

PART B - GENERAL CONDITIONS

B-1. CONTRACT DOCUMENTS.

- A. The following shall constitute the Contract Documents and shall be deemed the Contract made pursuant to this Invitation to Bid:
- (1). The Ordinance or Ordinance authorizing the making of the public improvement.
 - (2). The Invitation to Bid, General Conditions, Supplemental General Conditions and Detail Specifications.
 - (3). The Contract Drawings.
 - (4). All Addenda issued by the City prior to the receipt of bids.
 - (5). The Affidavit of Non-Collusion.
 - (6). The Bid.
 - (7). The Resolution of the Board of Control awarding the Contract.
 - (8). The Agreement.
 - (9). All required Bonds and Policies of Insurance.
 - (10). All provisions required by law, charter or ordinance to be inserted in the Contract, whether actually inserted or not.

B-2. DEFINITIONS.

- A. The following words and expressions, or pronouns used in their stead shall, wherever they appear herein, be construed as follows, unless a different meaning is clear from the context:
- (1). "Addendum" or "Addenda" shall mean the additional contract requirements prepared by the Director and issued in writing, by means of drawings, or both, by the Commissioner of Purchases and Supplies prior to the receipt of bids.
 - (2). "City" shall mean the City of Cleveland, Ohio.
 - (3). "Contract" or "Contract Documents" shall mean each of the various parts of the contract referred to in Part B-1 hereof, both as a whole and severally and shall include subsidiary agreements, if any.
 - (4). "Contractor" shall mean the corporation, firm or individual, or any combination thereof, and its, their or his successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted therefor under this contract, and shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.
 - (5). "Contract Drawings" shall mean those identified as such in the contract documents and shall include those issued in connection with any addendum, or issued in connection with any proper subsidiary agreement and shall also include any other detail or explanatory drawings issued during the progress of the work which are consistent with the contract documents, true developments thereof or reasonably inferable therefrom.
 - (6). "Specifications" shall mean all of the directions, requirements and standards of performance applying to the work as hereinafter detailed under specifications.
 - (7). "Contract Work" or "Work" shall include the furnishing of all labor, materials, tools, equipment, incidentals, and any other thing necessary or required for the full performance of the contract by the Contractor, including all such required or necessary as called for in any proper subsidiary agreement.
 - (8). "Director" shall mean the director of the department for which the improvement is being made.
 - (9). "Final Acceptance" shall mean final acceptance of the work by the Director, as evidenced by his signature upon his certificate of completion and acceptance filed in the Office of Commissioner of Accounts of the City, copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as of the date so stated in such certificate.
 - (10). "Law" or "Laws" shall mean the Constitution of the State of Ohio, the Cleveland City Charter, a statute of the United States or of the State of Ohio, The Codified Ordinances of the City of Cleveland, and any municipal ordinance, rule or regulation having the force of law which is applicable to this contract.
 - (11). "Materialman" shall mean any person, firm or corporation, other than employees of the contractor, who or which contracts with the contractor, or any sub-contractor to fabricate or deliver, or who actually fabricates or delivers, materials, plant, or equipment to be incorporated in the work.
 - (12). "Subcontractor" shall mean anyone (other than the contractor and his employees) who performs work (other than or in addition to the furnishing of materials, plant or equipment) at or about the construction site, directly or indirectly for or on behalf of the contractor (and whether or not in privity of contract with the contractor), but shall not include any person who furnished merely his own personal labor or his own personal services.
 - (13). "Workman", "Laborer" or "Workingman" shall mean any employee of the contractor or of a subcontractor, who performs personal labor or personal services at the construction site.
 - (14). "Directed", "Required", "Approved", and words of like import whenever they refer to the work or its performance; and the words "directed", "required", "permitted", "ordered", "designated", "established", "prescribed", and words or like import used in the specifications, the contract, or upon the drawings, shall imply the direction, requirement, permission, order, designation or prescription of the Director; and "approved" - "acceptable" - "satisfactory", and words of like import shall mean approved by or acceptable or satisfactory to the Director.
 - (15). "Site" shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Director.
 - (16). "Resident" or "Resident of the City" shall mean persons domiciled within the boundaries of City of Cleveland. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.
 - (17). "Low Income Person" shall mean a Resident who is a member of a family having an income equal to or less than the Section 8 very low-income limit established by the Department of Housing and Urban Development. Very low-income families are defined as families whose incomes do not exceed fifty percent (50%) of the median family income for the area. Income limits are adjusted for family size. Unrelated individuals shall be considered as one-person families for this purpose.
 - (18). "Construction Worker Hours" shall mean the total hours worked on the Contract by Skilled and Unskilled Construction Trade Workers, whether those workers are employed by the Contractor or any Subcontractor. The total Construction Worker Hours to be furnished at the construction site includes the number of hours devoted to all tasks customarily performed on a construction site, whether or not such tasks are, in fact, performed on the construction site.

Construction Worker Hours excludes the number of hours performed by nonOhio residents.

- (19). "Resident Employment Requirement" means the percentage of Construction Worker Hours Residents must work, as required by Section 188.02.
- (20). "Skilled and Unskilled Construction Trade Worker" shall mean all work site foremen, journeymen, including technical engineers, apprentices, construction trainees and elevator construction helpers and apprentices that are in a bona fide apprenticeship training program that is certified by the U.S. Department of Labor, Bureau of Apprenticeship and Training. Also included are other workers appropriate for construction activities. Salaried superintendents are excluded.
- (21). "Referral Source" shall mean a company or agency that the Director of Equal Opportunity has designated as a source from which a Contractor must or may seek referrals of Residents or Low Income Persons to work on a Construction Contract.
- (22). "Work Force Table" shall mean a document identifying a Contractor's estimated numbers and types of various Skilled and Unskilled Trade Workers required for performance of a Construction Contract, separately listed by trade, month, Residents and Low Income Persons.

B-3. TIME OF ESSENCE.

Since this contract is for a needed improvement, the provisions relating to the time of performance and time of completion of the work included in this contract are of the essence of this contract. The Contractor shall begin work on the day specified in paragraph B-4 and shall prosecute the work diligently so as to assure completion of the work not later than the time specified therefor, or the time of completion extended, pursuant to paragraph B hereof.

B-4. TIME OF COMMENCEMENT AND COMPLETION OF WORK.

- A. The work to be performed herein shall start within five (5) days after the execution of the contract and without further notices from the Director, except as otherwise provided in the supplemental general conditions; provided in case of special conditions arising after the execution of the contract the Director and Contractor may agree in writing to postpone the commencement of the work hereunder.
- B. A contract shall be deemed executed when signed by the parties thereto, certified by the Director of Finance as required by law, secured by the required bond, and approved by the Director of Law; and when the original contract is filed with the Commissioner of Accounts of the City and a copy delivered to the Contractor. Under normal conditions a contract will be executed within six weeks after award of contract.
- C. Unless fixed by the Director, or otherwise provided in the supplemental general conditions, the bidder shall state in his bid the date on or before which the work herein contemplated will be completed and ready for final acceptance. (Where equal bids are received, the date of completion will be used in determining the lowest responsible bid.)

B-5. LIQUIDATED DAMAGES FOR DELAY.

The Contractor guarantees that he can and will complete the work on or before the time fixed in his bid, or on or before the extended time as provided in paragraph B-6. For the reason that the damage and loss to the City which will result from the failure of the Contractor to complete the work at the time fixed will be most difficult or impossible of accurate assessment, the damages to the City for such delay and failure on the part of the Contractor shall be liquidated in the amount of Twenty-Five Dollars (\$25.00), or the amount fixed in the supplemental general conditions, for each calendar day which the Contractor shall fail to complete the work, or any part thereof, in accordance with the provisions of the contract and such liquidated damages shall not be considered as a penalty. The City will deduct and retain out of any money due or to become due under the contract the amount of the liquidated damages and, in case those amounts are less than the amount of the liquidated damages, the Contractor shall be liable for the payment of the difference upon demand of the City.

B-6. DELAY FOR CAUSES BEYOND CONTROL.

- A. If the Contractor be delayed in the completion of the work by any act or neglect of the City, or by any other contractor employed by the City, or by changes ordered in the work; or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any cause beyond the contractor's control, including orders, limitations, or restrictions of any Governmental agency having jurisdiction over the subject matter of the contract, or by delay authorized by the City, or by any cause which the Director shall decide to justify the delay; then, for all such delays and suspensions, the Contractor shall be allowed one calendar day extension beyond the time herein stated for completion of the work for each and every calendar day of such delay so caused in the completion of the work, the same to be ascertained by the Director.
- B. No such extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Director. In case of a continuing cause of delay, only one request will be necessary.
- C. No claims for damages or any claim other than for an extension of time as herein provided shall be made or asserted against the City by reason of any delays hereinbefore mentioned.
- D. When by reason of any of the causes stated herein an extension of time has been allowed the Contractor for the completion of his work, he shall not be entitled to a bonus for completion prior to the date so extended, anything in the contract documents to the contrary notwithstanding.

B-7. STORAGE OF MATERIALS.

- A. The Contractor shall make all necessary arrangements and provisions for the storage of materials and equipment to be used on this contract.
- B. Materials and equipment which are to become the property of the City, shall be so stored as to facilitate their prompt inspection and insure preservation of the quality and fitness of the work, including proper protection against damage by freezing and wet weather; and they shall be placed under cover on wooden platforms or other hard, clean surfaces, and not on the ground, when so directed. Whenever the best interest of the City so requires, upon order of the Director, the Contractor shall promptly provide improved storage facilities and methods.
- C. Lawns, grass plots or other private property shall not be used for storage purposes without written permission of the owner, his agent or other person in possession or control of such premises.
- D. The City disclaims all responsibility for loss or damage to stored materials or equipment, or both.

B-8. RESPONSIBILITY OF CONTRACTOR.

- A. The City will not insure the work under construction, nor against claims for injury to person or property arising during the

prosecution of such work.

- B. The Contractor will be held responsible for all damage to the work under construction, whether from fire, water, high winds, or other causes until final completion and acceptance, even though partial payments have been made under the contract. He will be held answerable for all damages that may occur to persons, property, animals, or vehicles from want of proper shoring, bracing, lighting, watching, boarding or enclosing, and for any accident arising from defective scaffolding or apparatus, or from any negligence on the part of himself or his employees.

B-9. DUTY AND RESPONSIBILITY OF CONTRACTOR FOR PLANT AND METHODS.

The Contractor shall provide and install such construction plants and shall use such methods and appliances for the performance of all the operations connected with the work to be done under this contract as will secure the safety of the work and those working on it, a satisfactory quality of the work and a rate of progress which will insure the completion of the work within the time specified. If at any time before the commencement or during the progress of the work, or any part of it, such methods and appliances appear to be unsafe, inefficient or inadequate for securing the safety of the workmen, the quality of the work or the rate of progress required, the Director may order the Contractor to increase safety measures or to improve their character, and the Contractor shall comply with such orders; but the failure of the Director to make such a demand shall not release the Contractor from his obligation to secure the safe conduct and the quality of the work, and the rate of progress required, and the Contractor alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances and methods.

B-10. STRUCTURES ENCOUNTERED AND PROTECTION OF PROPERTY.

- A. The Contractor shall, at his own expense, support and protect all buildings, bridges, conduits, wires, water pipes, gas pipes, sewers, pavements, curbing, sidewalks, equipment and fixtures of all kinds and all other public or private property, whether of this or another contract, that may be encountered or endangered in the prosecution of the work herein contemplated and that are not otherwise provided for in the Charter or franchise relating to same. He shall repair and make good any damage caused to any such property by reason of his operations leaving all work in approved condition at the completion of the contract.
- B. The City reserves the right to repair any damage to public utilities or other facilities of the City caused by the work of the Contractor and the cost of such repair shall be borne by the Contractor. In the event the Contractor refuses or fails to pay bills for such repair work upon presentation, without prejudice to any other remedies available to the City, the cost of the same shall be deducted from any money that may be due to him on partial or final estimates as herein provided.

B-11. PROTECTION OF WORK.

The Contractor shall provide proper facilities, take all necessary precautions and assume the entire cost for protecting the work against adverse weather conditions and for handling all storm and flood water, sewage, seepage, ice or snow that may be encountered during the performance of the contract and the manner of providing for such contingencies and for carrying on the work in freezing weather shall meet with the approval of the City.

B-12. WATCHMEN.

- A. The Contractor shall provide the necessary watchmen and sufficient warning lights and barricades at his own expense and he shall take such other precautions as are necessary to protect life and property.
- B. The Director may at any time order the Contractor to provide watchmen or additional watchmen at any point where, in his opinion, they are required, or where they may be requested by the proper official of any municipality affected.
- C. Nothing in this section shall be construed as requiring the Contractor to provide a road patrol.

B-13. SANITARY PROVISIONS.

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the sanitary requirements of law and ordinance.

B-14. AID TO THE INJURED.

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

B-15. WATER SUPPLY.

- A. The Contractor may obtain water from the City water supply by obtaining the necessary fire hydrant permit from the Department of Public Utilities and shall pay all charges for the service. No improper, wasteful or undue use of water will be permitted.
- B. When the water supply to be used is in a Master Meter Municipality, permission shall be obtained by the Contractor from that municipality before any water is used, and the cost of such water supply shall be paid by the Contractor to said municipality.

B-16. ACCESSIBILITY OF FIRE HYDRANTS AND STOP VALVES.

Fire hydrants and stop valves adjacent to the work shall be kept readily accessible to fire apparatus and no material or other obstruction shall be placed within five (5) feet of any hydrant or stop valve unless by special permission of the proper authorities.

B-17. REMOVAL OF RUBBISH.

The Contractor shall, at his own expense keep the site of his operation, building or structure being worked on clean during the construction and remove all rubbish as it accumulates. Upon the completion of the work, the Contractor shall tear down and remove all temporary structures built by him; shall remove all rubbish of all kinds from any grounds which he occupied and shall leave the site and the work in a clean and neat condition.

B-18. PUBLIC LIABILITY, PROPERTY DAMAGE AND AUTOMOBILE INSURANCE.

- A. The Contractor shall take out and maintain during the life of this contract such public liability and property damage insurance, wherein the City of Cleveland is named as an additional insured, as shall protect himself, the City of Cleveland and any subcontractor performing work covered by this contract from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. An exact copy of such policy or policies shall be deposited with the City of Cleveland before the commencement of any work under the contract. The amounts of such insurance shall be as follows:
- B. Public Liability Insurance: In an amount not less than \$500,000.00 for injuries, including accidental death to any one person,

and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of one occurrence involving injury to more than one person, and property damage insurance in an amount not less than \$200,000.00.

- C. The following special hazards shall be covered during the life of this contract by rider or riders to the policy or policies above required, or by separate policies of insurance in amounts as follows:
- (1). Public Liability insurance to cover each automobile, truck or other vehicle used in the performance of the contract in an amount not less than \$500,000.00 on account of injury or death of one person and not less than \$1,000,000.00 on account of injury or death of two or more persons.
 - (2). Property Damage liability insurance to cover each automobile, truck, or other vehicle used in the performance of the contract in an amount not less than \$200,000.00 in any occurrence.
 - (3). Public Liability and property damage insurance to cover the use of explosives used in the performance of this contract, in the same limits as set forth in the preceding subsections.

The policy shall contain the following special provisions: "The Company agrees that ten (10) days prior to cancellation or reduction of the insurance afforded by this policy, with respect to the contract involved, written notice will be mailed to the City of Cleveland".

B-19. ACCESS TO WORK AND PLACE OF MANUFACTURE.

The Director or his authorized representative and such representative's staff shall at all times have access to inspect the work wherever it is in preparation, progress, being manufactured or fabricated and the Contractor shall arrange and provide proper facilities for such access and inspection to determine whether such work is being done in accordance with the contract requirements.

B-20. EXPERIMENTAL METHODS, EQUIPMENT AND MATERIAL PROHIBITED.

The use of any experimental or untried methods, or the use or installation of any experimental or untried materials or equipment or any combination of either or both, shall not be allowed. Each bidder shall, if so required by the Director, submit ample proof that the method of doing any of the work contemplated under these specifications has been successfully used for like work for a period of at least one year; or that the materials or equipment or any combination of either or both proposed to be used on, or furnished for such contemplated work, is of a reliable make and is of a type that has been successfully used in practical service outside of the builder's works, for a period of not less than one year.

B-21. STATUS OF CITY INSPECTOR.

- A. Inspectors as designated by the Director shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work, and to the preparation or manufacture of the materials to be used. In case of any dispute arising between the Contractor and the Inspector as to materials furnished or the manner of performing the work, the Inspector shall have the authority to stop the use of material or suspend the work until the question at issue can be referred to and decided by the Director. The Inspector shall not be authorized to revoke, alter, enlarge, relax or release any requirements of these specifications, nor to approve or accept any portion of the work or to issue instructions contrary to the plans and specifications. The Inspector shall in no case act as foreman or perform other duties for the Contractor or interfere with the management of the work by the latter. Any advice which the Inspector may give the Contractor shall in no wise be construed as binding the Director in any way or releasing the Contractor from the fulfillment of the terms of the contract.
- B. The Contractor shall not be entitled to any claims for loss of time, damages or anticipated profit due to any time lost from suspension of work and from the referral of the questions at issue to said Director or his representative

B-22. LAWS, PERMITS AND REGULATIONS.

The Contractor shall comply with all applicable laws of the Federal Government, State of Ohio and Ordinances of the City of Cleveland or other municipality in which the work is being done, and all applicable regulations and any authorized regulations, and shall be responsible for securing at his own expense any and all licenses, permits and certificates of inspection required by law, or by the Contract Documents.

B-23. BLASTING

- A. The use, storage and transportation of explosives in and about the work or in the vicinity of the same shall be in accordance with the provisions of Sections 387.01 to 387.99, both inclusive, of The Codified Ordinances of the City of Cleveland.
- B. In addition, all laws, rules and regulations of the State and the municipalities or townships through which the explosives are to be transported or in which the explosives are to be stored or used shall be complied with.
- C. The Contractor shall assume all responsibility for any damage that may be done by the use of any explosives, by him or his agent, in any way, in connection with this contract, or damage that may be done by explosives that are being stored for, or transported to or from the work.
- D. In blasting, great care must be taken not to injure any existing gas or water pipes, sewer drain, conduit or other structures on the site of the work or in adjacent premises, and the Contractor will be held responsible for any damage done to these structures.

B-24. OTHER CONTRACTS.

It is understood and agreed that the Contractor shall execute his work in such a manner and in such order as will not interfere with work in progress and will permit the City to perform other work or to enter into other contracts for work and materials to be constructed or placed in, on or about the work herein described, with the least interference possible and with complete cooperation whenever it is desirable to prosecute such other work, either simultaneously with the work under this contract or otherwise. The Director shall decide all questions of priority among separate Contractors.

B-25. PATENTS.

The Contractor shall pay all royalties and license fees and shall hold and save the City and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses, for or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the City of Cleveland unless otherwise specifically stipulated in the contract documents. In this respect the Contractor shall defend all suits or claims for infringement of any patent or license rights.

B-26. STATE INDUSTRIAL COMPENSATION.

The Contractor shall at all times during the term of this contract subscribe to and comply with the Workmen's Compensation Laws

of the State of Ohio and pay such premiums as may be required there under and to save said City harmless from any and all liability arising from or under said act. He shall also furnish at the time of delivery of this contract and at such other times as may be requested, a copy of the official certificate or receipt showing the payments hereinbefore referred to.

B-27. SOCIAL SECURITIES ACT.

The Contractor shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Contractor on work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized state or federal officials; and said Contractor also agrees to indemnify and save harmless the City of Cleveland from any such contributions or taxes or liability therefor.

B-28. EIGHT HOUR DAY-MINIMUM WAGE AND NON-DISCRIMINATION.

The Contractor agrees that he will comply with the following provisions of the Charter of the City of Cleveland, which read respectively, as follows:

Section 196. Except in case of extraordinary emergencies, not to exceed eight hours shall constitute a day's work and not to exceed forty-eight (48) hours a week's work, for any city employee of the City of Cleveland in the classified service thereof, and for any workmen engaged in any public work carried on or aided by the municipality whether done by contract or otherwise. The Council shall, by ordinance, provide for the enforcement of the provisions of this section.

Section 197. Every contract for public work entered into by the City of Cleveland shall contain, and no contract shall be entered into unless it contains the following stipulations:

The Contractor hereby agrees that all persons employed by him shall be paid wages which are not less than are paid by the City of Cleveland for similar or like work; but if said city has not established a rate of wages for any particular class of work to be performed under the terms of this contract, then said employees shall be paid wages not less than are generally paid therefor by others employing union labor in said city; but in no event shall any employee be paid less than four dollars and fifty cents (\$4.50) per day for eight hours.

The Contractor hereby further agrees that in the employment of labor, skilled or unskilled, under the contract there shall be no discrimination exercised against any citizen because of race, color, religion or national origin; and that any violation hereof shall be deemed a material breach of said contract.

Section 198. No person employed by any contractor or subcontractor on any public work of or for the City of Cleveland shall be paid less than four dollars and fifty cents (\$4.50) per day of eight hours work, and no contract for public work shall be entered into by the City of Cleveland unless said contract so provides.

B-29. PREVAILING RATES OF WAGES.

- A. Each laborer, workman or mechanic employed by the Contractor for the work herein specified or by the subcontractor, or by other persons upon such work, shall be paid the prevailing rates of wages as determined by the Department of Industrial Relations, Division of Building and Factory Inspection, of the State of Ohio, the published and approved schedule of which may be obtained at the office of the Director.
- B. In the event the wage scale for any labor classification is changed between the time the schedule was approved and the time the work required by this contract is performed, or in the event any class of labor employed under this contract, is not included in the published schedule of prevailing wages, then the rate prevailing at the time the work is actually performed as ascertained and determined by the Department of Industrial Relations of the State of Ohio shall govern the work done under this contract.
- C. Every contractor and subcontractor who is subject to Chapter 4115. of the Revised Code shall, as soon as he begins performance under his contract with any contracting public authority, supply to the prevailing wage coordinator of the contracting public authority a schedule of the dates during the life of his contract with the authority on which he is required to pay wages to employees. He shall also deliver to the prevailing wage coordinator a certified copy of his payroll, within two weeks after the initial pay date, and supplemental report for each month thereafter which shall exhibit for each employee paid any wages, his name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, his hourly rate of pay, his job classification, fringe payments, and deductions from his wages. If the life of the contract is expected to be no more than four months from the beginning of performance by the contractor or subcontractor, such supplemental reports shall be filed each week after the initial report. The certification of each payroll shall be executed by the contractor, subcontractor, or duly appointed agent thereof and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by the contract.
- D. Each contractor or subcontractor shall file with the contracting public authority upon completion of the public improvement and prior to final payment thereof an affidavit stating that he has fully complied with Chapter 4115. of the Revised Code. Said affidavit is to be filed with the Commissioner of Accounts.

B-30. STATE OR FEDERAL TAXES.

- A. The contract price or prices for the materials contained in the contract are subject to increase or decrease by the amount of any additional tax or taxes or reduction of such tax or taxes, as the case may be, affecting such commodity imposed by or under authority of the Federal Government or the State of Ohio, which may be enacted after receipt of bids for this contract and such changes shall continue in effect during the existence of such change in the taxes, provided, however, that in the event of any increase in cost, a claim shall be presented by the Contractor within thirty (30) days and provided that such claim is supported by evidence showing such additional tax, satisfactory to the Director of Law. Reductions in taxes will be deducted from the contract price.
- B. The City of Cleveland is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price, or a trade discount from catalogue list prices, shall be exclusive of all such taxes and will be so construed.

B-31. LABOR AND MATERIAL MEN.

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

B-32. ASSIGNMENT OF CONTRACT

The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the moneys due or to become due under this contract, except by consent of the Board of Control, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such prior written consent to any further assignment, transfer, or conveyance, nor shall any such change become valid before filing of the contract change with the Commissioner of Accounts.

B-33. SUBCONTRACTING.

- A. This contract is made pursuant to the bid submitted by the Contractor and in reliance upon the Contractor's qualifications and responsibility. Therefore:
 - i. The contractor shall not subcontract, sublet, assign, transfer, convey or otherwise dispose of the contract, its duties, rights, title or interest in it or in any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under the contract, except, in each instance, with the prior written authorization of the Board of Control of the City, expressed through its resolution, and then only upon such terms and conditions as may be agreed to by said Board. No such subcontracting, subletting, assignment, transfer, conveyance or other disposal of the contract shall be valid until the written consent of the Board of Control is attached or endorsed hereto and filed in the Office of the Commissioner of Accounts.
 - ii. Prior written Board of Control consent is required for a City contractor to add a subcontractor, or to substitute one subcontractor for another subcontractor, under a City contract.
 - iii. The City assumes no obligation to pay, and will not pay, a contractor for any work and services performed by a subcontractor on the contract prior to Board of Control approval of that subcontractor.
 - iv. The Director will not grant any City contractor additional time to meet project deadlines, and will not authorize or pay additional compensation or delay damages of any kind arising from the contractor's inability to add or substitute a subcontractor because the contractor failed to submit the approval request and supporting documentation at least 3 (three) weeks in advance of the date the additional or substitute subcontractor is needed.
 - v. The Office of Equal Opportunity shall evaluate each subcontractor addition and substitution for increased CSB, MBE, or FBE participation even if the original contract had no certified subcontractor participation.
 - vi. The City's Sub-contractor Addition and Substitution Policy and Procedure is hereby incorporated by reference in its entirety. The complete document is available online at the City of Cleveland website: <http://www.city.cleveland.oh.us>
 - vii. In making application for subletting any portion of the work, the Contractor shall state in writing the portion of the work which each subcontractor is to do or the material which he is to furnish, his place of business, and such other information as may be required in order to ascertain whether such subcontractor is responsible, reliable and able to perform the work or to furnish the materials as called for in the specifications. Subletting, if permitted, shall not relieve the Contractor, or his surety of any of his or its obligations under this contract
- B. Any subcontract for work covered by this contract must conform to the requirements of the general and detailed provisions of this contract.
- C. The Contractor shall be and remain solely responsible to the City for the acts or faults of his subcontractor and of such subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of his subcontract. The Contractor shall promptly, upon request of the Director file a conformed copy of the subcontract with prices and terms of payment deleted, as a condition precedent to the approval of a subcontractor. The Contractor and subcontractor shall jointly and severally agree that no obligation upon the City of Cleveland is thereby created to pay to, or see to the payment of any sums to any subcontractor.

B-34. CHANGES OR MODIFICATIONS OF CONTRACT. (Section 168 of the Charter of the City of Cleveland)

When in the prosecution of any work or improvement under contract it becomes necessary, in the opinion of the Director of the appropriate department, to make alterations or modifications in such contracts, such alterations or material, or both, under the altered or modified contract, shall have been agreed upon in writing and signed by the Contractor and such Director prior to authorization by Council.

- A. Changes in the Work - Without invalidating the Contract and without notice to the Contractor's surety, the City may, at any time, or from time to time, order additions, deletions or revisions in the work, which shall be authorized by a Change Order. Upon receipt of a Change Order, Contractor shall promptly proceed with the work as altered, the same as if it had been part of the original Contract, whether or not agreement has been reached as to any price adjustment for such work.
- B. Change of Contract Price - The contract price shall mean the moneys payable by the City to the Contractor under the Contract Documents less the Contingency Allowance. No change in the Contract Price shall be authorized for work required by or reasonably implied as a requirement of the Contract Documents or for work foreseeable at the time of the bid as necessary to complete the project as originally contemplated.

In the event the Contractor is requested or required to perform work neither required by nor reasonably implied as a requirement of the Contract Documents and not foreseeable at the time of the bid as necessary to complete the project as originally contemplated, the Contract Price may be changed for work so performed by Contingency Allowance or by Subsidiary Agreement, provided that:

- (1.) Within ten (10) days after the occurrence or non-occurrence of any event giving rise to Contractor's claim for an adjustment in the Contract Price based on changes in the work, Contractor shall notify the City, in writing, of the general nature of the claim.
- (2.) Contractor shall provide to Engineer, within thirty (30) days after such event, the following supporting documentation:
 - (i) statement of the date, nature and specific circumstances of such event;
 - (ii) copies of all correspondence regarding such event;
 - (iii) identification of all work which has been or may be affected by such event;
 - (iv) itemization of all labor, materials and equipment for which a price adjustment is claimed;
 - (v) copies of all invoices for materials delivered for which a price adjustment is claimed.

Contractor's supporting documentation shall be accompanied by the Contractor's written statement that the amount claimed covers all known amounts to which Contractor is entitled as a result of the occurrence of said event.

No claim by Contractor for an adjustment in the Contract Price shall be valid if not submitted in accordance with this Article, B-34.

- (3.) The price adjustment for any work for which Contractor claims an increase in the Contract Price shall not exceed the actual cost of additional on-site labor, materials and equipment plus ten percent (10%) of such cost for profit and overhead.

All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the City, and Contractor shall make provisions so that they may be obtained.

- (4.) In the event changes in the work result in a net decrease in the Contractor's costs, the Contract Price shall be decreased by an amount equal to the actual net decrease in the cost of on-site labor, materials and equipment plus ten percent (10%) of such net decrease.
- (5.) Where the work involved is covered by unit prices contained in the Contract Documents, the value of the work for which Contractor claims an increase in the contract price or the credit to which the City is entitled shall be determined by application of such unit prices.
- (6.) Changes in the contract price made pursuant to the Contingency Allowance shall not exceed the amount of the Contingency Allowance listed on the Contractor's bid.
- (7.) In the event that the Contingency Allowance is exhausted, changes in the Contract Price may only be made by Subsidiary Agreement, pursuant to Article B-34 of the General Conditions; the Contractor shall proceed with the work while any such Subsidiary Agreement is being processed.

B-35. FAILURE TO MEET PERFORMANCE REQUIREMENTS.

The delivery of any material, equipment or the performance of any labor hereunder which does not in all respects conform to contract requirements, will be rejected and the Contractor shall be notified promptly by the Director of such rejection and the reason therefor, which notice shall be confirmed in writing. If the said Contractor fails to effect immediate replacement of such rejected materials, equipment and labor with material, equipment and labor meeting the requirements of the order and of the contract, the City of Cleveland will purchase in the open market, material, equipment and hire labor of the character required under the order up to the amount rejected and the said Contractor and his surety shall be liable to the City of Cleveland for any excess cost and expense occasioned the City thereby. The Director shall have the right to suspend the whole or any part of the work to be done hereunder, when the Contractor is not doing the work in accordance with the provisions of the contract. No extension of time for completion of the contract work or claim for damages will be allowed by reason of such suspension.

B-36. ANNULMENT OF CONTRACT.

The Director shall have the right to annul the contract upon the failure of the Contractor to comply within three (3) days after receipt of written notice to proceed with the performance of any work unreasonably delayed as to indicate failure of completion within the time specified or to replace any work, material or equipment not meeting the contract.

B-37. ACCEPTANCE OF PERFORMANCE.

It shall be understood and agreed by the parties hereto that the Director shall determine finally, the satisfactory quality of the work, material and equipment furnished under the contract.

B-38. GUARANTEE.

- A. The Contractor for the work called for in the contract documents, in consideration of the price bid and the payments received or to be received, guarantees that all work done and all material used in the project under contract are in all respects first-class, of the proper kind and quality and has been done and is being done in accordance with the requirements of the contract documents, and also guarantees that the improvement will remain in good condition for and during the entire period of guarantee.
- B. The period of guarantee shall begin upon the date of final acceptance by the Director in writing, of the construction work, and shall continue for a period of twelve (12) months thereafter or as otherwise provided in the supplemental general conditions.
- C. If at any time before or during said period of guarantee, any defects or omissions become apparent in the work, or if the work, or if it becomes apparent that any of the work is not in accordance with the requirements of the contract documents, or if any of the work constructed under this contract requires repairs due to defects in materials or workmanship, or for any other cause which may be attributed to the work which is being done or has been done by the Contractor, all as determined by the Director or his authorized representative, such Director or representative will notify the Contractor to rectify such defects or omissions, or to make the repairs so required.
- D. If the Contractor shall fail to begin to rectify such defects or omissions or to start such repairs within five (5) days from the date of such notification, or if such rectification or repair work is not made in a manner satisfactory to the Director or to his representatives, the Director shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as he may deem proper to make such repairs, and to pay the expense thereof out of moneys then due, or which may thereafter become due to the Contractor, or out of the amount

retained for that purpose by the City.

- E. In case of an emergency the Director shall have the right to purchase any necessary materials, rent any necessary tools and equipment and to employ such other person or persons as he may deem proper to make such repairs, and to pay the expense thereof out of the moneys then due, or which may thereafter become due to the Contractor, or out of the amount retained for that purpose by the City.
- F. If such moneys are not sufficient to meet such expense, the additional moneys shall be furnished by the Contractor, and if he refuses or neglects to provide the necessary moneys, they shall be provided by his sureties.
- G. If it is necessary to remove any part of the work to rectify defects or omissions or to repair defects in materials or workmanship, or if any part of the work becomes damaged due to such rectification or repairing, all such shall be replaced or repaired, all to the satisfaction of the Director or said representative. The guarantee provisions shall also apply to all rectified or repaired work.

B-39. TERMS OF PAYMENT.

- A. The Contractor will make current requests for payment in writing, not more than one each month, and submit them to the Director for approval. Said request shall be dated the last working day of the month and shall be submitted to the Director by the fifth day of the following month. At the same time, a copy of the request shall be mailed by the Contractor to the Resident Engineer or Architect. The request for payment shall cover the materials in place complete, and the amount of work performed in accordance with the contract during the preceding payment period and the value thereof. At the discretion of the Director, allowances may be made for non-perishable materials which are to be incorporated into the work, when delivered and properly stored upon the site. Upon approval of the Contractor's request for payment, the Director will make estimates in writing, one each payment period of the material in place complete, and the amount of work performed, all in accordance with the contract. Upon approval by the Director, the Contractor shall be paid the amount of each such estimate less a deduction of five percentum (5%) which shall be retained until final acceptance of all work covered by the contract, and less all prior payments.
- B. Upon the final acceptance of the work as certified by the Director, the City shall pay the Contractor the whole amount of the money then due the said Contractor under the contract except such sums which have already been paid and except such sum as may have been expended by the City or may be due the City or properly deductible, under the provisions of the contract, and less a deduction of five percentum (5%) to be retained for a further period of forty five (45) days.
- C. Forty-five (45) days after the final acceptance the Contractor shall be paid the sums retained less proper deductions and less two percent (2%) of the total amount of the contract, which shall be retained for the balance of the guarantee period.
- D. The payment of the moneys provided for herein shall constitute a full and complete discharge of all the duties and obligations of the City of Cleveland under this contract.

B-40. NO WAIVER OF LEGAL RIGHTS.

Neither acceptance of nor payments for the work, or any part of the work, nor any extension of time, nor any possession taken by the City shall operate as a waiver of any portion of the contract, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach.

B-41. INDEMNITY CLAUSE.

The Contractor shall indemnify, keep and save harmless the City of Cleveland, Ohio and their respective officers, agents, and employees against all suits or claims that may be based upon any injury to persons or property that may occur, or that may be alleged to have occurred in the course of the performance of this contract by the Contractor, or as a result of the performance of this contract by the Contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the Contractor or his employee, and whether or not the persons injured or whose property was damaged were third parties, employees of the Contractor or employees of an authorized subcontractor; and the Contractor shall at his own expense defend the City of Cleveland in all litigation, pay all attorneys' fees and all costs and other expenses arising out of the litigation or claim incurred in connection therewith; and shall, at his own expense satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents or employees.

B-42. FIRE AND EXTENDED COVERAGE INSURANCE.

The Contractor shall insure for the life of the contract against all loss or damage by theft, vandalism, by fire, water, hurricane, windstorm, hail, lightning, explosion, riot, civil commotion, aircraft, smoke, vehicles and other hazards covered by the standard extended coverage insurance endorsement. The insurance policy shall be held jointly in the names of the owner and the Contractor. The amount of the policy may vary with the extent of the work completed, but shall at all times be at least equal to the amount paid on account of work done and materials on hand as furnished or delivered by the Contractor. Certificates of the insurance companies as to the amount and extent of coverage shall be delivered to the City before partial payments are made by any estimate for payment.

B-43. FANNIE M. LEWIS CLEVELAND RESIDENT EMPLOYMENT LAW (Chapter 188, Codified Ordinances).

- A. Employment of City Residents
 - (1.) Where not otherwise prohibited by federal, state or local law or the terms of federal or state grants, the Contractor shall employ Residents to perform twenty percent (20%) of the total Construction Worker Hours ("Resident Construction Worker Hours").
 - (2.) Where not otherwise prohibited by federal, state or local law or the terms of federal or state grants, the Contractor and any of its Subcontractors shall use significant effort to ensure that no less than four percent (4%) of the Resident Construction Worker Hours are performed by Residents who qualify as Low Income Persons.
 - (3.) The Resident Construction Worker Hours percentage levels set forth in subparts 1 and 2 above are intended only as minimum requirements for use of Residents of the City under the Contract and do not limit or defer the Contractor from full use of Residents above those levels.
 - (4.) Prior to the commencement of work, each Contractor and Subcontractor(s) shall complete and submit to the Director of Equal Opportunity a Work Force Table. The Contractor and Subcontractor shall revise this document as required, but not less than once a month.
- B. Reductions; No Waiver

The Director of Equal Opportunity may reduce, but may not waive, the Resident Construction Worker Hours requirement prior to or during construction, as more specifically provided in the Standards and Procedures

C. Contractor Reporting; Records; Access

- (1.) The Contractor shall provide for the maintenance of all records documenting that Residents of the City are employed in the Contract. The Contractor and its Subcontractors shall maintain copies of personnel documents supportive of every Resident employee's actual residence of record. The Contractor and Subcontractors shall maintain all relevant personnel data in records for a period of at least three (3) years after final completion of the work.
- (2.) The Contractor shall designate a principal officer of its firm to be responsible for administering the Resident Employment Requirement for the Contractor and its Subcontractors. This officer shall meet regularly, or as may be required, with the Director or his designee to ensure compliance with the Resident requirements. The Contractor has primary responsibility for meeting the Resident Employment requirement and the Low Income Persons goal.
- (3.) The Contractor shall submit monthly to the Director of Equal Opportunity certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) for this Contract in a format specified by the Director. The reports shall identify clearly the actual residence of every employee on each submitted payroll and shall include a hire date for an employee the first time the employee's name appears on a payroll.
- (4.) The Contractor and Subcontractors shall grant the Director of Equal Opportunity, his designated agents, the Chief of Police, or any duly authorized representative of either, full access to their employment records that document information related to the Resident Employment Requirements.

D. Violation; Penalty

- (1.) If Contractor does not employ the percentage of Residents required by these General Conditions, it has breached this contract. The penalty shall be one-eighth of one percent of the final total amount of the contract for each full percentage point by which the Contractor has fallen short of the percentage required by these General Conditions.
- (2.) If Contractor does not meet the Low Income Persons Objective, the Director shall determine if a penalty is appropriate. The penalty shall be one-eighth of one percent of the final total amount of the contract for each percentage of shortfall toward the Low Income Persons Objective.
- (3.) Failure to submit or knowingly falsifying a Work Force Table or any of the reports required by the Resident Employment Law or the Director of OEO is a breach of the contract. The penalty shall be as stated in subsection 1 above, calculated as if no residents were employed. Knowing falsification of reports is also a misdemeanor of the first degree, punishable by a fine of not more than \$5000. A Contractor that is convicted of this crime is barred from contracting with the City for five years on any construction project governed by the Resident Employment Law.
- (4.) Anyone who knowingly supplies false information to establish that a person is a Resident for purposes of the Resident Employment Law is guilty of a misdemeanor of the first degree. Anyone convicted of this crime may not work on a contract under the Resident Employment Law for five years. Contractor shall not employ any person prohibited from employment on a contract governed by the Resident Employment Law. The Director of Equal Opportunity will maintain a list of the persons prohibited from employment.
- (5.) During the five years after a Contractor has violated the Resident Employment Law, the City may require the Contractor to furnish a surety bond or other security of twenty percent of the contract price for any contract governed by the Resident Employment Law awarded to that Contractor. This requirement shall be in addition to any other bond requirement and penalty in the Codified Ordinances.
- (6.) The City may withhold any retainage until it determines whether Contractor must pay a penalty.

B-44. COMPLIANCE WITH THE *CLEVELAND AREA BUSINESS CODE* (Chapter 187, Codified Ordinances).

A. Definitions.

As used in these General Conditions, all terms shall have the meanings assigned to them in the *Cleveland Area Business Code*, Chapter 187 of the Codified Ordinances of Cleveland, Ohio, 1976. Refer to the enclosed Mayor's Office of Equal Opportunity Notice to Bidders & Schedules, Item 2, Definitions, for definitions of terms related to the *Cleveland Area Business Code*.

B. Requirements.

During performance of this contract, contractor shall comply with all applicable requirements of the *Cleveland Area Business Code*, Chapter 187 of the Codified Ordinances of Cleveland, Ohio, 1976, and any *Regulations* promulgated under the *Code*, which *Code* and *Regulations* are incorporated into and made part of this contract by this reference as fully as if attached. Specifically, compliance shall include, but not be limited to, the contractor's compliance with its bid representations regarding, CSB, MBE and/or FBE participation in the contract, and contractor's:

- (1.) Timely and accurate submission of all required forms, including, but not limited to, employment reports, certified payrolls, electronic monitoring forms, and other documentation the Director of the Office of Equal Opportunity may require to ascertain the Contractor's compliance, whether in print or electronically; and
- (2.) Active compliance and cooperation with Project monitors, whether from the Office of Equal opportunity or the Contracting department;
- (3.) Attending and participating in all required pre-construction meetings, Office of equal opportunity compliance meetings, and all progress meetings called by the Contracting Department Director(s) at key intervals during construction of the project (e.g. 25% completion, 50% completion, 75% completion)

C. Failure to Comply.

In determining a Contractor's future eligibility for a City contract, the City shall consider the Contractor's failure to comply with its bid representations and the requirements of the *Cleveland Area Business Code* as a failure to faithfully perform a contract.

B-45. CITY'S REMEDIES.

All rights and remedies granted to the City in this Agreement and any other rights and remedies which the City may have at law and in equity are declared to be cumulative and not exclusive and the fact that the City may have exercised any remedy without terminating this Agreement shall not impair the City's rights later to terminate or to exercise any other remedy granted or to which it may be otherwise entitled.

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