Inspectors, all other Contractors on or adjacent to the Project, and all utility companies and railroads. The Contractor shall attend progress meetings when requested by the Engineer. The Contractor shall keep at least one set of Contract Documents at the Project at all times.

Where the Work extends across private property, the Contractor shall conduct operations in strict conformity with the terms and conditions of the easements and agreements obtained from the owners of the property. The City will not provide any points of access to any of these easements other than at points shown or described in the easement or agreement with the property owner. Arrangements for the use of any additional points of access shall be made with the property owners by the Contractor at no additional cost, or obligation, to the City.

The Contractor agrees to confine the work under the Contract to the strict dimensions of Construction Limits. Any failure of the Contractor, or the Contractor's agents, servants, employees and subcontractors to restrict the Work within the Construction Limits shall be the sole liability and responsibility of the

Contractor, and the Contractor shall defend, indemnify and hold harmless the City as provided in 107.24 relating to any activity of the Contractor's agents, servants, employees and subcontractors where such activity concerning Work under this Contract extends beyond the Construction Limits. The Contractor also agrees that where its operations extend outside the Construction Limits, the Engineer has the absolute right to suspend the applicable Work, unless the Contractor provides written evidence that indicates permission from the property owner.

In the event the Engineer orders the Work suspended for conditions under this Section, the expense and time, whether direct or indirect, for such suspension shall be borne solely by the Contractor and shall not be considered a suspension of work under 104.02.C.

If the Contractor disperses any or all of its equipment to an area outside the Construction Limits of the Project, the re-mobilization of the equipment back to the work area shall be at the Contractor's expense.

105.06 Superintendent. Provide a competent Superintendent for the Project that is available and responsive at all times and is responsible for all aspects of the Work. The Superintendent must be capable of reading and understanding the Contract Documents and experienced in the type of Work being performed. The Superintendent shall receive instructions from the Engineer or the Engineer's authorized representatives. The Superintendent shall have the full authority to execute orders or directions of the Engineer without delay and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of Work sublet. Contractor shall not replace the Superintendent without the express written permission of the City. Contractor shall replace the Superintendent upon request of the City with no additional charge to the City.

105.07 Cooperation with Utilities.

A. General. During the course of design, the City shall notify all utility companies, all pipeline owners or other parties affected and endeavor to have all necessary adjustments of the public or private utility fixtures, pipe lines and other appurtenances within or adjacent to the Construction Limits made as soon as possible so as not to interfere with the progress of the Work or in accordance with the time provisions set forth in the Contract Documents.

The Contractor shall comply with all laws, regulations and codes concerning the identification and locations of all underground utilities. During the course of the Work, the Contractor shall be solely responsible to notify any utility or other service when such utility or service is encountered.

Water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cable-ways, signals, and all other utility appurtenances within the limits of the proposed Construction Limits which are to be relocated or adjusted are to be moved by the utility owners at their expense, except as otherwise provided for in the Special Provisions or as noted on the Plans.

B. Protection and/or Replacement of Utilities. The Contractor shall protect all utilities encountered while performing the Work, whether indicated on the Plans or not. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed before starting the Work, at no cost to the City.

C. Surface or Overhead Utilities. Existing surface or overhead structures or utility lines are not necessarily shown on the Plans and those shown are only approximately correct. The Contractor shall make such investigations as are necessary to determine the extent to which existing surface or overhead structures may interfere with the prosecution of the Work contemplated under the Contract Documents.

D. Subsurface Utilities. The information and data shown or indicated in the Contract Documents with respect to existing subsurface utilities at or contiguous to the Construction Limits is based on information and data furnished to the City by the owners of such subsurface utilities, including the City, or by others.

The City shall not be responsible for the accuracy or completeness of any such information or data provided by others.

The cost of all of the following shall be included in the Contract Sum, and Contractor shall have full responsibility for:

1. reviewing and checking all such information and data;
2. determining the exact location all subsurface structures and utilities (including sewer service connections) shown or indicated in the Contract Documents;
3. coordination of the Work with the owners of such subsurface utilities, including the City, during construction; and
4. the safety and protection of all such subsurface utilities and repairing any damage thereto resulting from the Work.

In accordance with Section 153.64 of the Ohio Revised Code, at least two Working Days, excluding Saturdays, Sundays, and legal holidays, before commencing construction operations in the construction area which may involve underground utility facilities, the Contractor or its subcontractor(s) shall notify the registered utility protection service and the owners of each underground and overhead utility facility not members of the registered utility protection service.

If a subsurface utility is uncovered or revealed which was not shown or indicated, or not shown or indicated with reasonable accuracy, in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith, identify the owner of such subsurface utility and give written notice to that owner and to the City. The Engineer will promptly review the subsurface utility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the subsurface utility. During such time, Contractor shall be responsible for the safety and protection of such subsurface utility.

E. Delay. In the event that the Contractor has used reasonable efforts to coordinate with a utility company to relocate or adjust its lines and, through no fault of the Contractor, the progress of the Work is delayed for an unreasonable length of time from that shown in the accepted progress schedule due to the failure of a utility company to relocate or adjust its lines, the Contractor shall immediately file with the City a detailed statement describing the nature of the delay and its effect upon progress of the Work and shall be entitled to request a Contract adjustment in accordance with 104.03 and 108.06.

F. Utility Shut-off. In the event that the Work requires a shut-off of any public or private utilities, the Contractor shall notify the affected subscribers of the time of such shut-off and the probable time that service will be restored. The Contractor shall make such notification at least forty-eight hours before such shut-off unless otherwise directed by the Engineer. If a shut-off is cancelled or postponed, the Contractor shall notify the affected subscribers of the new time of shut-off and the probable time that service will be restored.

All shut-offs and turn-ons shall be made under the direction and supervision of personnel of any affected utilities and the Contractor shall furnish all assistance required including tools and equipment. The time and place of such shut-offs shall be designated by the Engineer.

G. Basis of Payment. It is understood and agreed that the Contractor has considered in the Proposal all permanent and temporary utility appurtenances in their present or relocated positions and included the cost thereof in the price bid for the various items in the Contract. No additional compensation shall be allowed for any delays, inconvenience, or damage sustained by the Contractor due to any interference from such utility appurtenances or the operation of moving them, except as provided for in 104.02.B., if applicable.

H. Indemnification. The Contractor shall defend, indemnify and hold harmless the City as provided in 107.24 relating to any damage caused by the Contractor or its agents, assigns or employees, or by the Contractors' subcontractor(s), done directly or indirectly to the above mentioned items, whether such damage results from negligence or otherwise and whether the damage is to private or public property or real or personal property. The Contractor hereby agrees that it bears the sole responsibility to pay the entire cost thereof.

Failure of the Contractor to pay the entire cost as stated above within thirty days shall give the City the unqualified right to deduct and withhold the entire amount of damages from the cost of this Contract.

The Contractor further covenants not to sue the City, either in law or equity, where such deduction and withholding is made by the City.

The City shall return, within a reasonable time thereafter not to exceed thirty days, any excess amount over the amount of damages paid by the City; or, any amount in excess of any judgments and costs of litigation the City is required to pay.

The Contractor further waives any and all rights, title or interest in any and all amounts so liquidated and any and all amounts of judgments and costs of litigation found against the City.

105.08 Cooperation between Contractors. The City reserves the right at any time to contract for and perform other work on or near the Work covered by the Contract.

When separate contracts are awarded within the work limits of any one project, each Contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed by the Engineer.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with its Contract and shall defend, indemnify and hold harmless the City as provided in 107.24 relating to any inconvenience, delay, or loss relating to the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange its work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. Each Contractor shall join their work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

105.09 Construction Stakes, Lines and Grades. Unless the Proposal contains a Lump Sum bid Item 623 Construction Layout Stakes, the Contractor shall execute all Work in conformity to the lines and grade furnished by the City and shall preserve all points of reference until authorized to remove them. The Contractor shall notify the City at least two working days before the time that stakes or other points for line and grade will be needed. There shall be no compensation to the Contractor for the cost occasioned by delay in establishing lines, grades and elevations or making other necessary measurements or by inspection; but such costs shall be considered as having been included in the Contract Price.

Perform all construction staking, including privately funded projects under the supervision of a Registered Professional Engineer or Land Surveyor. Submit all field notes, cut sheets, etc., to the City upon request.

105.10 Photographs and Videos. The Engineer, Inspectors or other duly authorized City personnel or agents, from time to time during the progress of the Work, may take photographs or videos of the Work. The Contractor shall furnish access to the Work at all times for this purpose and shall furnish such assistance as may be required. The photographs or videos thus taken shall be the property of the City. Nothing herein contained shall be construed as prohibiting the taking of photographs or videos by the Contractor or its agents, provided, however, that it is done at no cost or expense to the City.

105.11 Inspection of Work. All materials and each part or detail of the Work shall be subject to inspection by the Engineer, Inspector, or duly authorized City representative. The Engineer, Inspector, or duly authorized City representative shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection. Notify the Engineer at least twenty-four hours before all required special inspections and testing as specified in the Contract Documents or as required by the Engineer.

If the Engineer requests it, the Contractor, at any time before acceptance of the Work or any portion thereof, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Contract Documents. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work; but should the Work so exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, shall be at the Contractor's expense.

The Contractor shall notify the Engineer at least forty-eight hours in advance of any changes in the work schedule. This notification is required to accommodate construction inspection scheduling. The notification shall include the beginning date and time of the work, and the duration of the work. The notification shall be submitted to the Engineer in writing. In the absence of such notification, and if the work is performed without inspection, the Engineer may require the work to be removed and redone.

Any Work done or materials used without supervision or inspection by an authorized City representative may be ordered removed and replaced at the Contractor's expense. Failure to reject any defective Work or materials shall not in any way prevent later rejection when such defects are discovered, or obligate the City to final acceptance of the Work.

When any unit of government or political subdivision or railroad or any corporation is to pay a portion of the cost of the Work covered by this Contract, its respective representatives shall have the right to inspect the Work. Such inspection shall not make any unit of government or political subdivision or railroad or any corporation a party to this Contract, and shall in no way interfere with the rights of the Contractor or City hereunder.

105.12 Removal of Unacceptable and Unauthorized Work. All Work that does not conform to the requirements of the Contract Documents may be considered unacceptable Work.

Unacceptable Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist before the expiration of the guaranty period, shall be removed immediately and replaced in a manner acceptable to the Engineer at no expense to the City.

Work done contrary to the instructions of the Engineer, Work done beyond what is shown in the Contract Documents, or any Extra Work done without authority, will be considered as unauthorized and shall not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure of the Contractor to comply with any order of the Engineer under the provisions of this Section, the Engineer shall have authority to cause unacceptable Work to be remedied or removed and replaced and unauthorized Work to be removed, and to deduct the costs from any monies due or to become due to the Contractor pursuant to 109.14.

105.13 Load Restrictions. The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads. A special permit shall not relieve the Contractor from its sole liability for damage that may result from the moving of equipment or materials, whether caused by the Contractor's or its subcontractors' equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures, utilities, or the roadway or to any other type of construction shall not be permitted. Hauling of materials over the base course or surface course of a roadway under construction shall be limited as directed by the Engineer. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. In no case shall legal load limits be exceeded unless permitted in writing by the Engineer. The Contractor shall be responsible for all damage done by its equipment or its subcontractors' equipment and the Contractor shall defend, indemnify and hold harmless the City as provided in 107.24 relating to any damage done by its equipment or its subcontractors' equipment.

105.14 Maintenance during Construction. The Contractor shall maintain the Work in a presentable and safe condition during construction and until the Project is accepted. Maintenance of the Work shall include continuous and effective work prosecuted day by day, with adequate equipment and forces so that the roadway, conduits or structures are kept in satisfactory condition at all times. The Contractor shall be responsible for damage done by its equipment and the Contractor shall defend, indemnify, and

hold harmless the City as provided in 107.24 relating to damage caused by the Contractor's or its subcontractors' or suppliers' equipment.

The Contractor shall maintain the previous courses or subgrade during all construction operations, when placing a course upon other courses of embankment, base, subgrade, concrete or asphalt pavement, or other similar items previously constructed. This maintenance includes, but is not limited to draining, re-compacting, re-grading, or if destroyed, the removal of Work previously accepted by the City.

Maintain Stormwater Best Management Practice (BMP) features. Prevent sediment laden surface water from coming in contact with BMP features during construction.

Temporary restoration of street surfaces shall be made on installation of underground lines and structures, surplus excavation shall be removed, and the street graded and put in a safe and passable condition. Settlements occurring in or adjacent to trenches shall be immediately refilled to a proper grade. Failure on the part of the Contractor to restore the street surface to the satisfaction of the Engineer may be considered a cause sufficient for suspending the applicable work until such restoration. In the event the Engineer orders the Work suspended for conditions under this Section, the expense and time, whether direct or indirect, for such suspension shall be borne solely by the Contractor and shall not be considered a suspension of work under 104.02.C.

The Contractor shall repair, restore and clean streets and other public facilities outside the Construction Limits that are affected by its operations, including hauling and delivery of materials.

If the Contract does not contain an Item 616 – Dust Control, all costs of maintenance work and dust control during construction and before the Project is accepted shall be included in the unit prices bid of the various pay items.

All costs of maintenance work during construction and before the Project is accepted shall be included in the unit prices bid of the various pay items and the Contractor shall not be paid an additional amount for such work.

105.15 Failure to Maintain Roadway or Structures, Traffic Control Facilities and Other Appurtenance.

If the Contractor, at any time, fails to comply with the provisions of 105.14, the Engineer will immediately notify the Contractor of such non-compliance. If the Contractor fails to remedy unsatisfactory maintenance within twenty-four hours after receipt of such notice, the Engineer may immediately proceed to maintain the Project site and the entire cost of this maintenance will be deducted from monies due or to become due the Contractor on the Contract pursuant to 109.14.

105.16 Borrow and Waste Areas. Before any borrow or waste disposal operations are to begin, the Contractor shall submit its plan for operation, control of drainage water, cleanup, shaping, and restoration of the disturbed areas and obtain the Engineer's written approval. The plan of operations shall include the following:

- A. Control of drainage water.
- B. Cleanup, shaping, and restoration of disturbed areas.
- C. Disposal of regulated materials.
- D. Avoidance of regulated areas.
- E. Excavation and filling of waste and borrow areas.

F. Saving of topsoil.

G. Temporary Sediment and Erosion Control BMPs required for compliance under the Clean Water Act, Ohio Water Pollution Control Act, (OWPCA) (ORC Chapter 6111), any applicable individual and/or general NPDES permit, any applicable provisions of the City of Marietta Stormwater Drainage Manual, and the provisions of any applicable Stormwater Pollution Prevention Plan.

When it becomes necessary to locate such areas in or near streams, special precautions shall be taken.

The stability of borrow and waste areas and any damage to surrounding property resulting from movement of the area shall be the sole responsibility of the Contractor. Perform all engineering necessary to ensure long-term stability of all side slopes and foundations of all borrow and waste areas. If requested by the Engineer, furnish a certification by a Registered Engineer attesting to the stability of all borrow and waste areas. Contractor shall defend, indemnify and hold harmless the City as provided in 107.24 for all damage resulting from the instability of borrow and waste areas, the removal of borrow materials, the placement of waste materials, or the hauling of material to and from these areas is the sole responsibility of the Contractor. Repairs to approved haul roads shall be made in accordance with 105.13.

Restoration of all borrow or waste areas shall include cleanup, shaping, replacement of topsoil and establishment of vegetation cover by seeding and mulching in accordance with the requirements of Item 659 at no additional cost to the City. The restored area shall be well drained unless approval is given by the Engineer to convert a pit area into a pond or lake, in which case restoration measures shall be confined to the disturbed areas above the anticipated normal water level.

If burning is permitted under the OAC-3745-19 and ORC 1503.18, submit a copy of the Ohio EPA permit and the Ohio DNR permit to the Engineer and copies of all information used to obtain the permit.

Before the disposal of waste materials, submit to the City an executed copy of the contract or permission statement from the property owner. The contract or permission statement must indicate that the waste materials are not the property of the City. Further, it must expressly state that the City is not a party to the contract or permission statement and that the Contractor and property owner will defend, indemnify and hold harmless the City as provided in 107.24 relating to their contract or permission statement. The disposal of waste materials shall comply with the hazardous and solid waste laws and regulations of the state of Ohio, **Washington** County, Ohio, and the City of Marietta.

The cost of work described herein necessary to secure these results shall be included in the Contract Price bid for these items to which they apply.

105.17 Use of Fire Hydrants. In accordance with City Code and the Division of Power and Water rules and regulations, the Contractor shall obtain the proper hydrant permits(s), and pay any applicable fees, for the use of hydrants(s) deemed necessary for work performed under this Contract. Permit(s) must be obtained from the jurisdiction owning and maintaining the hydrant (for areas outside Marietta corporation limit) and from the Division of Power & Water (Water) Permit Office. The Contractor shall adhere to all rules and regulations governing said permit and must have the original permit on site anytime in which the hydrant is in use.

Cost of the permit and application fees shall be included in the various bid items.

105.18 Moving of Equipment. Non-rubber tired vehicles or equipment shall not be moved on City streets. Permits to do so must be obtained from the Department of Public Service, Division of Planning and Operations.

105.19 Construction and Demolition Debris, Vegetative Debris, and Clean Soil.

A. Construction Demolition and Debris. The Contractor shall manage Construction and Demolition Debris generated in carrying out the Work in compliance with the requirements of ORC Chapter 3714, OAC Chapter 3745-400, the regulations of the **Washington** County Board of Health, and the City of Marietta Health Code. The Contractor shall dispose of Construction and Demolition Debris at a licensed Construction and Demolition Debris facility or as otherwise authorized in OAC 3745-400-04.

The Contractor shall maintain records establishing compliance with ORC Chapter 3714, OAC Chapter 3745 -400, the regulations of the **Washington** County Board of Health, and the City of Marietta Health Code in the management and disposal of Construction and Demolition Debris generated in carrying out the Work.

B. Clean Hard Fill. The Contractor shall manage and/or dispose of Clean Hard Fill generated in carrying out the Work in compliance with the requirements of OAC 3745-400-05 and as follows:

1. Recycle the Clean Hard Fill into a usable construction material if allowed by the Contract Documents;
2. Dispose of the Clean Hard Fill in licensed construction and demolition debris or other waste facilities;
3. Use the Clean Hard Fill in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on the site of generation if allowed by the Contract Documents; or
4. Use the Clean Hard Fill in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, if allowed by the Contract Documents provided that:
 - a. The Contractor shall provide a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed. The notification shall be received by each local licensing authority with sites to be filled, at least seven days before filling as required by division (F) of Section 3714.13 of the Revised Code. The Contractor shall provide a new Notice of Intent to Fill if there are any changes in the information required for notification under OAC 3745-400-05.

The Notice of Intent to Fill shall state:

- i. The nature of the fill material, the site(s) to be filled;
- ii. When filling will begin and end; and
- iii. The telephone number of the Contractor.

Clean Hard Fill generated in **Washington** County, Ohio and that is hauled off the site at which the fill was generated must be hauled by a waste hauler registered with the **Washington** County Board of Health in a vehicle permitted by the **Washington** County Board of Health.

The Contractor shall maintain records establishing compliance with OAC 3745-400-05, the regulations of the **Washington** County Board of Health, and the City of Marietta Health Code in the management and disposal of Clean Hard Fill generated in carrying out the Work.

C. Vegetative Debris. Trees, brush, stumps, tree trimmings, branches, weeds, leaves, grass, shrubbery, yard trimmings, crop residue, and other vegetative debris generated in the clearing and grubbing of a construction site in the course of performing the work shall be managed and disposed of as follows:

1. If specifically allowed by the Contract Documents, vegetative debris generated in the clearing and grubbing of a construction site in the course of performing the Work may be used as fill material at the site on which such debris was generated, either alone or in conjunction with clean soil, sand, gravel, or other clean aggregates, in legitimate fill operations for construction purposes or to bring the site up to a consistent grade;
2. Vegetative debris not used in legitimate fill operations at the site of generation shall be disposed of at a licensed yard waste composting facility in compliance with the requirements of OAC 3745-27- 45; or
3. Vegetative debris not used in legitimate fill operation at the site of generation shall be disposed of at a licensed solid waste disposal facility if a yard waste compost facility has refused to accept the vegetative debris and the Contractor obtains a Refusal of Acceptance form.

The Contractor shall maintain records establishing compliance with OAC Chapter 3745-27 in the management and disposal of vegetative debris generated in carrying out the Work.

D. Clean Soil. Clean Soil generated in the City of Marietta or **Washington** County, Ohio shall be managed and disposed of in compliance with the provisions of the City of Marietta Health Code and the regulations of the **Washington** County Board of Health and as follows:

1. If allowed by the Contract Documents, use the Clean Soil in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on the site of generation if allowed by the Contract Documents; or
2. If allowed by the Contract Documents, use the Clean Soil in legitimate fill operations for construction purposes or to bring the site up to a consistent grade, on a site other than the site of generation, if allowed by the Contract Document; or
3. Dispose of the Clean Soil at a registered clean fill disposal site.

Clean Soil generated in **Washington** County, Ohio and that is hauled off the site at which the fill was generated must be hauled by a waste hauler registered with the **Washington** County Board of Health in a vehicle permitted by the **Washington** County Board of Health.

The Contractor shall maintain records establishing compliance with OAC Chapter 3745-27, the regulations of the **Washington** County Board of Health, and the City of Marietta Health Code in the management and disposal of clean soil generated in carrying out the Work.

If the Project contains garbage or solid and hazardous waste, the Contract Documents will detail the removal of these items in compliance with Ohio's solid and hazardous waste laws and regulations, the regulations of the **Washington** County Board of Health, and the City of Marietta Health Code.

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

When the wasting of clean hard fill is allowed, comply with all the requirements of this Section and 105.16.

ITEM 106 CONTROL OF MATERIAL

106.01 Source of Supply and Quality Requirements

106.02 Samples, Tests, Cited Specifications

106.03 Small Quantities and Materials for Temporary Application

106.04 Plant Sampling and Testing Plan

106.05 Storage of Materials

106.06 Handling of Materials

106.07 Unacceptable Materials

106.08 City-Furnished Materials

106.01 Source of Supply and Quality Requirements. The materials used on the Work shall meet all requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of the proposed sources of materials before delivery. At the option of the Engineer, materials may be inspected at the source of supply before delivery is started. If it is determined by the Engineer that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources without adjustment to the Contract Sum or Time.

The Contractor shall furnish or cause to be furnished to the Engineer delivery tickets or documents for all materials to be incorporated in the Work, which tickets or documents shall describe in detail the type, size, specification or data, fully denoting the materials being delivered.

106.02 Samples, Tests, Cited Specifications. All materials will be inspected, tested and compliance determined by the Engineer before incorporation into the Work. The City may sample and test materials or require certifications. Unless otherwise designated, tests in accordance with AASHTO, ASTM or other methods on file at the Laboratory will be made by and at the expense of the City. Samples will be taken by a qualified representative of the City.

All materials being used are subject to inspection, test or rejection at any time before incorporation into the Work. Copies of all tests will be furnished to the Contractor's representative. The Contractor, in all cases, shall furnish the required samples and specified material certifications at no expense to the City.

Transports and distributors hauling bituminous material shall be equipped with an approved submerged bituminous material sampling device.

If, in the judgment of the Engineer, the quantity used of any one material is so inconsequential as to not warrant testing in accordance with the minimum requirements for sampling materials in Section 700, verification of the quality of the material may be covered by a Field Inspection Report of Materials, prepared by the Engineer.

106.03 Small Quantities and Materials for Temporary Application. The Engineer may accept small quantities and materials for temporary application that are not intended for permanent incorporation into the Work. The Engineer may accept these small quantities and materials for temporary application in either of the following cases:

- A. Where similar materials from the same source have recently been approved.
- B. Where the materials, in the judgment of the Engineer, will serve the intended purpose.

106.04 Plant Sampling and Testing Plan. The Engineer or an authorized representative may undertake the inspection of materials at the source.

In the event plant sampling and testing is undertaken, the Contractor and its material provider shall meet the following conditions:

- A. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- B. The Engineer or an authorized representative shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- C. If required by the Engineer, the Contractor shall arrange for an approved building for the use of the Inspector. The building should be located conveniently near the plant and independent of any building used by the material producer.
- D. Adequate safety measures at the plant shall be provided and maintained.

The City reserves the right to retest all materials that have been tested and accepted at the source of supply before their incorporation into the Work. After the approved materials have been delivered to the site, the City may reject all materials that, when retested, do not meet the requirements of the Contract Documents or those established for the specific project.

106.05 Storage of Materials. Materials shall be so stored as to assure the preservation of their quality and fitness for the Work. Stored materials, even though approved before storage, may again be inspected before their use in the Work. Stored materials shall be located to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by the Contractor at no expense to the City. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Engineer copies of such written permission shall be furnished. All storage sites shall be restored to their original condition by the Contractor at no expense to the City and the Contractor shall defend, indemnify and hold harmless the City as provided in relating to their contract or permission statement.

106.06 Handling of Materials. All materials shall be handled in such manner as to preserve their quality and fitness for the Work. Aggregate shall be transported from the storage site to the project in tight vehicles so constructed as to prevent loss or segregation of materials after loading and measuring in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the Work as loaded, and the quantities as actually received at the place of operations.

106.07 Unacceptable Materials. All materials not conforming to the requirements of the Contract Documents at the time they are used shall be considered unacceptable and shall be removed immediately from the site of the Work unless otherwise instructed by the Engineer. No previously identified unacceptable materials, the defects of which have been corrected, shall be used until approval has been given. Upon failure on the part of the Contractor to comply immediately with any order of the Engineer made under the provisions of this Section, the Engineer shall have authority to remove and replace defective materials and to deduct the cost of removal and replacement from any monies due or to become due to the Contractor pursuant to 109.14.

106.08 City- Furnished Materials. The Contractor shall furnish all materials required to complete the Work, except when otherwise provided in the Contract Documents.

Materials furnished by the City will be delivered or made available to the Contractor at the points specified in the Contract Documents.

The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the Contract Price for the item in connection with which they are used.

The Contractor shall be responsible for all delivered materials, and deductions will be made from any monies due the Contractor to make good any shortages and deficiencies, from any cause whatsoever, and for any damage which may occur after such delivery, and for any demurrage charges.

ITEM 107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Laws to be Observed

107.02 Permits, Licenses and Taxes

107.03 Patented Devices, Materials and Processes

107.04 Restoration of Surfaces Opened by Permit

107.05 Federal-Aid Provisions

107.06 Sanitary Provisions

107.07 Public Convenience and Safety

107.08 Barricades and Warning Signs

107.09 Maintenance of Traffic

107.10 Use of Explosives

107.11 Protection and Restoration of Property

107.12 Contractor's Use of the Project Right-of-Way or Other City-Owned Property

107.13 Responsibility for Damage Claims

107.14 Motorist Damage Claims

107.15 Opening Sections of Project to Traffic

107.16 Contractor's Responsibility for Work

107.17 Contractor's Responsibility for Utility Property and Services

107.18 Furnishing Right-of-Way

107.19 Personal Liability of Public Officials

107.20 No Waiver of Legal Rights

107.21 OSHA

107.22 Litigation

107.23 Environmental and Natural Resources Protection

107.24 Indemnification

107.01 Laws to be Observed. The Contractor shall keep fully informed of all Federal, State and local laws, ordinances, codes and regulations and all orders and decrees of authorities having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with all such laws, ordinances, codes, regulations, orders, and decrees; and shall protect and defend, indemnify and hold harmless the City as provided in 107.24 relating to violation of any such law, ordinance, code, regulation, order, or decree, whether by the Contractor or its employees or agents, or the Contractor's subcontractors or suppliers.

The Contractor agrees that in the hiring of employees for the performance of work under this Contract or any subcontract hereunder, no Contractor or subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall, by reason of race, sex, creed or color, discriminate against any citizen of the United States in the employment of labor or workers, who is qualified and available to perform the work to which the employment relates. That no Contractor, subcontractor, nor any of their employees or agents shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Contract because of race, sex, creed or color.

107.02 Permits, Licenses and Taxes. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work.

Before the closure of or working in or on any portion of a street, the Contractor shall obtain a permit from the Department of Public Service, Division of Planning and Operations.

The Contractor shall include and pay all state and local sales, consumer and use taxes. Materials purchased for incorporation into the work will be exempt from state and local sales tax. A sales tax exemption certificate will be issued by the City at the request of the Contractor.

A. Licensed Water Contractor Requirement. It shall be unlawful for any person to perform any work on City of Marietta water line systems without first securing license to engage in such work, as indicated in Marietta City Code Section 1103.06. This work includes any attachments, additions, alterations, or rehabilitation of any City service pipe or appurtenances (including water service lines and

taps). This requirement may be met by utilization of a subcontractor who holds a City of Marietta Water Contractor License or a Combined Water/Sewer Contractor License to perform this work. Utilization of a subcontractor must meet the licensing requirements of City of Marietta Building Code, in particular Section 4114.119 and 4114.529.

B. Licensed Sewer Tapper Requirement. It shall be unlawful for any person to engage in the business of sewer tapping and sewer building, or to open or tap any sewer in any street, alley or any public or private place or rehabilitation of any sewer or appurtenances (including manholes, inlets, and service laterals) in the City of Marietta without first securing license to engage in such business, as indicated in Marietta City Code Section 1131.01. Utilization of subcontractor must meet the licensing requirements of City of Marietta Building Code, in particular Section 4114.119 and 4114.529.

107.03 Patented Devices, Materials and Processes. If the Contractor employs any design, device, material, or process covered by letters of patent or copyright, suitable legal agreement(s) with the patentee or owner shall be provided for such use. The Contractor shall defend, indemnify and hold harmless the City, as well as any affected third party or political subdivision, as provided in 107.24 relating to any infringement due to the use of any such patented design, device, material or process or any trademark or copyright.

The Contractor must obtain the approval of the City to substitute a patented material or process specified in the Contract Documents.

In the case of patented pavements and wearing courses, where royalties, licensing and proprietary service charges exacted or to be exacted by the patentees are published and certified agreements are filed with the City, guaranteeing to prospective Bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented payments may be specifically designated in the Proposal and competition secured upon the item exclusive of the patent or proprietary charges.

107.04 Restoration of Surfaces Opened by Permit. The right to construct or reconstruct any utility service in the roadway, street, or right of way or to grant permits for same, at any time, is hereby expressly reserved by the Director, or the owner of said roadway, street or right of way.

Any individual, firm, or corporation wishing to make an opening in the street must secure a permit. The Contractor shall allow parties bearing such permits, and only those parties, to make openings in the roadway.

When ordered by the Engineer, the Contractor shall make in an acceptable manner all necessary repairs due to such openings and such necessary work will be paid for as provided in the Specifications, and the repair work shall conform to the Contract Documents.

107.05 Federal-Aid Provisions. When the United States Government pays for all or any portion of the Project's cost, the federal laws and the rules and regulations made pursuant to such laws must be observed and the Work is subject to the inspection of the appropriate Federal agency.

Such inspections shall not make the Federal Government a party to this Contract and such inspections will in no way interfere with the rights of the Contractor or the City under the Contract.

107.06 Sanitary Provisions. The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees and City representatives as may be necessary to comply with the requirements of the State and local Board of Health, or of other authorities having jurisdiction.

107.07 Public Convenience and Safety. The Contractor shall, at all times, so conduct the Work as to assure the least possible obstruction to traffic. The safety and convenience of the general public and the residents along the street and the protection of persons and property shall be provided for by the Contractor as specified under 104.04.

The Contractor shall provide and maintain safeguards, safety devices and protective equipment and take any other needed actions as may be necessary to protect the public and property in connection with the work. Do not close streets unless specifically allowed by the Contract.

The presence of barricades or lights provided and maintained by any party other than the Contractor shall not relieve the Contractor of this responsibility.

107.08 Barricades and Warning Signs. Temporary traffic control devices and facilities shall be furnished, erected, maintained and paid for in accordance with the provisions of Item 614, Maintaining Traffic. All traffic control devices shall conform to Part 7 of the OMUTCD for Streets and Highways as amended, as required under Section 4511.09 of the Ohio Revised Code. The provisions of this item and this Section shall not in any way relieve the Contractor of any of its legal responsibilities or liabilities for the safety of the public.

107.09 Maintenance of Traffic. All work shall be performed in accordance with Item 614, Maintaining Traffic.

To avoid interruption of bus and coach operations, the Contractor shall give sufficient advance notice to the company or companies concerned to permit rerouting of lines, if necessary. When material is piled in the gutters, suitable drains of sufficient size to carry all the storm water flowing in the gutters, shall first be laid. Where the drainage from cross streets or alleys is interfered with or cut off because of the nature of the work, suitable crossings shall be provided for pedestrians. No material shall be piled within 20 feet (6.0 m) of any fire hydrant.

The Contractor shall notify the Marietta Fire and Police Divisions and "Paving the Way" whenever a street or section of street is about to be closed to traffic and when it is to be opened.

107.10 Use of Explosives. When and if it is necessary for the prosecution of the Work to resort to blasting with explosives, the Contractor shall use the highest degree of care and adequate protective measures so as not to endanger life, completed portions of the Work, and all other property, both public and private. Before conducting any blasting operations, the Contractor shall furnish the Engineer, in writing, a schedule of intended blasting operations and it shall give the Engineer prior written notification of any changes in such schedule.

The use, handling, storage and transportation of explosives shall conform and be in accordance with the applicable requirements and/or provisions of:

1. the latest revision of "State of Ohio Administrative Code Chapter 4121:1-3," issued by the Department of Industrial Relations and the Industrial Commission of the State of Ohio;

2. the Ohio Explosive Laws, Section 3743.01 - 3743.26 of the ORC and amendments thereto;
3. local regulations; and
4. as specified herein.

The Contractor shall secure a written permit from the Department of Public Safety, Division of Fire, of the City of Marietta before any blasting work is begun.

All shot firing shall be done by IME approved electrical or non-electric blasting systems that allows the blaster to control the exact moment in which firing of the shot will occur. The Contractor shall make suitable provisions to prevent the scattering of broken rock, earth, stones or other material during blasting operations.

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

The Contractor is responsible for all damage or injury to property, during the prosecution of the Work, resulting from any act, omission, neglect, defective work or materials, or misconduct in the manner or method of executing the Work. The Contractor shall remain responsible for all damage and injury to property until the Project is accepted under 109.11. The Contractor shall defend, indemnify and hold harmless the City as provided in 107.24 relating to any damage or injury to property. If the Contractor causes any direct or indirect damage or injury to public or private property by any act, omission, neglect, or misconduct in the execution or the non-execution of the Work, then it must restore, at its own expense, the property to a condition similar or equal to that existing before the damage or injury.

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

Cooperate with the Engineer in protecting and preserving monuments, cornerstones and boundary survey markers that are affected by the Work as required by ORC 5519.05.

When specified in the plans, the Contractor will construct the Monument Assemblies with the iron pin and Reference Monuments with the iron pin and cap. Right-of-Way Monuments are property boundary monuments set to comply with Ohio Administrative Code Section 4733.37, "Minimum Standards for Boundary Surveys in the State of Ohio" and ORC 5519.05 and are recited in the Right-of-Way deeds to convey the property or easement rights. If shown in the Right-of-Way plans, Right-of-Way monuments will be set after acquisition and before construction activities by the City. These monuments normally delineate the boundary secured for the highway construction. There are situations where temporary Right-of-Way easements are purchased to construct the work and it is expected that the permanent Right-of-Way monuments within the temporary easements may be destroyed to perform the work. Any permanent Right-of-Way Monuments or property monuments on or outside the Right-of-Way limits and not enclosed within a temporary easement for the project will be the Contractor's responsibility to protect. Upon completion of the final grading, replace any Right-of-Way Monuments destroyed during or by construction activities. A quantity for replacement of Right-of-Way Monuments expected to be

destroyed that are within a temporary easement will be paid under Item 604. When specified in the plans, the Contractor will construct the Monument Assemblies and Reference Monuments with the iron pin and cap. Right-of-Way Monuments, Monument Assemblies and Reference Monuments are to be set under the direct supervision of a Registered Surveyor.

Do not begin grading or resurfacing operations until the Contractor has referenced and verified the position of all known monuments, cornerstones, and boundary survey markers in the area to be improved, relative to the survey information provided to the Contractor by the City. Make a reasonable search effort using common iron pin locating devices to locate monuments, cornerstones, and boundary survey markers at normal probable locations (i.e., offsets at occupation lines) if no monuments are shown on the Plans. If monuments, cornerstones, and boundary survey markers are unexpectedly encountered, then protect, reference, and preserve them in the same manner. Referencing, as indicated above, shall mean locating their positions relative to a project control network, traverse line or centerline using standard acceptable surveying measurements and techniques suitable to meet the requirements of OAC Section 4733-37-04, Measurement Specifications. The locating method, field data recording procedures and equipment to be used will be reviewed and approved by the Engineer before performing the work.

Provide the Engineer with a report indicating the monuments, cornerstones, and boundary survey markers located. List project coordinates and/or station and offset relative to the plan centerline and a description of the monuments, cornerstones, and boundary survey markers found, including size, material, condition, any cap stamping or markings and noting any differences from the plan locations of any of the monuments. The Engineer shall compare the Contractor's preconstruction monument report with the plans and any preconstruction checks provided by the City.

If monuments, cornerstones, and boundary survey markers of the Public Land Survey System control corners are encountered in the performance of the Work, and adjustable monument assemblies are not listed in the Proposal, then the City will furnish them and supervise their precise location and installation in conformity with ORC 5519.05. Furnish all labor, equipment, and materials required to perform such installations. The City will pay for any labor, equipment, or materials furnished during the installation according to 109.05. Perform relocation Work under the supervision of a registered surveyor.

The Engineer will deduct from the estimates the cost incurred by the City for repair, re-determination of location, and replacement of any monuments, cornerstones, or boundary survey markers within the highway that were damaged, destroyed, or made inaccessible during the progress of the Work by the Contractor or its employees, subcontractors, or their agents, in violation of these provisions.

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

1. Cultural Resources
 - a. Buildings, structures, objects, and sites eligible for or listed on the National Register of Historic Places

- b. Historic or prehistoric human remains, cemeteries, and/or burial sites (pursuant with ORC 2909.05 and 2927.11
- 2. Ecological Resources
 - a. Wetlands
 - b. Streams
 - c. Wooded areas with trees to be removed in excess of 8 inches diameter at breast height
- 3. Public Lands
 - a. Lands meeting the criteria of 49 U.S.C. 303, 23 CFR 771.135: 4(f).
 - b. Lands meeting the criteria of 16 U.S.C. 4601-4, 36 CFR59.1: 6(f).
- 4. FEMA Mapped 100 year Floodplains
- 5. Hazardous Waste Areas

All areas proposed to be utilized by the Contractor outside the Construction Limits shall be reviewed by the City and/or environmental contractor(s) that are prequalified by the City for each environmental resource. Have the consultant(s) certify that the proposed site to be utilized for the Contractor will not affect:

- 1. Cultural Resources
- 2. Ecological Resources
- 3. Public Lands
- 4. FEMA Mapped 100 year Floodplains
- 5. Hazardous Waste Areas

Provide all documentation and the consultant certification to the Engineer.

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

107.12 Contractor's Use of the Project Right-of-Way or Other City-Owned Property.

A. Disposal of Waste Material and Construction Debris and Excavation of Borrow on the Project Right-of-Way or on Other City-Owned Property. Dispose of waste material according to 105.16 and dispose of construction debris according to 105.19. In addition to the rights granted in 104.05, the Contractor's use of the Project Right-of-Way or other City-owned property for the disposal of waste material and construction debris and excavation of borrow material is restricted as follows:

- 1. If the Contract Documents identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of -Way or on other City-owned property, then only perform these operations in these designated locations.
- 2. If the Contract Documents do not identify locations for the disposal of waste material and construction debris or excavation of borrow material within the Project Right-of-Way or on other City-owned property, then do not bid assuming that the City will make such locations available.

If the Contractor's request to use locations within the Project Right-of-Way or on other City- owned property is approved by the Engineer, then the City may allow the Contractor to dispose of waste material and construction debris or excavate borrow material for a fee of \$0.50 per cubic yard.

B. Equipment Storage and Staging. The Contractor may use, fee-free, any portion of the Project within the Project Right-of-Way for staging, equipment storage, or an office site with the approval of the Engineer, provided such usages do not interfere with the Work and are not prohibited by the Contract Documents. Do not bid in anticipation of using any properties within the Project Right-of-Way or any City-owned property that is outside the Project Right-of-Way for equipment storage or staging.

C. Equipment Removal and Site Restoration. Remove all Contractor equipment and completely restore all utilized sites used as required by 104.07 before Final Acceptance as provided in 109.11.

107.13 Responsibility for Damage Claims. The Contractor shall defend, indemnify and hold harmless the City, as well as any participating railroad or railway company, as provided in 107.24 relating to any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the work or through the use of unacceptable materials in the construction of the Project or on account of any act or omission, by the Contractor, its agents, its subcontractors, or its suppliers.

107.14 Motorist Damage Claims. The resolution of motorist damage claims shall comply with the provisions of Sections 335.01 and 335.012 of City Code.

107.15 Opening Sections of Project to Traffic.

A. When Ordered by the Engineer. Upon written notice from the Engineer directing that the highway, street, bridge, or culvert, or any part thereof be opened for travel, the Contractor shall put the highway, street, bridge or culvert or such portions thereof as the Engineer may direct in such condition for travel as the Engineer may direct, and shall remove all barriers and obstructions. Acceptance of the Work in whole or in part is not involved in this case, but the Contractor shall be responsible for damage by such traffic to completed or partially completed portions of the Work. Additional costs and time to the Contractor by such action shall be reimbursed in accordance with 104.02.F and 108.06.D, as applicable.

B. When Progress is Unsatisfactory or Work is Suspended by the Contractor. When a portion of a roadway or a structure is completed and the progress schedule for the Work has not been met or the Contractor suspends work for over fourteen days during the normal construction season, the Engineer on written notice to the Contractor may order the road or structure to be opened for travel and the Contractor shall place the highway, street, structure, or portions thereof in such condition for travel as the Engineer may order and shall remove all barriers and obstructions at no cost to the City.

107.16 Contractor's Responsibility for Work. Until Final Acceptance of the Project by the Engineer, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements, from vandalism, from vehicular accidents, or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any of the above causes before Final Acceptance and shall bear the expense thereof.

In case of suspension of work by the Contractor, or under the provisions of 105.01.B, the Contractor shall be responsible for the Work and shall take such precautions as may be necessary to prevent damage to the Work, provide for adequate drainage, erect any necessary temporary structures, temporary pavements, signs, or other facilities, and providing required maintenance of traffic and public and private access to property, all at the Contractor's expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seeding, and sodding furnished under the Contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

107.17 Contractor's Responsibility for Utility Property and Services. At points where the Contractor's operations are adjacent to properties of railway, telephone, cable, fiber optics, and power companies, or are adjacent to private wells, private wastewater disposal facilities, private stormwater conveyance systems and other utilities or property, damage to which might result in considerable expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the owners of any underground or overhead utility lines in their protection and in removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

In the event of interruption to underground or overhead utility services, water lines, private water wells, private wastewater disposal facilities or utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall immediately notify the occupants of nearby premises and the proper authority or operator of the utility facility of the disruption and shall cooperate with the said authority in the restoration of service. If water or sewer service is interrupted, repair work shall be continuous until the service is restored by a licensed Contractor. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

107.18 Furnishing Right-of-Way. The City will be responsible for the securing of all necessary rights-of-entries in advance of construction deemed necessary by the City. Any exceptions will be indicated in the Contract Documents.

107.19 Personal Liability of Public Officials. In carrying out any of the provisions of these specifications, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability of the Director or other City-authorized representatives, either personally or as officials of the City, it being understood that in all such matters they act solely as agents and representatives of the City.

107.20 No Waiver of Legal Rights. No action or inaction by the City, including but not limited to, the inspection by the Engineer, nor by any inspector or duly authorized City representatives, nor any order, measurements, or certificate by the Director, or said representatives, nor any order by the Director for the payments of money, nor any payment for, nor acceptance of any Work by the Engineer, nor any extension of time, nor any possession taken by the City or its duly authorized representatives, shall

operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, or any other rights or remedies that the City may have under the Contract, at law or otherwise; nor shall any waiver of any breach of the Contract be held to be a waiver of any other subsequent breach.

107.21 OSHA. All Contractors shall comply with the provisions of the Occupation Safety and Health Act of 1972 and all amendments thereto.

107.22 Litigation. All lawsuits involving claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Contract or its breach shall be brought in and decided by a court of competent jurisdiction within the County of **Washington**, State of Ohio, and the law of Ohio shall govern without reference to its conflict of laws rules, if applicable.

107.23 Environmental and Natural Resources Protection. Comply with all Federal, State, and local laws and regulations controlling protection of the environment and natural resources. Avoid polluting streams, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, sediments, or other harmful materials, and avoid polluting the atmosphere with particulate and gaseous matter. Adopt sustainability best management practices, including clean and efficient energy use, the use of recycled materials if allowed by the Contract Documents, and waste reduction and recycling.

A. Water Pollution Control. The Contractor shall comply with all federal, state and local water pollution control laws and regulations, permits, plans, and policies, including but not limited to:

1. The Clean Water Act and the regulations promulgated thereunder;
2. Ohio Revised Code Chapter 6111 and the regulations promulgated thereunder;
3. City of Marietta Stormwater Drainage Manual;
4. Individual NPDES Permits issued for City of Marietta Facilities;
5. Ohio General Permit to Discharge Stormwater associated with Industrial activity, if applicable;
6. Ohio General Permit for filling Category 1 and Category 2 Isolated Wetlands;
7. Ohio EPA General Permit for Storm Water Discharges Associated with Construction Activity;
8. Ohio EPA General Permit for Storm Water Discharges Associated with Construction Activity in the Scioto River Watershed;
9. Stormwater Pollution Prevention Plans adopted for City of Marietta facilities and/or required for the Project pursuant to the Clean Water Act;
10. Any Spill Prevention Control and Countermeasures Plan required under the Clean Water Act;
11. Marietta Erosion and Sediment Pollution Control Regulation, latest revision.

When equipment is working next to a City storm sewer inlet, stream, lake, pond, or reservoir, spill response equipment is required in the event of a hydraulic leak. Do not stockpile fine material next to a sewer inlet, stream, lake, pond, or reservoir.

Take precautions to avoid demolition debris and discharges associated with the excavation and hauling of material from entering the stream. Remove any material that does a storm sewer or stream immediately.

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

Accomplish control of ground water and water in excavations in a manner that prevents the degradation of the water quality of any surface water. Install wells and well points with suitable screens and filters where necessary to prevent the continuous pumping of fines. Pump sediment-laden water in a manner to prevent introduction into the City storm sewer system or degradation of streams, lakes, ponds, or other areas of water impoundment. Such prevention may involve but is not limited to the means and methods described in Item 207. Use the current version of the *Sediment and Erosion Control Handbook* to plan this work. Use the methods necessary to prevent adverse effects to surface waters as provided in OAC-3745-1-04. The cost of constructing and maintaining these measures is incidental to the Contract.

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

B. Dredging, Filling, and Construction Activities in the Waters of the United States or Isolated Wetlands.

1. When the Work involves dredging, filling, and/or construction in the waters of the United States as defined by federal law, including but not limited to wetlands, and ephemeral and intermittent streams with a significant nexus to the navigable waters of the United States, the Contractor shall:

a. Comply with the applicable United States Army Corps of Engineers (USACE) Nationwide General Permit, including any requirement to file a pre-construction notification or to obtain an individual permit;

b. Comply with any applicable USACE Nationwide Permits Regional General Conditions, Nationwide Permits for the State of Ohio, promulgated by the USACE Huntington District Engineer;

c. Comply with the applicable Ohio EPA Section 401 Nationwide Permits Certification General Conditions and Limitations and Special Conditions and Limitations; and

d. Obtain an Ohio EPA Section 401 Certification for dredging, filling, and/or construction activities in the waters of the United States.

2. When the Work involves dredging, filling, and/or construction activities in an isolated wetland, the Contractor shall obtain from the Ohio EPA an isolated wetlands permit as required by ORC Sections 6111.02 through 6111.028

C. Construction Activities or Filling in Special Flood Hazard Areas.

1. When the Work involves construction activities or filling in a Special Flood Hazard Area as defined in the City of Marietta Flood Plain Management Regulations codified in Marietta City Code Chapter 1150, and these activities will occur within the Marietta City limits, the Contractor shall:

- a. Obtain a Special Flood Hazard Area Development and Use Permit from the City of Marietta, Department of Public Utilities before beginning the Work;
- b. Obtain prior approval for the Work from the Federal Emergency Management Agency if required under the Marietta Flood Plain Management Regulations and 40 C.F.R. 60.3; and
- c. Comply with the flood plain filling mitigation requirements of the Marietta Stormwater Drainage Manual

2. When the Work involves construction activities or filling in a Special Flood Hazard Area outside the Marietta City limits, the Contractor shall obtain all necessary permits and comply with the flood plain management regulations of the jurisdiction in which these activities will occur.

D. Air Pollution Control. The Contractor shall comply with Ohio's Air Pollution Control Laws and Regulations, ORC Chapter 3704 and the regulations promulgated thereunder, including but not limited to controlling fugitive dust emissions as required under OAC 3745-17-08.

E. Solid and Hazardous Waste Management. The Contractor shall manage all solid and hazardous wastes generated in carrying out the Work in compliance with Ohio's Solid and Hazardous Waste Laws, ORC Chapter 3734 and the regulations promulgated thereunder.

F. Endangered Species. Before engaging in any activities that may affect the habitat of threatened or endangered species, the Contractor shall perform any environmental review required under the National Environmental Policy Act, the Endangered Species Act, or Ohio laws and regulations.

G. Historic Preservation. Where the Work may affect archaeological, historic, or cultural resources, the Contractor shall conduct any assessments, reviews, and/or studies required under the applicable provisions of the National Environmental Policy Act or other federal law and Ohio's Historic Preservation Laws and regulations, including but not limited to ORC Section 149.53 and OAC Chapter 149-1.

H. Recordkeeping. The Contractor shall maintain records establishing compliance with all applicable all federal, state and local laws and regulations, permits, plans, and policies related to environmental and natural resources protection.

107.24 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City and its officers, employees, representatives, and agents (hereinafter collectively referred to as the "City") against any and all claims, actions, damages, costs, and legal liability of every name and nature that the City may sustain, incur, or be required to pay (including, but not limited to, consultant and attorney's fees, disbursements, costs or other expenses) whether proven or not, arising out of or in connection with the Work by reason of any action, inaction, omission, or breach by the Contractor, its agent(s) or person(s) employed by the Contractor, or any of its subcontractors or suppliers, including, but not limited to, (i) failure to comply with the terms and conditions of the Contract or pertinent subcontract(s), or (ii) any of the Contractor's liability under the Contract Documents.

The City may retain any amounts due or that may become due to the Contractor as may be necessary to satisfy any claim for indemnification under the Contract. The Contractor's obligation under this Section shall not be deemed waived by the failure of the City to retain in whole or any part of such monies due to the Contractor, nor shall such suit, action, damages and/or costs have to have been resolved or determined before release of any monies to the Contractor under the Contract, nor shall such obligation be deemed limited or discharged by the procurement of any insurance for liability for damages imposed by law upon the Contractor, its subcontractors or suppliers, or the City.

In applying this indemnification provision, the Contractor shall be required to indemnify the City in any action brought by an employee of the Contractor, or any employee of its subcontractors or suppliers, whenever such employee is found to have been comparatively negligent, even if Contractor and/or its subcontractors or suppliers are found not to have been negligent themselves.

The Contractor shall advise the Engineer in writing immediately upon its receipt of notice, actual or otherwise, of any (a) incident or circumstance or (b) claim or action that could give rise to a claim covered by this indemnification provision.

ITEM 108 PROSECUTION AND PROGRESS OF WORK

108.01 Subletting of Contract

108.02 Preconstruction Conference

108.03 Prosecution and Progress

108.04 Limitation of Operations

108.05 Character of Workers, Methods, and Equipment

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

108.07 Failure to Complete on Time

108.08 Unsatisfactory Progress and Default of Contractor

108.09 Certified Payroll

108.01 Subletting of Contract. The Contractor must obtain the Director's written consent to sublet, sell, transfer, assign, or otherwise relinquish any rights, title, or interest in the Work. Upon the Engineer's request, the Contractor shall also promptly furnish copies of subcontracts and supply agreements.

The Contractor must perform Work amounting to not less than 50 percent of the Contract Sum with its own organization, unless otherwise approved by Director. Any items set forth in the Proposal to be "specialty items" may be performed by subcontract and the cost of any such specialty items so performed by sub- contract may be deducted from the Contract Sum before computing the amount of work required to be performed by the Contractor's own organization. The Contractor's percentage of the Contract Sum includes the cost of materials and manufactured products purchased by Contractor, but not the cost of materials and manufactured products purchased by subcontractors. The Engineer will calculate Contractor's percentage based on the quantities shown in the Proposal and the unit prices of the Contract items to be performed by the Contractor's organization.

All subcontractors must hold a valid contract compliance certification number before the City will approve the subcontractor pursuant to this Section.

108.02 Preconstruction Conference. Unless otherwise provided for in the Contract Documents, no Work shall be commenced under this Contract until a Preconstruction Conference has been held.

After the Contract is fully executed, the City will send Preconstruction Conference notices to all parties. In general, fourteen days are required to notify all interested parties of a Preconstruction Conference. The Contractor shall take due note of this requirement and aid in the timely scheduling of the Preconstruction Conference to avoid unnecessary delays in the commencement of the Work.

At or before the Preconstruction Conference, the Contractor shall submit to the Engineer the baseline construction schedule prepared according to 108.03. Furnish a list of proposed subcontractors and material suppliers at or before the Preconstruction Conference. If the Contractor fails to provide the required submissions at or before the Preconstruction Conference, the Engineer may order the Preconstruction Conference suspended until they are furnished.

108.03 Prosecution and Progress. The Construction Schedule shall reflect the Contractor's detailed construction plan to be implemented during all phases of the construction process, Notice to Proceed to final completion. The approved Construction Schedule also serves as a means for the Contractor to schedule, coordinate and evaluate the work of its subcontractors and suppliers. The Contractor is required to include and involve all subcontractors and suppliers in the development and updating of the Construction Schedule. The Contractor shall produce schedule updates and reports to analyze project progress and current status and shall be prepared to respond to reasonable requests from the Engineer for additional information.

Unless a specific Pay Item is included in the Proposal, the cost of preparation of the Construction Schedule, progress updates, and other schedule related information requested by the Engineer is to be included within the Contractor's bid prices for the various pay items.

Failure to comply with Project scheduling requirements may be grounds for termination of the Contract. In addition, the City may withhold pay estimates until all scheduling requirements, including providing schedule updates, are met and accepted by the Engineer.

When a pay item for a CPM schedule is included in the Bid Documents, use Type B – Critical Path Method (CPM) Schedule. Otherwise, all projects shall be scheduled using the Type A – Basic Construction Schedule.

A. Basic Construction Schedule (Type A).

1. Initial/Baseline Construction Schedule Submission. The Contractor shall submit to the Engineer at or before the Preconstruction Conference a baseline bar chart construction schedule and written narrative describing the sequence of construction, and critical events including delivery of materials, services, or equipment.

The Engineer will review the schedule and within seven calendar days of receipt, will either accept the schedule or provide the Contractor with written comments. Acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within seven calendar days of a written request by the Engineer. The City will withhold pay estimates until the Engineer accepts the schedule.

The Contractor shall provide a working day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Completion Date. Show the order and the sequence for accomplishing the Work. Describe all major activities in sufficient detail so that the Engineer can readily identify the Work and measure the progress. The bar chart schedule must reflect the scope of work, required phasing, maintenance of traffic, interim completion dates, final Completion Date, and other project milestones established in the Contract Documents. Include activities for major submittals, as provided in 105.02, major material procurement and fabrication, and the delivery of key materials, plant, and equipment, and other similar activities. The schedule must be detailed on letter or 11 x 17 sized paper.

2. Completion Date. The baseline construction schedule shall not indicate a completion date that is earlier than the Contract Completion Date.

3. Monthly Progress Updates. Before the 5th of every month, submit an updated schedule that includes the following:

- a. Date that all progress is being recorded through;
- b. Actual start date of progressed activities;
- c. Actual finish date of completed activities;
- d. Actual percent complete for each progressed activity.

4. Changed Conditions Reporting.

a. Schedule Revisions. If the Contractor's operations are materially affected by changes in the Work plan or in the amount of the Work or if the Contractor has failed to comply with the approved Construction Schedule, the Contractor shall submit a revised construction schedule. The revised schedule shall show how the Contractor proposes to prosecute the balance of the Work. All schedule revisions are subject to Engineer's approval.

b. Recovery Schedules. If the Monthly Update Schedule or Revised Monthly Update Schedule projects a finish date for the Project later than the current Completion Date, submit a recovery schedule showing a plan to finish by the current Completion Date as requested by the Engineer, at no additional cost to the City. Such measures to regain schedule may include, but are not limited to, increasing the size of the workforce; increasing the number of working hours per shift, shifts per work day, work days per week, the amount of equipment or combination thereof; or rescheduling of work activities to achieve maximum concurrence of work efforts, all at no additional cost to the City. The Contractor shall submit the recovery schedule within five calendar days after the request is made by the Engineer.

The City will withhold Estimates until the Engineer approves the recovery schedule. The approved Recovery Schedule will supersede the then-current Construction Schedule and be used as the basis for progress evaluations. Acceptance by the City of the recovery schedule and/or recovery plan shall not serve as a time extension approval.

c. Delay and Analysis of the Construction Schedule. The Contractor shall not be entitled to and hereby waives any extension of time resulting from any event, circumstance, condition or cause unless a Claim for an extension of time is made in accordance with the requirements of 104.03. In the event the Contractor requests an extension of the Contract Time, it shall furnish such justification and supporting evidence as the Engineer may deem necessary for a determination of whether or not the Contractor is entitled to an extension of time under the provisions of the Contract.

The written claim seeking an extension of time must include the following information:

- i. Nature of the delay.
- ii. Date (or anticipated date) of commencement of delay.
- iii. Identification of person(s) or organization(s) or events affected by delay.
- iv. Activities on the Construction Schedule affected by the delay, or new activities created by the delay and their relationship with existing activities.
- v. Identification of person(s) or organization(s) or event(s) the Contractor believes responsible for the delay.
- vi. Anticipated extent of the delay.
- vii. Recommended action to avoid or minimize the delay.
- viii. Identification of the pertinent contract provisions and supporting documents or project records.

Any request for an extension of the Contract Completion Date must be processed per 108.06. If there is a time extension request pending, the Contractor shall not include the time extension in a monthly progress update until the request is approved by the City and shall not use the time extension request as a basis for refusing to prepare and submit a recovery schedule.

B. Critical Path Method (CPM) Schedule (Type B).

The Contractor shall submit to the Engineer a baseline construction schedule as described in 108.03.B.1 in the form of a computer generated CPM Schedule in a format approved by the Engineer or as specified. The Contractor shall designate a Scheduler(s) who shall be responsible for preparing and maintaining the schedule and coordinating with the Engineer. The Contractor shall provide personnel or a subcontractor specializing in CPM scheduling with experience in scheduling three projects of a similar complexity to the Project. If requested by the Engineer, provide at the preconstruction meeting the experience and qualifications of the scheduler(s).

The CPM Construction Schedule shall clearly show the sequence of work and interdependence of activities by utilizing predecessor and successor relationships.

1. Initial/Baseline Construction Schedule Submission. The Contractor shall submit a baseline schedule within fifteen calendar days from the Notice to Proceed. The baseline schedule will be in CPM format and as described herein. The baseline construction schedule shall provide a complete and detailed sequence of operations of the work within the time limits specified in the Contract. The baseline construction schedule shall show the order in which the

Contractor proposes to carry out the work, the dates on which the various portions of the work shall commence, and the dates on which the Contractor contemplates completing the Work.

In addition to providing the baseline construction schedule, the Contractor shall provide an initial work plan narrative containing the following: the planned number of crews: crew type, approximate crew size, and equipment.

The Engineer will review the baseline schedule and will provide a disposition of the schedule within fourteen calendar days of receipt. The Engineer's review of the baseline schedule will be for compliance with the Specifications and Contract requirements. Approval by the Engineer shall not relieve the Contractor of any of its responsibilities for the accuracy or feasibility of the schedule.

For baseline schedules that are not accepted, the Engineer shall indicate in writing all portions of the schedule that do not comply with the Contract requirements. The Contractor shall make the necessary revisions and resubmit the revised schedule within seven Calendar Days. The Engineer will reject baseline schedules that do not comply with Contract requirements. The Engineer shall conduct a mandatory meeting with the Contractor and the Contractor's Schedule Representative within seven calendar days of the Engineer's written notice for any baseline schedule that is not accepted. The purpose of this meeting is to resolve issues with the baseline schedule. At this meeting, the Contractor shall provide clarification and additional information necessary for the Engineer to accept the baseline schedule.

The City shall withhold pay estimates until the baseline schedule is "accepted". Acceptance of the baseline schedule does not revise the Contract Documents.

a. Schedule Requirements. Generate the baseline schedule using Oracle Corporation's Primavera P6 Project Management or the latest version of Oracle Primavera Software.

Provide a working day schedule that shows the various activities of work in sufficient detail to demonstrate a reasonable and workable plan to complete the Project by the Contract Completion Date. Show the order and interdependence of activities and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Engineer can readily identify the elements of the Work and measure the progress of each activity. The baseline schedule must reflect the scope of work, required phasing, maintenance of traffic requirements, interim completion dates, the Completion Date, and other project milestones established in the Contract Documents. Include activities for major submittals, working drawings, shop drawings, submittal review time for the City, material procurement and fabrication, and the delivery of materials, plant, and equipment, and other similar activities.

The Contractor shall be responsible for assuring subcontractor and supplier work, is included in the schedule. The Contractor shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan.

Failure by the Contractor to include any element of Work required for performance of the Contract shall not excuse the Contractor from completing all Work by the Completion Date. Omissions and errors shall be corrected as described in 108.03.B.4.a and will not affect Contract Time.

b. CPM Schedule Format.

i. Administrative Identifier Information: The following information should be included in the title bar on all schedule sheets:

- a. Project Number
- b. Project Name
- c. Project Location
- d. Data Date
- e. Completion Date
- f. Contractor's Name

ii. Project Activities shall represent an uninterrupted action, task, component, process or operation and include the following:

a. Activity Identification (ID). Assign each activity a unique identification number. Activity ID length shall not exceed 10 characters. Once accepted, the Activity ID shall be used for the duration of the project.

b. Activity Description. Each activity shall have a narrative description consisting of a verb or work function (e.g.; form, pour, excavate) and an object (e.g.; slab, footing, underdrain).

c. Activity Original Duration. "Activity Original Duration" is defined as the amount of time required to complete the activity based on a set of planned resources necessary to complete the activity. Assign a planned duration in working days for each activity. Do not exceed a duration of 20 working days for any construction activity unless approved by the Engineer. Do not represent the maintenance of traffic, erosion control, and other similar items as single activities extending to the Completion Date. Break these Pay Items into component activities in order to meet the duration requirements of this paragraph.

d. Activity Relationships:

1. All activities, except the first activity, shall have a predecessor(s). All activities, except the final activity, shall have a successor(s).

2. Use only finish-to-start relationships with no leads or lags to link activities.

a. No activity shall involve more than one trade or specialty subcontractor. There is to be at least one activity for every subcontractor performing work on the Project.

b. Provide activities for procurement of major equipment and any other long lead time items.

c. Any activity durations that are based on other than a single shift operation are to be clearly and individually identified with an appropriate explanation of how those multi-shift activities relate to the other schedule activities. Shift work needs to be consistently addressed either in an activity id and/or in an activity code. The schedule is

considered to be based on an eight-hour days, five-day workweeks unless otherwise noted.

iii. Project Milestones. Milestones shown in the Contractor Documents shall be included in the Baseline Schedule. Milestone dates may be modified only by Change Order or Contract Modification. In addition to any milestones identified in the Contract Documents, include the following milestones in the schedule:

a. Start Project: The Contractor shall include as the first milestone in the schedule, a milestone named "Start Project". The date used for this milestone is the date provided in the Notice to Proceed.

b. End Project Milestone: The Contractor shall include as the last activity in the project schedule, a milestone named "End Project". The date used for this milestone is considered the project completion date.

c. Start Phase Milestone: The Contractor shall include as the first activity for a project phase, an activity named "Start Phase X", where "X" identifies the phase of work.

d. End Phase Milestone: The Contractor shall include as the last activity in a project phase, an activity named "End Phase X" where "X" identifies the phase of work. The Contractor may include additional milestones, but at a minimum contractual milestones.

iv. Level of Effort Activities: Use level of effort activities to show the duration of specified contract work periods, phases and road closures. The level of effort activity type is allowed to have a start-to-start relationship with the first activity in a series of activities and a finish-to-finish relationship with the last activity in a series of activities.

v. Constraints: The Construction Schedule is to have no constrained activities except the Start Project Milestone and the End Project Milestone dates, unless otherwise permitted by the Engineer. Interim dates are to be controlled by logic and activity duration only. Mandatory start and finish constraints are not to be used in the schedule.

vi. Seasonal Weather Conditions: Anticipated weather days outlined in the Table 108.07-1 identify the number of days each month the Contractor must plan for weather impacts. Seasonal weather conditions shall be considered and included in the planning and scheduling of all Work in accordance with Table 108.07-1.

Anticipated weather days specified in Table 108.07-1 shall be incorporated in the schedule using work calendars. In the baseline schedule, random non-sequential weekdays shall be considered non-workdays to match the anticipated weather days total for that month according to 108.07. Anticipated weather days must be the same dates on all calendars affected by weather. Subsequent schedule updates shall remove the random weather days and replace them with the actual agreed weather days at no additional cost to the City. The winter shutdown periods shall be shown using non-work calendars. The activity can be assigned to a calendar indicating periods of non-work. These custom calendars can be created to show days, weeks, or months of non-work. Seasonal weather conditions shall be considered and included in the planning and scheduling of all work.

vii. Linking Projects: Independent projects shall not be linked.

vii. Activity Codes: The Contractor shall, at a minimum, include codes for Area, Phase, and Responsibility for each activity. At the Engineer's approval, the Contractor may use a Work Breakdown Structure (WBS) to organize the construction schedule.

ix. Schedule Options: The schedule may only be calculated using actual dates. Schedule durations are to be contiguous. Total float shall be calculated as finish float. All activities must have a predecessor/successor relationship except for the first activity (Project Start) and the last activity (Project Finish).

x. Calendars: All calendars are to be based on a five-day, workweek and activity durations are to be in working days unless otherwise approved by the Engineer. Calendars are to include any recognized holidays (when observed) that will shorten a five working-day week. The construction schedule shall include multiple calendars appropriate to the activity (i.e. 7-day calendar for cure time, burn-in time, settlement period, etc.). Calendars should reflect weather restrictions for certain work (i.e. asphalt, painting, etc.).

b. Completion Date. The baseline construction schedule shall not indicate a completion date that is earlier than the Contract Completion Date.

c. Submission Requirements. Submit all schedules within the periods specified. Submit the schedule and information in electronic file format.

Submit the following information along with the electronic baseline schedule:

i. A baseline schedule in a bar chart format, including the Administrative Identifier Information on the first page of the schedule. For each activity on the chart, indicate the Activity ID, Activity Description, Original Duration, Remaining Duration, Total Float, Early Start Date, Early Finish Date, and Calendar ID. Use arrows to show the relationships among activities.

ii. A baseline schedule in a bar chart format, on paper. Identify the critical path of the project on the bar chart in red. The critical path is defined as; the longest path of activities in the project that determines the project completion date. The activities that make-up the critical path of activities are the "Critical Activities."

iii. A Six Week Look Ahead Schedule in bar chart format. This schedule will have all the requirements of the baseline schedule in bar chart format except that it shall be limited to those activities that have an early start or early finish within a six week period of the data date.

iv. A Scheduling Statistics Report. Submit a report of baseline schedule statistics, including number of activities, number of activities on the longest path, number of started activities, number of completed activities, number of relationships, percent complete, and number and type of constraints.

v. A Logic Diagram (If requested by the Engineer). Submit a diagram in PERT chart format showing the logic of the baseline schedule.

vi. An Activity ID Sort. Submit a listing of all activities included in the baseline schedule sorted by ascending Activity Identification Number.

vii. A Total Float Sort. Submit a listing of all activities included in the baseline schedule sorted by increasing total float and by early start date.

viii. A Detailed Predecessor/Successor Sort. Submit a listing of all activities included in the baseline schedule indicating the activities that immediately precede and immediately succeed that activity in the schedule logic.

2. Float. Float is not time for the exclusive use or benefit of either the City or the Contractor but is to be a shared commodity to be reasonably used by either party to mitigate delay to the Contract Completion Date.

Pursuant to the float sharing requirements of this Section, the use of float suppression techniques such as: preferential or logic sequencing (arranging critical path through activities more susceptible to City caused delay); special lead/lag restraints; extended activity durations; as late as possible constraints; imposed constraint dates other than those required by the Contract Documents; and the like are prohibited and shall be cause for rejection of the project schedule or its updates.

a. Definitions of Float: "Float" is defined as the amount of time between the early start date and the late start date (or the early finish date and late finish date) of any activity in the Construction Schedule. "Total Float" is defined as the amount of time any given activity or path of activities may be delayed before it will affect the Contract Completion Date. Project Float is the length of time between the End Project Milestone and the Contract Completion Date.

Ownership of Float: Float available in the schedule, at any time, shall not be considered for the exclusive use of either the City or the Contractor. During the course of contract execution, any float generated due to the efficiencies of either party is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party. Efficiencies gained because of favorable weather within a calendar month, where the number of days of normally anticipated weather is less than expected, will also contribute to the Project Float. A monthly progress update schedule showing work completing in less time than the contract time, and accepted by the City, will be considered to have Project Float. Project Float will be a resource available to both the City and the Contractor. No time extensions will be granted nor delay damages paid unless a delay occurs which impacts the Project's critical path, consumes all available float and extends the work beyond the Contract Completion Date.

Negative Float: Negative float will not be a basis for requesting time extensions. Any extension of time will be addressed in accordance with 108.03.B.4.c. Scheduled completion date(s) that extend beyond the Contract (or phase) Completion Date(s) may be used in computations for assessment of liquidated damages. The use of this computation shall not be construed as an order by the City to accelerate the Work.

3. Monthly Progress Updates. Before the 5th of every month, submit an updated schedule with a data date of the last day of the previous month, unless a different date is agreed to by the Engineer. A monthly update schedule is a schedule in which only progress is updated from the prior data date to the current data date. Work added and/or excusable delays encountered since the prior data date must be represented as a schedule revision as described in 108.03.B.4.a.

a. Update Requirements.

i. Submit the monthly updated bar chart on paper and a copy of the updated schedule in electronic file format. The Engineer shall accept or not accept the schedule update within seven calendar days of receipt of the updated CPM schedule.

ii. Correct out-of-sequence progress listings generated by the Scheduling Statistics Report as directed by the Engineer.

iii. Maintain schedules to record actual start and finish dates of completed activities on a weekly basis until otherwise notified by the Engineer.

iv. Identify the actual start date and remaining duration for all activities in progress. Indicate progress of each activity to date of revision using remaining duration, not percent complete.

v. Show accumulated percentage of completion of each item for updates, and total percentage of Work completed, as of the schedule's data date.

b. Submit the following with each updated schedule:

i. CPM Schedule in Bar Chart Format - Two large printed copies, minimum 22" X 34"

ii. Two Week Look Ahead CPM Schedule in Bar Chart Format

iii. Logic Diagram (If requested by the Engineer)

iv. Activity ID Sort (If requested by the Engineer)

v. Total Float Sort (If requested by the Engineer)

vi. Detailed Predecessor/Successor Sort (If requested by the Engineer)

vii. Schedule Statistics Report

viii. Electronic files of the Primavera Project files in .xer

The Contractor may submit a statement that there were no changes in the schedule logic, activity durations, or calendars since the previous update in lieu of submission of items 3, 4, 5 and 6.

c. Provide two printed copies of a Narrative Status Report that includes the following:

i. A description of the general status of the Work.

ii. Any outstanding issues that affect the construction schedule, i.e., any current and anticipated delaying factors, and describe their impact on the construction schedule, the critical path and the Project Completion Date.

iii. Any activities added to the construction schedule with an explanation for their addition.

iv. Any activities deleted from the construction schedule with an explanation for their deletion.

v. Any changes in the relationships of activities with an explanation.

vi. Any changes to worker hours or budgeted costs with an explanation.

vii. An explanation of any recovery measures being taken.

d. Estimates will not be processed unless all schedule requirements are met.

e. Early Completion Monthly Update Schedule. In the event that an accepted monthly progress update indicates a completion date that is earlier than the Contract Completion Date, the Contractor shall not be entitled to any extension in Contract time or recovery of any cost for delay, disruption, interference, hindrance, extension, or acceleration costs incurred, however caused, because of an extension of the early completion date until such time as the network or activities affected increases the critical path duration of the CPM Schedule beyond the Contract Completion Date.

f. Late Completion Monthly Update Schedule. A Late Completion Monthly Update Schedule is defined as a monthly update schedule submitted by the Contractor in which the Finish Date exceeds the Contract Completion Date. The project schedule shall be reviewed at each progress meeting.

g. Any corrections to the schedule shall be made and submitted to the Engineer within seven calendar days.

4. CPM Changed Conditions.

a. Schedule Revisions. If the Contractor's operations are materially affected by changes in the Work plan or in the amount of the Work or if the Contractor has failed to comply with the approved Construction Schedule, the Contractor shall submit a revised construction schedule, which schedule shall show how the Contractor proposes to prosecute the balance of the Work.

Any addition of new activities or new calendars or changes to existing activities, calendars or logic constitute a revision. All revisions must be reported in narrative form on a cover sheet accompanying the monthly update schedule. The schedule revision must be accompanied by a narrative detailing the changes in logic, activities, and durations from the accepted baseline.

Any revision that modifies the critical path or affects an interim date or project completion date must be represented on a companion schedule submitted with the monthly update schedule or as a fragnet within the monthly update schedule. A fragnet is defined as the sequence of new activities that are proposed to be added to the existing schedule. The fragnet shall identify the predecessors to the new activities and demonstrate the impacts to successor activities. If submitted as a fragnet, the Contractor shall compute two Finish Dates. The first Finish Date shall be computed without consideration of any impact by the fragnet. The second Finish Date shall be computed with consideration of any impact by the fragnet. The Contractor shall also submit a written narrative stating the reason for the proposed revisions. The Engineer shall "approve" or "reject" proposed revisions within ten days of receipt of appropriate schedules and narrative. All approved revisions will be incorporated into the Monthly Update Schedule, which will become the Revised Monthly Update Schedule.

b. Recovery Schedules. If the Monthly Update Schedule or Revised Monthly Update Schedule projects a finish date for the Project more than fourteen calendar days later than the current Completion Date, submit a recovery schedule showing a plan to finish by the current Completion Date if requested by the Engineer, at no additional cost to the City. The recovery schedule shall also include a written plan detailing how the Contractor proposes to recover the lost time and meet the Completion Date. Such measures may include, but are not limited to, increasing the size of the workforce; increasing the number of working hours per shift, shifts per

workday, workdays per week, the amount of equipment or combination thereof; or rescheduling of work activities to achieve maximum concurrence of work efforts, all at no additional cost to the City. The Contractor shall submit the recovery schedule within ten days after the request is made by the Engineer.

The City may withhold Estimates until the Engineer approves the recovery schedule. The Engineer will use the schedule to evaluate time extensions and associated costs requested by the Contractor. In the event the current Completion Date is in dispute, the recovery schedule must be submitted once the dispute has been resolved.

The Engineer will review the Contractors' revised plan and provide comments. The Contractor is to incorporate or resolve all such comments to the satisfaction of the Engineer. At that time, the revised Construction Schedule will supersede the then-current Construction Schedule and be used as the basis for progress evaluations. Acceptance by the City of the revised construction schedule and/or recovery plan shall not serve as a time extension approval.

c. Delay and Analysis of the Construction Schedule. The Contractor shall not be entitled to and hereby waives any extension of time resulting from any event, circumstance, condition or cause unless a request for an extension of time is made in accordance with the requirements of 104.03. In the event the Contractor requests an extension of the Contract Time, it shall furnish such justification and supporting evidence, as the Engineer may deem necessary, for a determination of whether or not the Contractor is entitled to an extension of time under the provisions of the Contract.

Any request for an extension of the Contract Completion Date must be processed per 108.06. If there is a time extension request pending, the Contractor shall not include the time extension in a monthly progress update until the request is approved by the City and shall not use the time extension request as a basis for refusing to prepare and submit a recovery schedule in accordance with this Section. The City may withhold payment estimates until the progress schedule, revised progress schedule and/or recovery plan is approved by the City. Should the prosecution of the Work, for any reason, be discontinued, the Contractor shall notify the Engineer at least one Work Day in advance of resuming operations.

Submit the impacted schedule with the request for time extension. Include a narrative report describing the effects of new activities and relationships to interim and contract completion dates. The written claim seeking an extension of time must include the following information:

- i. Nature of the delay.
- ii. Date (or anticipated date) of commencement of delay.
- iii. Identification of person(s) or organization(s) or events affected by delay.
- iv. Activities on the Construction Schedule affected by the delay, or new activities created by the delay and their relationship with existing activities.
- v. Identification of person(s) or organization(s) or event(s) responsible for the delay.
- vi. Anticipated extent of the delay.

- vii. Recommended action to avoid or minimize the delay.
- viii. Identification of the pertinent contract provisions and copies of applicable documents and project records.
- ix. Show the impact of the delay on the Critical Path by comparing the original longest path to the current longest path that incorporates the delay.

The determination of the total number of days' extension shall be based upon the most recently approved Schedule Update as of the start of the delay claimed by Contractor and on all data relevant to the extension. Circumstances and activities leading to such claim shall be indicated or referenced in the Contractor's daily field report for the day(s) affected.

Perform the following analysis to compute the duration of the time extension. Submit two paper copies and two electronic copies of each analysis performed.

- i. Determine project progress before circumstance(s) necessitating the time extension. Provide an interim schedule updated to the date of the circumstance alleging to have caused delay. This schedule is referred to as the Un-impacted Schedule.

- ii. Prepare a fragmentary network (fragnet) depicting the circumstance that is believed to have delayed the project.

- iii. Insert the fragnet into the Un-impacted Schedule, run the schedule calculations and determine the finish date. This schedule is referred to as the Impacted Schedule.

- iv. Compare the Impacted Schedule finish date with the Un-impacted Schedule finish date in order to determine the duration of any warranted time extension.

All approved time extensions will be incorporated into the monthly update with the fragnet used to determine impacts incorporated into the schedule.

C. Basis of Payment.

No separate payment will be made for Type A schedules and the cost of such schedule shall be included in the prices bid for the various Pay Items of the Contract.

The City will make payments for Type B Schedules according to 109.07 and as modified by the following schedule:

- 1. The City will release 60 percent of the lump sum amount bid for CPM Progress Schedule to the Contractor with the first regular estimate payable after the Engineer has approved the CPM Baseline schedule submission.

- 2. The City will release an additional 30 percent of the lump sum amount bid for CPM Progress Schedule to the Contractor with the first regular estimate payable after 50 percent of the original contract amount is complete.

- 3. The City will release the remaining 10 percent of the lump sum amount bid for CPM Progress Schedule to the Contractor with the first regular estimate payable after 90 percent of the original contract amount is complete.

The City will pay for the accepted quantities at the contract price as follows:

Item	Unit	Description
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108.04 Limitation of Operations. The Contractor shall conduct the Work at all times in such a manner and in such sequence as will assure the least interference with traffic and other operations of the City and the public. The Contractor shall conduct the Work with due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work that would interfere with other work or operations already started or adversely affect work that is already partially completed. The Engineer may require the Contractor to finish a section on which work is in progress before work or operations are started on any additional sections if the completion and opening of such section is essential to public convenience.

A. Work Hours. All Work on this Contract shall be performed only during the period from 1/2 hour before sunrise and 1/2 hour after sunset as sunrise and sunset are determined by the U.S. National Weather Service.

B. Night Work, Work on Sunday and National Holidays. Authorization to work at night, on Sunday and/or National Holidays shall only be upon written permissions of the Engineer or as detailed in the Contract Documents. Requests to work at night, on Sunday and/or National Holidays must be made in writing three working days before the night, Sunday and/or Holiday work.

The Contractor is advised, however, that if permission is granted by the Engineer, all work at night, on Sunday and/or National Holidays must be in accordance with the City's Noise Ordinance unless such requirements have been waived by action of the Director.

108.05 Character of Workers, Methods, and Equipment.

A. Labor, Materials and Equipment. The Contractor shall at all time employ sufficient competent labor, materials and equipment for prosecuting the Work to completion in the manner, method, sequence and time required by the Contract Documents. All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work or operations shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

B. Personnel. Any person employed by the Contractor or by any subcontractor who, in the opinion of the Engineer, does not perform their work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or its subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.

C. Equipment. All equipment that is proposed to be used on the Work shall be of sufficient type and size and in such mechanical condition as to meet requirements of the Contract and produce a satisfactory quality of Work. Equipment used on any portion of the Work shall be such that no injury to workers, the public, the roadway, adjacent property, or other streets or highways will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the Contract, the Contractor may use any methods or equipment that is demonstrated to the satisfaction of Engineer will accomplish the Work in conformity with the requirements of the Contract.

When working or staging on existing pavements that are not including in the contract for replacement or resurfacing, Contractor shall select equipment and sequences such that the existing pavements are not further degraded by the Work. Contractor may use any equipment that increases efficiency or production and that results in additional degradation of the pavements, but agrees that the use of this equipment was used knowingly that degradation of pavements would occur and that all pavements degraded from his Work shall be resurfaced or replaced as determined by the Engineer at no additional cost to the City.

When the Contract specifies that the Work be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized in writing by the Engineer. If the Contractor desires to use a method or type of equipment other than those specified in the Contract, the Contractor may request authority from Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for requesting to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing Work in conformity with Contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute methods or equipment and shall complete the remaining Work with the Contract specified methods and equipment. The Contractor agrees that the substitution of methods and equipment shall not be a basis for any Claim seeking additional cost or time.

D. Withholding of Payment. Should the Contractor fail to furnish sufficient competent personnel, materials and equipment for the proper prosecution of the Work, or fail to remove such person(s) as requested by the Engineer, the Engineer may withhold all payment estimates, which are or may become due.

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

A. General. The City will extend the Completion Date only for (a) excusable delays as specified in 108.06.B or 108.06.D that (b) delay Work on the critical path as shown on the accepted progress schedule and (c) impact the Completion Date. For purposes of this Section, the critical path is defined as the longest path of activities in the Project that determines the Completion Date. Any delay that is not on the critical path of the Project shall not be excusable or compensable.

The City will not evaluate a request for extension of the Completion Date unless the Contractor notifies the Engineer consistent with the process and timelines as specified in 104.03. In the event that the Contractor does not know the extent of the delay at the time of the first written notice, it shall supplement its notice and schedule analysis per 104.03, 108.03.A.4.c and 108.03.B.4.c as it becomes aware of the extent of the delay for which it is requesting a time extension.

If the Contractor contends that an excusable delay is also compensable as specified in 108.06.D, the Contractor shall also submit a detailed cost analysis of the requested additional compensation in accordance with 109.05 along with the request for an extension of the Completion Date.

The Contractor is responsible for mitigating any delay, whether caused by the City, the Contractor, its subcontractors or suppliers, a third party, or an intervening event. Mitigation efforts may include, but are not limited to, re-sequencing work activities, acceleration, and continuation of work through an

otherwise planned shutdown period. The Contractor and the Engineer shall work cooperatively with one another to explore and implement mitigation efforts in a timely manner. The Engineer will measure all time extensions in Calendar Days. The Engineer will not grant an extension of time for delays incurred from December 1 to April 30 unless the Contractor's accepted progress schedule shows work on the critical path occurring during this period. The Engineer may order Contractor to continue the Work after November 30 and compensate Contractor for additional costs incurred due to cold weather work during the period December 1 to April 30.

If the Engineer extends the Completion Date pursuant to 108.06, the City will excuse the Contractor from corresponding liquidated damages as specified in 108.07.

B. Excusable, Non-Compensable Delays. Excusable, non-compensable delays are critical path delays that are not the City's or the Contractor's fault or responsibility. If the conditions in 108.06.A are met, the Engineer will extend the Completion Date only for the following excusable, non-compensable delays:

1. Delays due to floods, tornadoes, lightning strikes, earthquakes, or other cataclysmic phenomena of nature.
2. Delays due to weather as specified in 108.06.C.
3. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts, or industry-wide and area-wide material shortages. Delays due to Contractor's, subcontractor's, or supplier's insolvency, actions or omissions, or mismanagement are not excusable.
4. Delays due to civil disturbances.
5. Delays from fires or epidemics.
6. Delays from labor strikes that are beyond the Contractor's, subcontractor's, or supplier's power to settle and are not caused by improper acts or omissions of the Contractor, subcontractor, or supplier.
7. Added quantities that delay an activity on the critical path.
8. All other delays to the critical path that are not the Contractor's or the City's fault or responsibility.

C. Extension to the Completion Date for Weather or Seasonal Conditions. The Contractor shall be entitled to a non-compensable extension of the Completion Date caused by weather days only as permitted in 108.06.C. A weather day is defined as a Work Day on which weather or seasonal conditions reduced production by more than fifty percent on items of work on the critical path as defined by 108.06.A; provided, however, Sundays and holidays will not be counted as lost Work Days.

Delays caused by weather or seasonal conditions should be anticipated by the Contractor. The following Table 108.06-1 of monthly anticipated abnormally inclement weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or other similar data for Marietta, Ohio and will constitute the baseline for monthly inclement weather evaluations. The Construction Schedule must reflect these anticipated adverse weather delays in all weather dependent activities. Inclement weather will be considered as the basis for an extension of the Completion Date only when the actual Work Days

lost due to inclement weather exceeds the anticipated number of inclement weather days as shown in the following table:

**TABLE 108.06-1 MONTHLY ANTICIPATED INCLEMENT WEATHER
DELAY TABLE**

(Work Days Based on a Five-Day Work Week)

	0.10 Inch Precipitation or More	32 Degrees F or Less
January	15	18
February	12	16
March	7	14
April	6	4
May	6	0
June	5	0
July	4	0
August	4	0
September	4	0
October	4	2
November	6	11
December	10	17

This table applies to the duration between Notice to Proceed and original Completion Date. Extensions for weather days beyond the original Completion Date will be determined in accordance with 108.06.C.

The Engineer will not extend the Completion Date for work days lost from December 1 to April 30, unless the Contractor's accepted progress schedule depicts Work on the critical path occurring during the period from December 1 to April 30 and the number of weather days is in excess of those listed above for the period from December 1 to April 30.

D. Excusable, Compensable Delays. Excusable, compensable delays are critical path delays that are not Contractor's fault or responsibility and are City's fault or responsibility or are determined by judicial proceeding to be City's sole responsibility.

If the conditions in 108.06.A are met, the Engineer will extend the Completion Date only for the following excusable, compensable delays:

1. Delays due to revised Work as specified in 104.02.B; 104.02.D; and 104.02.F.
2. Delays due to utility or railroad interference within the Construction Limits that are not the Contractor's responsibility.
3. Delays due to an Engineer-ordered written delay or suspension as specified in 104.02.C.
4. Delays due to acts of the government or a political subdivision other than the City; provided, however, these compensable delay costs are limited to escalated labor and material costs only, as allowed in 109.05.D.2.b and 109.05.D.2.d.

Compensation for excusable, compensable delays will be determined by Engineer in accordance with 109.05.D.

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

F. Concurrent Delays. Concurrent delays are separate critical path delays that occur at the same time. For all periods when a non-compensable critical path delay is concurrent with a compensable critical path delay as shown by the schedule analysis performed pursuant to 108.03, the Contractor shall be entitled only to additional time but not entitled to additional compensation.

108.07 Failure to Complete on Time. If the Contractor fails to complete the Work by the Completion Date, then the Engineer, if satisfied that the Contractor is making reasonable progress, and deems it in the best interest of the City, may allow Contractor to continue in control of the Work. If the Contractor is permitted to continue, Contractor must provide for the Engineer’s approval a written work plan and schedule for completion of the Project and shall diligently prosecute the Work in such a manner as required by the Contractor’s approved work plan.

For each Calendar Day that Work remains uncompleted after the Completion Date, the City will deduct the sums specified herein from any money due Contractor, not as a penalty, but as liquidated damages based on the following schedule:

TABLE 108.07-1 SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount (Total Amount of the Bid)		Amount of Liquidated Damages to be Deducted for Each Calendar Day of Overrun in Time
From More Than	To and Including	
\$0	\$50,000	\$150.00
\$50,001	\$150,000	\$250.00
\$150,001	\$500,000	\$500.00
\$500,001	\$2,000,000	\$1,000.00
\$2,000,001	\$5,000,000	\$2,000.00
\$5,000,001	\$10,000,000	\$2,500.00
Over \$10,000,001		\$3,000.00

If the Contract Documents contain a special provision for liquidated damages, it shall be used in lieu of the schedule listed above.

In addition to the amounts specified above, for each Calendar Day after the Completion Date the Contractor will be charged for all City inspection and contract administration services. The Contractor acknowledges that these costs are in addition to the liquidated damages set forth above to compensate

the City for its inability to use the Work as scheduled for its intended purpose and the Contractor expressly waives any right to assert or plead that such costs are duplicative of the liquidated damages set forth above.

The City will continue to pay the Contractor for Work performed on the Project less any liquidated damages set forth in this Section. The City may deduct the liquidated damages and inspection costs from all estimates due and payable to the Contractor after the Completion Date.

108.08 Unsatisfactory Progress and Default of Contractor.

A. Termination for Default. The Director will notify the Contractor in writing of unsatisfactory progress and provide a Notice of Intent to Declare the Contractor in Default ("Notice of Default") for any of the following reasons:

1. The Contractor assigns or sublets the Work without approval of the Director.
2. The Contractor makes a material misrepresentation in any of the required Bid or Contract Documents.
3. The Contractor fails to supply a sufficient number of properly skilled workers or proper equipment or materials.
4. The Contractor becomes financially unable to meet its obligations, as evidenced by any of the following: filing for bankruptcy protection, making a general assignment for the benefit of creditors, a receiver is appointed to take charge of Contractor's affairs, or Contractor's property is levied or taken in execution or under attachment.
5. Contractor is not fulfilling or is violating any of the terms of the Contract or fails or refuses to perform or complete the Work.
6. Contractor is not making such progress in the execution of the Work as needed to meet the Completion Date.
7. The Contractor abandons the Work under the Contract.
8. The Contractor disregards laws, permits, ordinances, codes, rules, regulations or orders of any public authority having jurisdiction or fails to follow instructions of the City.
9. The Contractor repeatedly fails to make prompt payment to subcontractors or suppliers, or for materials and labor.
10. The Contractor has not furnished required schedule(s) or schedule information, or has not commenced or progressed the Work by the dates established in the approved project schedule or updates.
11. Any other reason the Director believes jeopardizes completion of the Work by the Completion Date.

If the Contractor does not respond to the Notice of Default to the satisfaction of the Director, the Director may declare the Contractor in default, issue a Notice of Termination to the Contractor, terminate the Contractor's employment, and notify the Surety and the Contractor that the responsibility to complete the Contract is transferred to the Surety. Upon receipt of the Notice of Termination, the Contractor's right to control and supervise the Work shall immediately cease and the Contractor shall

not be entitled to receive any further payment. Upon the receipt of the Notice of Termination, the Contractor shall discontinue the Work or such part thereof as the Director shall designate.

If after default termination pursuant this Section, it is determined that none of the circumstances set forth in 108.08.A exist, then such termination shall be considered a termination for convenience pursuant to 108.08.B. In such event, the Contractor's sole remedy shall be the costs permitted by 109.05.F.

Contingent Assignment of Subcontracts. The Contractor hereby assigns its agreement with each Subcontractor and Material Supplier to the Owner provided that the assignment is effective only after termination of the Contract by the Owner for cause and only for those agreements that the Owner accepts by notifying the Contractor and applicable Subcontractor or Material Supplier in writing.

B. Termination for Convenience.

1. General. The City may by written order to the Contractor terminate the Contract or any portion thereof when such termination would be in the best interests of the City.

Any such termination shall be effected by delivery to the Contractor of an Order of Termination specifying that the termination is for the convenience of the City, the extent to which performance of Work under the Contract is terminated, and the effective date of the termination.

2. Contractor Obligations. After receipt of the Order of Termination the Contractor shall immediately:

a. Stop work under the Contract on the date and to the extent specified in the Order of Termination.

b. Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.

c. Terminate all orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.

d. Submit to the Engineer a material inventory list ("Materials Inventory"), certified as to quantity and quality of materials in its possession or in transit to the Project.

e. Transfer to the Engineer the completed or partially completed submittals, plans, drawings, information, and other property that if the Contract had been completed would be required to be furnished to the City.

f. Take such actions as may be necessary for the protection and preservation of property related to the Project which is in possession of the Contractor and in which the City has or may acquire an interest.

g. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination.

3. Materials. Acceptable materials included the Materials Inventory that have not been incorporated into the Work may, at the option of the City, be purchased from the Contractor and delivered to a location prescribed by the Engineer or otherwise disposed of as mutually agreed.

4. Claim by Contractor. Within ninety days after receipt of the Order of Termination from the City, the Contractor shall submit any Claim for additional damages or costs not covered above or elsewhere in the Contract. The City will meet with the Contractor to reach a settlement acceptable to both the Contractor and the City.

Failure of the Contractor to submit its Claim within the ninety-day period will result in the Director's determination of amounts due the Contractor, if any, on the basis of information available, and the City will thereupon pay to the Contractor the amount so determined. Such determination by the Director shall be final and binding and the Contractor expressly waives its right to contest the Director's determination.

5. Continuation of Contractual Responsibilities. Termination of the Contract or a portion thereof shall not relieve the Contractor of its contractual responsibilities for the completed Work and shall not relieve the Contractor's Surety of its obligation for and concerning any claim arising out to the Work performed.

108.09 Certified Payroll. The Contractor shall submit weekly to the Prevailing Wage Coordinator of the City of Marietta a copy of all project employee payrolls for the duration of the time of construction. The copy shall be accompanied by a certified statement, signed by the Contractor or an authorized agent, indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the prevailing wage rates in the Contract, or any subsequent revision of wage rates during the life of the Contract. The Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

Provide any additional forms and records as specified in ORC 4115 or as required by Federal law. The Contractor shall make employment records available for inspection by authorized representatives of the City and will permit employees to be interviewed during working hours by these representatives.

All weekly payrolls shall contain or have attached the following:

1. the full name and social security number of each employee;
2. the current address of the employee;
3. the Job Classification of the employee (same as shown on wage determination or provisional approval);
4. hourly rate of pay;
5. hours worked each day and total for each week;
6. fringe payments and deductions made;
7. gross and net wages for each week.

Failure to furnish and submit the above information as part of the required weekly Certified Payroll will be cause for the City to withhold the preparation of the monthly estimate. In the event of a violation of the wage rate provisions by the Contractor or any subcontractor, the City may, after notice to the

Contractor, suspend further payments or proceed to terminate the Contract as provided by the Contract.

ITEM 109 ACCEPTANCE, MEASUREMENT, AND PAYMENT

109.01 Measurement of Quantities

109.02 Measurement Units

109.03 Scope of Payment

109.04 Compensation for Altered or Eliminated Quantities

109.05 Extra Work

109.06 Directed Acceleration

109.07 Estimates (Partial Payments)

109.08 Project Contingency

109.09 Retainage

109.10 Payment for Material on Hand

109.11 Final Inspection and Acceptance

109.12 Release of Liability

109.13 Guarantee/Warranties

109.14 Backcharges

109.15 Right to Set-Off

109.01 Measurement of Quantities. The City will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the City will measure quantities as described below unless otherwise specified in the Contract Documents.

Lump Sum. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories. Partial payments of work bid as a lump sum may be made based upon an agreed percentage of work completed or an approved Schedule of Values.

Each. Measured by the number of individual items of Work completed.

Foot (Meter). Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m).

Square Yard or Square Foot (Square Meter). Measured by a two-dimensional area method on the surface of the item.

Cubic Yard (Cubic Meter). Measured by a three-dimensional volume method. Measure all "loose material" or material "measured in the vehicle" by the cubic yard (cubic meter). Haul material "measured in the vehicle" in approved vehicles and measure in the vehicle at the point of delivery. For

this purpose, use approved vehicles of any type or size satisfactory to the Engineer, provided the vehicle's bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

Cubic Yard (Cubic Meter) for Asphalt Concrete. Measure as specified in 401.21.

Acre (Hectare). Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

Pound (Kilogram). Measured by actual item net weight avoirdupois (mass).

Ton (Metric Ton). The term "ton" means the short ton consisting of 2000 pounds avoirdupois. The term "metric ton" means 1000 kilograms. Weigh all materials that are proportioned by weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Engineer. However, car weights will not be acceptable for materials to be passed through mixing plants. If trucks are used to haul material being paid for by weight, weigh the empty truck at least once daily and as the Engineer directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Engineer receipted freight bills for railroad shipments and certified weight-bills when materials are received by any other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

Gallon (Liter). Measured by actual item liquid volume. The City will measure the following materials by the gallon (liter) at the following temperatures:

Temperatures Items

Temperatures	Items
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to City's Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to City's Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to City's Supplement 1060.

Thousand Board Feet, MBF (Cubic Meter). Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

Standard Manufactured Items. When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

109.02 Measurement Units. The City will measure using either English or metric units as indicated in the Contract Documents. Use the appropriate factor provided in the IEEE/ASTM SI 10.

109.03 Scope of Payment. The Contractor shall receive and accept compensation provided for in the Contract as full payment for performing all Work under the Contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, except as otherwise provided in 104.02, 104.03 and 107.16.

Each unit price "Basis of Payment" clause in the Specifications includes any essential work or material described in the Specification unless specifically covered under any other pay item.

109.04 Compensation for Altered or Eliminated Quantities. When the accepted quantities of Work vary from the quantities in the Proposal, the Contractor shall accept as payment in full, payment at the original contract unit prices for the accepted quantities of work done, unless a request for an adjustment is made in accordance with 104.02.D.

The adjustment permitted by 104.02.D shall apply only for the quantities in excess of 125% of the estimated quantity stated in the Contract. For those excess quantities, the adjustment shall replace the unit price with a new unit or lump sum price, based upon the reasonable verifiable cost of performance of the excess quantities and calculated in accordance with 109.05.

For decreased quantities below 75% of the estimated quantities in the Contract, the adjustment shall apply to the total actual quantity and shall consist solely of an adjustment for the portion of fixed costs, actually incurred and reasonably allocable to the affected pay item, that the Contractor would have otherwise recovered at the contract unit price if 75% of the estimated quantity had been performed.

The Contract adjustment for payment for eliminated items shall be at the original Contract unit price for such eliminated item, subject to the Contractor making a timely demand for additional adjustment if there is a significant change. The City will not apply a deduction from such payment for maintaining traffic, mobilization, and construction layout stakes items for eliminated items, unless there is a significant change as defined by 104.02.D.

In no event shall allowances be made for loss of anticipated profits suffered or claimed by the Contractor resulting directly or indirectly from such increased, decreased or eliminated quantities or from unbalanced allocation among the Contract items, or from any other cause.

109.05 Extra Work.

A. General. If City revises the Contract, City will pay for changes and Extra Work with a Change Order using the sequence provided in 109.05.B through 109.05.D that constitutes payment in full for all changes and Extra Work.

B. Negotiated Prices. Before the Extra Work being performed, Engineer and Contractor may negotiate agreed unit or lump sum prices using one or more of the following methods:

1. Original Contract prices for similar work but adjusted for:
 - a. increased or decreased material costs.
 - b. increased or decreased labor costs.
 - c. increased or decreased equipment costs.
2. Prices computed by the Engineer.
3. Cost analysis of labor, material, equipment, and mark ups as allowed in 109.05.C.
4. Cost analysis for compensable delays shall be prepared by the Contractor and approved by the Engineer.

Negotiated prices for changes and Extra Work shall be comparable to prices that would have resulted from a competitively bid contract.

If the City negotiates with the Contractor but does not agree on a lump sum or unit price adjustment, Engineer may direct the Contractor to perform all or part of the revised Work under Force Account or Unilateral Change Order.

C. Force Account.

1. General. Force account procedures shall only be used when necessary, such as when agreement cannot be reached with the Contractor on the price of a new work item, when the extent of work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy, or when in the best interest of the City. The reason or reasons for using force account procedures shall be documented. When directed by the Engineer, the Contractor shall submit a cost estimate and written description of the Work, including the planned equipment, materials, labor, and work schedule.

If the Contractor performs any work that it submits for payment as a force account, it must notify the Engineer in writing before beginning the work such that the City may track the materials, labor, and equipment in order to verify the Contractor's quantities. If the Contractor fails to notify the Engineer in writing before beginning force account work, the work performed by the Contractor shall be paid for under the original contract sum. However, the Contractor shall not be entitled to any compensation for force account work if it is later determined that the work was otherwise included in the original contract or determined to be otherwise non-compensable under the Contract. The Engineer will provide documentation stating the reasons that the work is non-compensable under the Contract.

2. Labor. For all labor and for all foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage and fringe benefits currently in effect at the time the work is performed for each and every hour that said labor and foremen are actually engaged in such work, to which may be added an amount equal to 38 percent of the sum thereof. In addition to the above, the Contractor shall itemize the actual cost of Social Security Tax, Worker's Compensation and State and Federal Unemployment Insurance. In lieu of itemizing these 4 items, 22 percent of the sum of wages and fringe benefits may be added.

The City will pay, without mark up, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement. The City will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account work. (Proration of hours between force and non-force account work also is required.)

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

3. Materials. The City will pay Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Engineer-approved materials that the Contractor uses in force account work. The City will pay an additional 15 percent markup on these costs. Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented equipment used to haul materials to the Project shall not be part of the materials cost. The Contractor shall submit invoices to support the quantities of materials used, unit prices paid and transportation charges.

If the Contractor uses materials from the Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the City and the Contractor will agree on a price that represents the actual cost to the Contractor.

4. Equipment.

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

The City will not pay rental for small tools or equipment that show a daily rate less than \$5.00 or for unlisted equipment that has a value of less than \$400.00, unless such equipment is shown to be specialized to a specific area of work and not normally included in Blue Book. Traffic control devices used in maintaining traffic and owned by the Contractor will be treated as owned equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by City.

For force account work the Contractor may use Engineer-approved equipment in good working condition and providing normal output or production. The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the force account work. For each piece of equipment used, whether owned or rented, the Contractor shall provide the Engineer with the following information:

1. Manufacturer's name or trademark
2. Equipment type
3. Year of manufacture
4. Model number
5. Type of fuel used
6. Horsepower rating
7. Attachments required, together with their size or capacity
8. All further information necessary to determine the proper rate
9. Dates, daily hours, total hours of actual operation and idle time
10. Blue Book rate with reference or category
11. Quantity
12. Applicable Blue Book hourly operating cost
13. Invoices for all rental equipment

b. Hourly Owned Equipment Rates. For any machinery or special equipment other than small tools that it may be deemed necessary or desirable to use for the force account work, the Contractor shall receive payment for such equipment actually engaged in such work (hourly, daily, weekly or monthly).

For all machinery or special equipment already employed on the Project site at the time of the force account work, the Rental Rate Blue Book shall apply. The monthly rate will be divided by 176 to arrive at the hourly rate. The Contractor will be compensated at that rate for the working hours, which includes only those hours the equipment is actually in operation performing force account work. Base rate for the machine and attachments represent the major cost of equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

Compensation for equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs. The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base equipment.

c. Hourly Idle Equipment Rate. For equipment that is in operational condition, on site, and necessary for force account work, but is idle, the City will pay an hourly idle equipment rate. If rented equipment necessary for force account work is idle and with the Engineer's approval, the City will pay the Contractor for all equipment that was idled. The hourly rate of compensation for any idle equipment will be the monthly rental rate times a factor of 0.50 divided by 176 hours per month with no operating costs added.

The City will not pay idle equipment costs for more than eight hours in a 24-hour day or forty hours in a week. The City will not pay for inoperable equipment. Compensation for idle equipment will stop at the completion of the force account work or at the end of the suspension of work.

d. Rented Equipment. If the Contractor rents or leases equipment from a third party exclusively for force account work, the City will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Engineer. The City will pay a 15 percent markup for overhead and profit for all rented equipment costs supported by the actual invoices. Blue

Book hourly operating cost will be added to the marked up actual invoiced rates only for the time the rented equipment was used on the Force Account work.

If the Contractor uses rented equipment currently on the Project for original Contract Work to perform force account Work, then determine the hourly equipment rate as described in 109.05.C.4.b.

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

5. Foreman's Transportation. The City will pay a flat rate of \$4.50 for every hour the foreman's truck is on the force account work. This rate includes equipment cost, fuel and lubricants, overhead, and profit.

6. Subcontract Work. For Work performed by an approved subcontractor, City will pay the approved subcontractor invoice plus 5 percent markup for administrative costs. The administrative cost for subcontract work shall not exceed \$5,000.00. No additional mark-up is allowed for work of a subsubcontractor or trucking services employed by a subcontractor.

7. Payment for Force Account Work. The compensation to the Contractor as provided 109.05.C shall constitute payment in full for Extra Work done on a force account basis, including administration, superintendence, overhead, use of tools and equipment for which no rental is allowed, profit, taxes other than sales tax, premium on insurance, and any other expense incidental to performing the force account work. Sales tax will not be allowed on any item for which tax exemption may be obtained.

8. Force Account Records. The Contractor's representative and the Engineer's or City's representative shall compare records daily of the extra work done as ordered on a force account basis. Daily Force Account Records shall be signed by both City and Contractor daily. In the event the Contractor declines to sign the Daily Force Account Record, the City's records shall govern. Any resulting dispute must be pursued in accordance with 104.03.

City and Contractor personnel will document the labor and equipment used on the Force Account work on a Daily Force Account Record. At the end of each Workday, City and Contractor personnel will compare and sign the Daily Force Account Record. The City will make no Force Account payment before the Contractor submits an itemized statement of the costs for that work. The Engineer will examine and, if found to be acceptable, approve all rates and costs submitted by Contractor.

Final payment will not be made for Work performed on a force account basis until the Contractor has furnished the Engineer with itemized statements of the costs of such force account work detailed as follows:

- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and supervisor.
- b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- c. Quantities of materials, prices, and extensions.
- d. Transportation of materials.

Statements shall be accompanied and supported by proper invoices for all materials used and transportation charges, and rented equipment performing work on force account operations. However,

if materials used on the force account work are not specifically purchased for such work but are produced by the Contractor or taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were produced by or taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor. Statements shall be filed not later than thirty days following the period in which the work was actually performed.

D. Delay Costs.

1. General. If the City agrees that it is responsible for a delay as defined by 108.06, the City will pay for the costs specified in 109.05.D, unless these costs have been previously paid. Such payment constitutes full compensation for any and all delay costs.

Submit an itemized statement of applicable costs in the period specified in 109.05.C.8 and that includes the content specified in 109.05.C.8 for the applicable items in this subsection and the following:

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

2. Allowable Delay Costs.

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

b. Escalated Labor. To receive payment for escalated labor costs, demonstrate that the delay forced the Work to be performed during a period when labor costs were higher than planned at the time of the Proposal. The City will pay wages and fringes with a 20% mark-up to cover administrative costs.

c. Idle Equipment or Equipment Demobilization. The City will pay the Contractor according to 109.05.C.4.c for idle equipment, other than small tools, that must remain on the Project during the delay period. With prior approval, the City will pay the Contractor's transportation costs to remove and return equipment not required on the Project during the delay period. No other equipment costs shall be recoverable because of delay.

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

e. Overhead and Profit. City will pay a 15% mark up on all direct costs as all-inclusive compensation of all other Contractor costs, including but not limited to, home

office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in 109.05.D.2 and (b) profit.

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

1. Loss of anticipated profit.
2. Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.
3. Impact, Disruption, Loss of Efficiency, Loss of Productivity.
4. Indirect costs.
5. Attorneys' fees, claim preparation expenses, and the costs of litigation.

F. Damages for Termination for Convenience. If the Contract is terminated in accordance with 108.08.B, Termination for Convenience, the City will compensate the Contractor costs:

1. Payment for Completed Work. All completed items of Work as of the date of termination will be paid for at the Contract bid price. Payment for partially completed Work at the time of termination will be based upon actual costs incurred up to the date of termination and payment will be made either at agreed prices or by force account methods for extra work change order. The reasonable costs of the termination of convenience, may include accounting, clerical and other expenses, reasonable storage, transportation as set forth herein and the cost of demobilization which cannot exceed the price bid item and other reasonable and verifiable costs incurred in connection with the protection or disposition of materials obtained for this Project

2. Materials. Payment for materials included in the material inventory will be made at actual cost delivered to the project or City designated storage site, including transportation charges to which 15 percent for all overhead and profit markup will be added but shall not exceed the unit bid price for the referenced number involved. If the material is not turned over to the City, the City will pay the Contractor a restocking charges or actual disposal costs supported by paid invoices and an additional 5 percent markup on the overhead and profit. In addition, hauling costs if not included in the restocking charges for returned material and for material delivered to the City are compensable.

3. Idle Equipment. Claims for idle equipment time, if any, following termination of the Contract are limited to a maximum of thirty days and may not include any operating expenses. In the case of rented or leased equipment, the Contractor shall recover the lesser of the actual rental costs or fair market rental costs as established in 109.05.C and the amount shall not exceed thirty days rental.

4. Overhead and Profit. The mark-up for overhead and profit will comply with 109.05.C, except as provided in 109.05.F. In no event, however, shall consequential damages, loss of overhead, loss of overhead contribution or absorption of any kind, or loss of anticipated profits on Work that was not performed be compensable or considered as part of any settlement.

109.06 Directed Acceleration. The Contractor shall always have the obligation to complete the Work in the time frames set forth in the Contract, provided, however, the Engineer, in writing, may order the Contractor, or may approve the Contractor's written request, to accelerate the Work to avoid or mitigate delay or associated costs or to complete the Project earlier than the Contract Completion Date.

For purposes of this Section, lack of express written direction or approval by the Engineer shall never be construed as consent or direction to accelerate the Work.

In the event of an Engineer ordered or approved acceleration, the Engineer and the Contractor shall negotiate and agree on acceleration costs in advance of any acceleration work being started. To the extent, however, that the direction or approval to accelerate was due to delay caused by the fault or responsibility of the Contractor, the Contractor shall not be entitled to any additional time or costs associated with the acceleration. To the extent that the acceleration was directed for the benefit of the City or for a reason not the fault or responsibility of the Contractor, the Contractor will be entitled to a time or cost adjustment as provided by 108.06 and 109.05.

109.07 Estimates (Partial Payments). If satisfactory progress is being made, the Contractor will receive monthly payments based on the value of the Work completed and the materials in place and for materials delivered as specified in 109.10 as determined by the Engineer. The monthly payment is approximate only, and all partial estimates and payments shall be subject to correction in the Final Estimate and payment. Pay estimates must be signed by the Contractor and approved by the Engineer.

Payment for Work and materials shall not, in any way, prevent later rejection when defective Work or material is discovered, or constitute acceptance under 109.11. No estimate or payment shall be construed as acceptance of unacceptable Work or non-conforming materials. The City will not pay the adjusted Final Estimate until the Contractor remedies all unacceptable work, defective work, and accepted work damaged by the Contractor's operations.

Before the second partial payment estimate is processed and for each subsequent partial estimate thereafter, the Contractor shall submit a notarized affidavit confirming that all bills for materials and for subcontracted Work represented by the previous partial payment have been paid. The City will not pay an estimate until the Contractor certifies to the Engineer that the Work for which payment is being made was performed in accordance with the Contract Documents. Certification will be made on forms provided by the City.

Should any unacceptable Work, non-conforming material, or acceptable Work that has been damaged by the Contractor's operations be discovered before final acceptance thereof or should a reasonable doubt arise before final acceptance as to the integrity of any part of the completed Work, the estimate and payment for such defective or questioned Work shall not be allowed until the defect has been remedied and cause for doubt removed, by and at the expense of the Contractor.

Partial payments may, at any time, be withheld, if in the opinion of the Engineer, any Work will not be completed in accordance with the Contract Documents.

109.08 Project Contingency. Project Contingency is identified in the Proposal. This amount shall be included in the Contract Sum and shall be included in the coverage of the Proposal Guaranty. During the Contract, this pay item shall be utilized by the City as a resource for funding necessary changes in the Work. Project Contingency shall not, however, be considered a sum to which the Contractor has any entitlement, except as portions of it are assigned for payment by Change Order, and as progress is made by the Contractor upon the Work under such Change Order.

Upon completion of the Work under this Contract, any portion of the Project Contingency that has not been assigned for payment by Change Order shall be deducted by the final Contract Modification.

Thereafter, such deducted amount may be deleted from the Contractor Bond, warranty, guarantee, and other applicable coverages.

109.09 Retainage. Ten percent of the Estimates may be retained by the City until fifty percent of the Work has been completed. When more than fifty percent of the Work has been completed, the amount retained may be reduced to five percent for all Work completed to the date of the estimate. When more than ninety percent of the Work has been completed and approved for payment, the amount retained may be reduced to 2.5%. The Engineer may also, at any time, increase retainage by any amount needed to protect the City's interests with respect to any incomplete, defective or unsatisfactory Work; costs or damages incurred by the City that are subject to the Contractor's indemnification obligations; or back charges that the City may assess against the Contractor.

The Contractor is hereby put on notice that the City will neither deposit retainage in an escrow account, nor pay interest on such retainage.

109.10 Payment for Material on Hand. The City may pay, up to 75 percent of the applicable contract item, for the invoiced cost of the delivered and approved materials before they are incorporated into the Work, when delivered on the Project or stored in acceptable storage places. Delivered cost shall be evidenced by supplier's or manufacturer's invoice bearing the statement that all previous invoices have been paid.

The Contractor shall make application for payment for materials on hand or stored on a form provided by the City. Information will be required as to the cost of the materials, when such materials will be incorporated in the Work and such other information that will be considered for approval of such payment. Consideration will be given only as to materials for major items of the Contract.

No partial payment will be made on living or perishable plant materials.

109.11 Final Inspection and Acceptance.

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

When the Contractor completes all or portions of the Work to be accepted by the City, a request by the Contractor for a Final Inspection shall be made. If the Engineer agrees the Work is complete, then within ten business days the Inspector will inspect the Work and categorize it as one of the following:

Unacceptable or not complete.

Substantially complete with punch list items found by the Inspector.

Substantially complete.

If the Inspector finds the Work substantially complete or substantially complete with punch list items, then the Contractor's maintenance responsibilities end on the day of the Final Inspection, except for any maintenance related to unfinished punch list items. This shall not relieve the Contractor of responsibility to correct defective Work or repair damage caused by the Contractor or waive any other remedy to which the City is entitled under the Contract, applicable law, in equity, or otherwise. The Inspector will

issue a Final Inspection Report that will document the findings of the inspection and start any guarantee and warranty period(s).

B. Punch List. As provided in this Section, the Inspector will issue to the Contractor a written punch list of work required as a condition of acceptance. The Inspector's punch list will stipulate a reasonable time to complete the required work unless the Contractor can demonstrate to the Inspector that completion of the punch list work within the Inspector's period is unreasonable.

Notify the Engineer in writing when all of the punch list items are complete.

C. Finalization. The Contractor will receive the Engineer's list of final quantities within forty-five Calendar Days from the date that the Work is determined to be substantially complete by the Inspector. The Contractor shall accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within thirty Calendar Days of receiving the Engineer's list of final quantities. The prescribed 30 Calendar Day period can be modified by mutual agreement of the Contractor and the Engineer. If no notice of disagreement is received, then the final estimate shall be based on the Engineer's list of final quantities.

Within sixty Calendar Days from receipt of the Engineer's list of final quantities, the Contractor shall supply Final Project Documents for Project closeout, to include, but not be limited to:

Material certificates

Payrolls

Wage affidavits

DBE/MBE/WBE affidavits, if applicable

As-built drawings as required

Warranties

O&M Manuals

Lien Waivers

Final Force Account Statement(s)

Surety Consent for Final Payment

Spare Parts List

Certificate of Completion

Bond Rider (Check with the bond form)

Affidavit of Final Payment

Failure to submit these acceptably completed documents will result in an administrative fee of \$100.00 per Calendar Day deducted from the Final Pay Estimate for every day that any of the required documents remain delinquent, starting with thirty Calendar Days after receipt of written notification from the Engineer of a document deficiency.

D. Final Acceptance/Project Closeout Process. After the Final Inspection and the issuance of the Punch List, the Contractor must complete the items on the Punch List in the stipulated period. After completing the items on the punch list, the Contractor shall notify the Engineer to confirm that the

items have been completed. When the work noted on the Punch List has been confirmed to be complete, the Engineer will issue a Notice of Final Acceptance.

Final Acceptance of the Work does not waive any available rights or remedies of the City under the Contract, applicable law, in equity, or otherwise, and shall not discharge the Contractor from any obligations it has under the Contract, including, but not limited to: unsettled liens and claims against the City; faulty, defective, or nonconforming work discovered or appearing after Final Acceptance; failure of the Work to comply with the requirements of the Contract Documents; the terms of any warranties or guarantees contained in or required by the Contract Documents; any indemnification rights including damages or costs incurred by the City resulting claims or lawsuits brought against the City based on actions on the part of the Contractor, its subcontractors, sub-subcontractors, suppliers, or any of their employees, representatives or agents; fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of Work, but discovered by the City after Final Payment; and the City's audit and adjustment rights under the Contract.

Final Estimate. Final payment to the Contractor is based on:

The agreed final quantities or as determined by the Engineer;

Finding of Final Acceptance by the Engineer;

Receipt of acceptable Final Project Documents; and

Contractor certification that the Work was performed in accordance with the Contract Documents.

As soon as practical after the Final Acceptance of the Work by the City and after approval of the final Change Order, or the final Contract Modification if the final Contract Amount exceeds the amount authorized by City Council, there shall be issued a final estimate for payment based upon the actual quantities of completed and accepted Work performed under the Contract. Compensation will not be made for any Work that was not authorized.

Final Estimates shall be approved by the City, after which the City shall pay the entire sum found to be due, after deducting all previous payments under 109.07. All prior estimates are subject to correction in the Final Estimate.

F. Completion of Contract and Continuation of Contractor's Responsibility.

The Engineer will issue a letter confirming completion of the Contract, noting any exception as provided in Items 659 and 661 and any guarantee or warranty.

The Contract is complete, except for items covered by any required bonds, when the Contractor receives final payment.

Neither Substantial Completion, Final Acceptance nor Completion of the Contract relieves the Contractor of any responsibilities to properly perform or correct the Work or to repair damage or waives any remedies to which the City is entitled under the Contract, at law, in equity, or otherwise.

109.12 Release of Liability. No person or corporation other than the signer of this Contract as Contractor, has any interest hereunder and no claim shall be made or be valid, and neither the City, nor any official or agent thereof, shall be liable for or be held to pay any money, except as provided in the Contract. The acceptance by the Contractor of final payment shall operate as and shall be a release to the City, and every officer and agent thereof, from all claims and liability to the Contractor for anything

done or furnished for, or relating to the Work, or for any act or neglect of the City, or of any person relating to or affecting the Work.

109.13 Guarantee/Warranties. Unless otherwise noted in the Contract Documents, the guarantee period begins upon Final Acceptance of the Work by the City. The guarantee period extends for one year from the date of Final Acceptance.

Under the Contractor's guarantee the Contractor warrants to the City that materials and equipment furnished under the Contract are of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work is free from defects not inherent in the quality required or permitted; that the Work conforms to all requirements of the Contract Documents; that the Work is complete and fully functional; and that any failure to conform to these requirements or the occurrence of any defects or failures in the Work shall be remedied by the Contractor promptly and at no cost to the City.

In addition to the Contractor's guarantee and without in any way diminishing or changing it, the Contract Documents may also specify other express Contractor warranties or subcontractor, manufacturer or supplier warranties that apply during, or after, the Contractor's guarantee period. Notwithstanding the existence of other warranties, the Contractor shall remain as the responsible party to the City under the Contractor's guarantee for purposes of the City exercising its rights under this Section during the one-year guarantee period.

The guarantee provisions do not relieve the Contractor from completing the Work in accordance with the Contract and do not diminish any rights or remedies the City may have under the Contract, applicable law, in equity, or otherwise.

At any time during the guarantee period, the City may notify the Contractor that certain repairs or other actions are necessary. Within ten days after being so notified, the Contractor shall make such repairs or take such other actions as are declared necessary to restore the Work to a good and serviceable condition consistent with the requirements of the Contract Documents. In the event that the Contractor fails to comply with the order to repair or take other actions, such repairs may be made or other actions undertaken by the City and the Contractor agrees that it shall reimburse the City for any such expenses it incurs within ten days following the receipt of a statement rendered to the Contractor by the City for such expenses. Specifications for the Work performed under this Contract shall govern in the making of repairs or taking other action pursuant to this Section.

Upon the expiration of the one-year guarantee period, the Contractor shall take all steps necessary to transfer to the City all remaining rights and obligations that may exist under any other warranties from the Contractor, subcontractors, manufacturers or suppliers and shall continue to assist the City, as needed, to enforce such warranties.

109.14 Back charges. To the extent the City has the right to back charge the Contractor pursuant to the Contract, the City, at its option, may take one or more of the following actions: (i) require the Contractor to make payment to the City within ten days of the Contractor's receipt of the invoice; (ii) deduct the back charge from the next and subsequent pay estimates until the full amount of the back charge has been satisfied; or (iii) deduct the back charge from Retainage. The City's right to back charge is in addition to any or all other rights and remedies provided in the Contract, at law, in equity, or otherwise.

109.15 Right to Set-Off. The City shall have all of its contractual, common law, equitable, and statutory rights of set-off. These rights shall include, but not limited to, the City's option to withhold for the purposes of set-off (a) any monies due or that may become due to the Contractor under this Contract; (b) any monies due or owing under any other contract with the City Department that holds or funds this Contract; or (c) any monies due or owing the Contractor under any other contract with the City for tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The City shall exercise its set-off rights pursuant to audit by the City Auditor, or its representative.