



CITY COUNCIL REGULAR MEETING PACKET

March 7, 2022 @ 6:30pm Smith Park Shelter House

1. Call to Order: Mayor Mike Lowrey
2. Roll Call: Clerk of Council
3. Invocation:
4. Pledge of Allegiance:
5. Action on Minutes: **02/22/22** Regular Session
6. Communications:
 - A. Dirk Lackovich-Van Gorp, Grants Manager, Clark County Community and Economic Development and Derek Hutchinson, City of New Carlisle Planning Director – Discussion on CHIP 2022
 - B. BZA Cases (2) – 108 N. Scott Street and 200 E. Lake Avenue
7. City Manager's Report: Attached
8. Comments from Members of the Public: *Comments limited to 5 minutes or less
9. Committee Reports: Charter Review and/or Parks & Recreation Board (If applicable)

10. RESOLUTIONS: (0 - Intro; 1 - Action*)

***A. Resolution 2022-05R (Introduced on 02/22/2022. Public Hearing & Action Tonight)**

A RESOLUTION AMENDING RESOLUTION 2021-15R, THE CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF NEW CARLISLE, OHIO, FOR THE PURPOSE OF ADDING CAPITAL PURCHASES

11. ORDINANCES: (1 - Intro; 4 - Action*)

***A. Ordinance 2022-09 (Introduced on 02/22/2022. Public Hearing & Action Tonight)**

AN ORDINANCE SUPPLEMENTING CERTAIN APPROPRIATIONS CONTAINED IN NEW CARLISLE CITY ORDINANCE 2021-44

***B. Ordinance 2022-10 (Introduced on 02/22/2022. Public Hearing & Action Tonight)**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SUBMIT CONSENT TO THE OHIO DEPARTMENT OF TRANSPORTATION FOR AN RESURFACING PROJECT LOCATED WITHIN CITY OF NEW CARLISLE

***C. Ordinance 2022-11 (Introduced on 02/22/2022. Public Hearing & Action Tonight)**

AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000) FOR THE PURPOSE OF PURCHASING A NEWER VEHICLE FOR THE DIRECTOR OF PUBLIC SERVICE

***D. Ordinance 2022-12E (Introduction, Public Hearing & Action Tonight)**

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE DEMOLITION OF A NONOPERATIONAL SECONDARY CLARIFIER AND THE INSTALLATION OF A NEW SECONDARY CLARIFIER FOR THE WASTEWATER TREATMENT PLANT, AND DECLARING AN EMERGENCY

12. OTHER BUSINESS:

- Additional City Business
 - Open Discussion for City Related Matters

13. Executive Session: None.

14. Return to Regular Session: N/A.

15. Adjournment

Next **Special Meeting** of Council will be held on at the Smith Park Shelter House on Monday, **March 14, 2022**, at 6:30pm

Next **Regular Meeting** of Council will be held on at the Smith Park Shelter House on Monday, **March 21, 2022**, at 6:30pm

RECORD OF PROCEEDING

**MINUTES: CITY OF NEW CARLISLE, OHIO REGULAR SESSION MEETING @ Smith Park
Shelter HELD: Tuesday, February 22, 2022 @ 6:30PM**

- 1. Call to Order:** Mayor Lowrey calls the meeting to order.
- 2. Roll Call:** Berner calls the roll- 6 members present Lowrey, Grimm, Bahun, Cook, Lindsey, Rodewald
Staff present: Bridge, Deputy McDuffie, Chief Trusty, Colleen Harris, Howie Kitko, Derek Hutchinson
- 3. Invocation:** Chief Trusty
- 4. Pledge of Allegiance:** All Welcome to Participate
- 5. Action on Minutes:**
1/27/22
1st Grimm 2nd Lindsey YES: 6 Rodewald, Lowrey, Grimm, Bahun, Cook, Lindsey
NAY: 0 Accepted 6-0
2/7/22
1st Lindsey 2nd Rodewald YES: 6 Lowrey, Grimm, Bahun, Cook, Lindsey, Rodewald
NAY: 0 Accepted 6-0
- 6.Communications:**
- 7. City Manager's Report:**
- A. DEPARTMENTAL REPORTS-** Given at 2nd meeting of the month.

Police Report: Given by Deputy McDuffie

Patrol Division:

The New Carlisle Deputies were dispatched to 136 calls for service during the month of January.

Miles Patrolled: 4771

Calls Taken: 136

Reports: 25

Assists: 57

Criminal Arrest: 3

Felony Arrest: 1

Misdemeanor Arrest: 1

Warrants: 1

Traffic Stops: 68

Traffic Warnings: 44

Moving Citations: 24

Business checks: 183

Code Enforcement Follow-ups: 0

Traffic Crashes: 2

Pass on Information:

New Carlisle Patrol Car: The new patrol car that was ordered last year has finally been delivered. The Clark County Garage has placed all of the markings on the patrol car and it is now at P&R Communication for the rest of the build.

Aladec Scheduling Software: The Clark County Sheriff’s Office just purchased new scheduling software in the amount of \$11,500. This is to assist all divisions in the scheduling of deputies and keeping track of vacation, sick, personal, comp, etc.

Stolen Muscle Cars: New Carlisle Chrysler had a situation where someone attempted to take multiple high dollar muscle cars off of the showroom floor. This is occurring throughout the Miami Valley and State. Please if you see something report it.

Body Worn Camera Server: A new server for the Body Worn Camera’s will be installed at the New Carlisle Substation in the upcoming weeks.

NEW CARLISLE	CALLS	ASSISTS	REPORTS	TRAFFIC STOPS	CITATIONS	WARNINGS	ARREST	CODE ENFO	BUSINESS CHECKS	CRASH
JANUARY										
Dep. Majercak	11	8	4	5	1	4	0	0	28	1
Dep. Forrest	6	2	0	0	0	0	0	0	0	0
Dep. McDuffie	34	8	5	23	8	15	1	0	20	1
Dep. Garman	53	26	10	14	5	9	0	0	35	0
Dep. Harris	32	13	6	26	10	16	2	0	100	0
Total	136	57	25	68	24	44	3	0	183	2

Lindsey asks who the police administrator is and Bridge notes Sgt Lemen.

Fire/EMS Report:

Given by Chief Trusty

City of New Carlisle
City Council Meeting
02-22-2022
Fire-EMS Report

- In the Month of January, the New Carlisle Fire Division responded to 30 EMS call in the city an 13 in Elizabeth Township.
- The Division responded to 2 Fire related calls in the city and 0 in Elizabeth Township.
- We had 6 EMS calls answered by mutual aid, either by Pike Township or Bethel Clark, due to medic 52 being on a response.
- We answered 3 mutual aid EMS calls for Pike Township and 4for Bethel Clark.

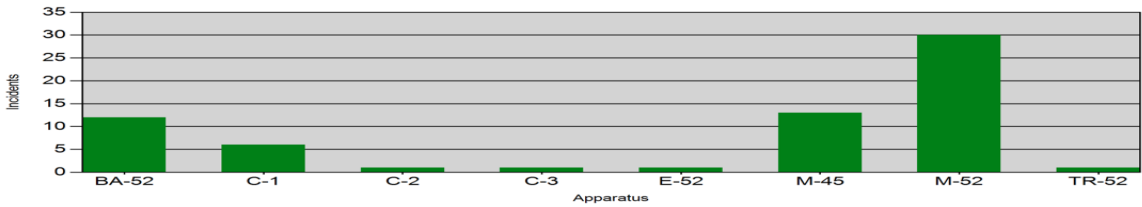
New Carlisle Fire Division

New Carlisle, OH

This report was generated on 2/15/2022 10:47:48 AM



Incident Count per Apparatus for Date Range
Start Date: 01/01/2022 | End Date: 01/31/2022



APPARATUS	# of INCIDENTS
BA-52	12
C-1	6
C-2	1
C-3	1
E-52	1
M-45	13
M-52	30
TR-52	1

Lowrey asks if the medic is back in service after the accident and Trusty notes it has been back for 2 months.

Finance Report:

COUNCIL FINANCIAL REPORT SUMMARY – JANUARY 2022

Estimated Revenue	\$	6,814,884.00
Amended Est. Resources		
Amended Est. Resources	\$	-
Amended Est. Resources	\$	-
Amended Est. Resources	\$	-
2022 REVISED TOTAL		
EST. REV.	\$	6,814,884.00

2022 Original Budget	\$	7,853,526.00
1st Q. Supplemental	\$	
2nd. Q. Supplemental	\$	
3rd. Q. Supplemental	\$	
4th Q. Supplemental	\$	
2022 REVISED TOTAL BUDGET	\$	7,853,526.00

Month	Revenue Received
January	\$ 567,869.37
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
Received To Date	\$ 567,869.37

Month	Expenses Paid
January	\$ 381,705.01
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
Expenses to Date	\$ 381,705.01

Statement of Cash from Revenue and Expense

Fund	Description	Beginning Balance	Net Revenue YTD	Net Expense YTD	Unexpended Balance	Encumbrance YTD	Ending Balance
Grand Total:		\$6,014,278.47	\$567,869.37	\$381,705.01	\$6,200,442.83	\$1,261,440.28	\$4,939,002.55

BANK RECONCILIATIONS - January 2022

Bank Accounts	Bank Balance	Outstanding Vendor	Outstanding Employee	Deposits in Transit	NSF Check (s)	Adjustments	Book Balance	Difference
PNC - General	\$ 2,524,849.41	\$ -	\$ -	\$ 4,476.14	\$ -	\$ -	\$ 2,529,325.55	\$ -
PNC - Payroll	\$ 100,789.12	\$ (154.12)	\$ -	\$ -	\$ -	\$ -	\$ 100,635.00	\$ -
Star Ohio	\$ 1,188,985.20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,188,985.20	\$ -
Park Nat. General	\$ 1,633,934.16	\$ (66,561.20)	\$ -	\$ 106.26	\$ -	\$ -	\$ 1,567,479.22	\$ -
Park Nat. - MMA	\$ 738,352.73	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 738,352.73	\$ -
Park Nat. - Mayor's	\$ 200.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 200.00	\$ -
NCF	\$ 526.49	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 526.49	\$ -
NCF - CD's	\$ 74,438.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 74,438.64	\$ -
Cash on Hand	\$ 500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500.00	\$ -
Grand Totals	\$ 6,262,575.75	\$ (66,715.32)	\$ -	\$ 4,582.40	\$ -	\$ -	\$ 6,200,442.83	\$ -

Harris notes the city is up about 2% on income tax collections.

-Motion by Grimm to accept finance report with 2nd by Lindsey YES: 6 Rodewald, Lowrey, Grimm, Bahun, Cook LIndsey NAY: 0 Accepted 6-0

To: Mr. Bridge, City Manager
From: Howard Kitko, Service Director
Date: February 22, 2022
Subject: Council Update

- Please call in Potholes to the Street Dept. at 937-845-3058. We will be utilizing cold patch until the spring for potholes.
- Will be performing some winter tree removal work

- Sanitary Survey: Updating the number of private well locations to complete our backflow program.
- Performed an annual leak detection and found several water leaks and main breaks that need to be addressed. The water crew have repaired 6 leaks/main breaks so far.
- Adam's Street Tower demo is 90% completed. The city has selected a local contractor to remove during the winter. Utilities have been located and removal will start soon.
- We have submitted a water infrastructure grant in the amount of \$2.5 million to replace lead service lines, water main, and mainline water valves that are 85 years old, in the old section of town. Update to come sometime around March 1, 2022 to see if all the monies have been allocated or not.

- Engineering agreement has been executed to start the engineering and bidding process for secondary clarifier #1. The new secondary clarifier #2 is currently being manufactured. American Rescue Plan Funds and minimal local Wastewater funds. Estimated \$295,000 ARP Federal and \$10,000 local.
- OPWC grant to pay 50% of the cost of the Primary #2 Clarifier was approved, with matching funds from American Rescue Plan. OPWC Funds \$98,500 & \$98,500 ARP Federal Funds.

- Clark County Resurface Project: Preparing for 2022 list of roads to resurface.
- Burgess and Niple have been tasked to evaluate the curbs and ADA ramps on St. Rte. 235. Project funded by Springfield/Clark County TCC. Results are scheduled to be back to the city, in order to perform the work this summer, prior to resurfacing in 2023.

Planning and Zoning Report:

Planning Department Update 2/22/2022

- **Statistics for January 2022**
 - *New Case Violation Report – New cases opened, and the violations identified for the month.*

[illegible]

- *Code Compliance Activity – Enforcement activities carried out by our Code Compliance Officer in addition to opening new cases.*

Code Activity Summary Report													
Activity Date01/01/2022 To 01/31/2022													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Row Total
New Inspection	14	0	0	0	0	0	0	0	0	0	0	0	14
Re-Inspection	5	0	0	0	0	0	0	0	0	0	0	0	5
Zoning Permit Final Inspection	49	0	0	0	0	0	0	0	0	0	0	0	49
Totals:													68

Code Compliance-continued

- Preparing a complete revised Exterior Property Maintenance Code Section.
 - a. Completed Draft for Council's review in March.

Zoning

- 13 Received Zoning Applications YTD
- 2 Board of Zoning Appeal Applications received
 - a. Cases will be heard 3/7/2022
 - i. 200 E. Lake Ave. Sign variance request
 - ii. 108 N. Scott St. Setback variance request
- 2 Planning Board Reviews
 - a. Reviews 3/22/2022

Economic Development / Community Development

- Meeting with SBDC (Small Business Development Center) of Ohio
 - Springfield Chapter helps assist small businesses in Clark County.
 - Assistance includes;
 - Startup Assistance
 - Marketing Guidance
 - Sales Coaching
 - Financial Advising
 - Operations Consulting
 - Management Coaching
 - Launch of their Community Navigator Pilot Program
- CHIP Grant Update!
- Volunteers needed to form a group that can assist our residents that may need help with maintenance and repairs. Tool Lending Center can supply tools and possibly materials.
- Board of Zoning Appeals (BZA) members needed. This is a board of 5 that needs filled.

Continuing Planning Projects

- *CDBG Grant Program – 2022 CHIP Grant*
- *Tool Lending Center Program*
- *Comp Plan - Outsourcing*
- *Zoning Code Review*

Lowrey asks how the tool lending shed is going in winter. Hutchinson notes a little slower, looking to add automotive repair tools such as jack stands.

B. INFORMATIONAL ITEMS:**B. INFORMATIONAL ITEMS**

- Discussion Topics
 - Board Renewals - Motion Needed
 - Planning Board
 - ◇ Alvin Putterbaugh - Term ending 12/31/25
 - ◇ Patricia McFarland - Term ending 12/31/25
 - Parks and Recreation Board
 - ◇ Brandy Mullet - Term ending 12/31/25
 - Assistant Clerk of Council Resignation
 - Coffee and Donuts? Pizza and Pop? Council and Chicken?
 - Additional City Council Committee Discussion
 - Charter Review - Reminder current model or new model?
 - 2022 Fireworks
 - Veterans Banner Program
 - Elizabeth Township and Medical Billing Issue
- Upcoming Legislation for Council Approval
 - Employees Generally Code Section Update

Motion to approve Alvin Putterbaugh and Patricia McFarland for planning board by Cook 2nd by Grimm YES: 6 Bahun, Cook, Lindsey, Rodewald, Lowrey, Grimm NAY: 0 Accepted 6-0

Motion by Lindsey to approve Brandy Mullet PR board with 2nd by Cook. YES: 6 Lindsey, Rodewald, Lowrey, Grimm, Bahun, Cook NAY: 0 Accepted 6-0

Quick discussion on Council members being a part of sub group committees. Cook notes this should make for better communication.

Firework discussion deciding on \$17,000 and a motion by Lindsey to move forward with firework contract and fireworks date set on 6/25/22 and rain date of 6/26/22 at no more than \$20,000 with a 2nd by Grimm. YES: 6 Bahun, Cook, Lindsey, Rodewald, Lowrey, Grimm NAY:0 Accepted 6-0 Lindsey asks about Parks and Rec taking over the fireworks event. Brandy Mullet notes she will meet with Mr. Cook and "get the ball rolling".

No further questions by Council.

Motion by Grimm to break rules of Council to move comments from members of the public to section 12 2nd by Cook. Yes: 6 Lindsey, Rodewald, Lowrey, Grimm, Bahun NAY: 0 Accepted 6-0

8. Comments from Members of the Public: Moved to section 12.

9. Committee Reports:None

10. RESOLUTIONS:

Resolution 2022-03R (Introduction, Public Hearing & Action Tonight) A RESOLUTION AMENDING AND ADOPTING THE NEW CARLISLE CITY COUNCIL RULES OF COUNCIL 1st Bahun 2nd Rodewald -yearly housekeeping, adopting rules of Council. Grimm checks to make sure the adjournment is followed by a majority vote in the rules. Bridge notes all changes were made. YES: 6 Lowrey, Grimm, Bahun, Cook, Lindsey, Rodewald NAY: 0 Accepted 6-0

Resolution 2022-04R (Introduction, Public Hearing & Action Tonight) A RESOLUTION ADOPTING A DISASTER RECOVERY PLAN FOR THE CITY OF NEW CARLISLE 1st Lindsey 2nd Cook- financial disaster plan, auditors wanted the city to add to their current plan. YES: 6 Lindsey, Rodewald, Lowrey, Grimm, Bahun, Cook NAY: 0 Accepted 6-0

Resolution 2022-05R (Introduction Tonight, Public Hearing & Action on 3/7/22) A RESOLUTION AMENDING RESOLUTION 2021-15R, THE CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF NEW CARLISLE, OHIO, FOR THE PURPOSE OF ADDING CAPITAL PURCHASES

11. ORDINANCES:

Ordinance 2022-04 (Public Hearing & Action Tonight)AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000) FOR THE PURPOSE OF PURCHASING A NEWER VEHICLE FOR THE DIRECTOR OF PUBLIC SERVICE DIE due to lack of motion.

Ordinance 2022-05 (Public Hearing & Action Tonight)AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000) FOR THE PURPOSE OF PURCHASING A NEW UTILITY TRUCK FOR THE WATER DEPARTMENT 1st Cook 2nd Grimm- approved spending, Lindsey asks what it will be used for- Utility truck. YES: 6 Bahun, Cook, Lindsey, Rodewald, Lowrey, Grimm NAY: 0 Accepted 6-0

Ordinance 2022-06 (Public Hearing & Action Tonight)AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000) FOR THE PURPOSE OF PURCHASING A NEWER AERIAL PLATFORM BUCKET TRUCK FOR THE PUBLIC WORKS AND PARKS DEPARTMENT 1st Cook 2nd Rodewald- approved in 2022 CIP purchase. YES: Lowrey, Grimm, Bahun, Cook, Lindsey, Rodewald NAY: 0 Accepted 6-0

Ordinance 2022-07 (Public Hearing & Action Tonight)AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF NEW CARLISLE, OHIO, TO REZONE A PARCEL OF LAND FROM OA - OFFICE APARTMENT TO CB - CENTRAL BUSINESS 1st Grimm 2nd Bahun zoning for Safe and Sound Outfitters. YES: 6 Cook, Lindsey, Rodewald, Lowrey, Grimm, Bahun NAY: 0 Accepted 6-0

Ordinance 2022-08 (Public Hearing & Action Tonight) AN ORDINANCE AMENDING AND REPLACING A CERTAIN SECTION OF CHAPTER 278 OF THE CODIFIED ORDINANCES OF THE CITY OF NEW CARLISLE REGARDING THE PARKS AND RECREATION BOARD BYLAWS 1st Lindsey 2nd Rodewald approval of amendments. Grimm asks if the changes are highlighted in yellow. YES: 6 Lowrey, Grimm, Bahun, Cook, Lindsey, Rodewald NAY: 0 Accepted 6-0

Ordinance 2022-09 (Introduction Tonight. Public Hearing & Action on 03/07/2022) AN ORDINANCE SUPPLEMENTING CERTAIN APPROPRIATIONS CONTAINED IN NEW CARLISLE CITY ORDINANCE 2021-44

Ordinance 2022-10 (Introduction Tonight. Public Hearing & Action on 03/07/2022) AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SUBMIT CONSENT TO THE OHIO DEPARTMENT OF TRANSPORTATION FOR AN RESURFACING PROJECT LOCATED WITHIN CITY OF NEW CARLISLE

Ordinance 2022-11 (Introduction Tonight. Public Hearing & Action on 03/07/2022) AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000)

12. OTHER BUSINESS:

Additional City Business

1. Miami County Residential Development - Annexation into City - Early Discussions- Bridge explains the process of annexations. He notes the 3 possible developments in the works located North of town and West, just outside the City limits. Bridge notes that the city has a land use policy to grow its tax base. Bridge gives factual information on the Miami County possible development. Notes- conceptual at the moment, no annexation papers have been filed. Homes would start at \$250,000. He stressed NO FILING has been made. Bridge notes this is a multi-year project. Projects North of town, one has a builder: Arbor Homes, no concept plans yet, traffic study being done, 83 acres, working on being annexed. Second location is located in the city, 143 acres, across from Vancrest, no concepts, no formal applications submitted. Bridge notes the benefits of growing the city will alleviate tax costs on residents. These developments are "healthy" for the city. Bridge notes it will ultimately be the Council's decision. Bridge notes not a lot of disposable income in New Carlisle. He adds these investors came to the City and is a process that will take 5-8 years.

2. Open Discussion for City Related Matters/Comments from members of the public:

Peggy Eggleton 312 S. Main St.- Notes something needs to be done about the curve on Main St. She gives some possible ideas and Kitko will look into some ideas.

Jenny Stump 524 Church St. Expresses she would like to see the green space at Smith Park stay and questions the location of the new shelter house. Council and Bridge note it will be tucked back into the woods and utilize the drive already there off Washington. Majority of the green space should stay.

Brandy Mullet 522 Hamilton Notes Parks and Rec board are "rocking and rolling". They have most of the egg hunt finalized and have some really good ideas in the works. She also noted the green space to the right of Washington in the Brubaker Park area and would like to work with Derek to utilize that in some way.

Jason Layton 8115 E. New Carlisle Rd. Notes his feelings on the possible development located on Scarff and New Carlisle Rd. He mentions people have been talking about it. He reads from a prepared letter addressed to Council and Mr. Bridge asking that some considerations be taken into account before accepting. These include the amount of possible students, traffic, tax abatements and incentives. Bridge suggests keeping up with the Council meetings and most of their questions at this time, can be directed to Miami County.

Jim Mulford E. Walnut Rd.- in attendance along with his family that owns 4720 S. Scarff rd- known as Silver Lake. He has concerns of the development going in

and harming his property which contains a 17 acre naturally formed lake. He is concerned the property and environment will be in jeopardy. Asks the Council to vote No to supplying services to the project and asks if Council is willing to sacrifice something that is 10,000 years old.

Rodewald asks how many people have gone to a Miami County/Bethel Township meeting?

MaryAnne Layton 8085 E. New Carlisle Rd- She notes she has been informed Miami County cannot do anything. She questions tax abatements in surrounding developments, notes TLS is not aware of any development and asks why the City wants to come into Bethel Township-Miami.

Rose McCormick 910 Scarff Rd- Notes she bought her house because of the beautiful field across the street. She is concerned about this project and what it may do to her taxes. She asks the Council to "think from the heart". She understands the business end but does not want to see this beautiful property disappear. She notes this is what makes New Carlisle a beautiful small town.

Ed Wynett 8330 E. New Carlisle Rd- Notes his opinion on the project and the possibility of it hurting his property value. Asks the council to really think about the project.

Rodney Phipps 930 Scarff Rd- Expresses his concerns and asks that this new development not come at the city residents expense. Bridge notes any cost would be paid for by the developer. He also notes that the water plant is at 40% capacity so there is room for growth. Bridge reminds everyone that nothing has been turned in.

Justin Jiles 8015 E. New Carlisle Rd.- His property is adjacent to the property in question. He notes the property is a part of the Honey Creek Watershed. He is concerned about water contamination and doesn't want to see the city turn into Huber Heights. He asks for Council to take this all into consideration. Lowrey asks Bridge and Kitko if the developers ever come and say the property would not work. Kitko notes they can usually make anything work. Bridge adds the property near the lake does not appear to be in the plans for being developed.

Margaret Callen 1769 Addison New Carlisle Rd- Notes she has lived all over and understands the desire to own a home. She understands the farmer wanting to sell his land also. Her home will be sandwiched between the City and the new development north of town. She asks for plans that do not take away from their properties and to "prayerfully consider thy neighbor".

Shelly Vicory 8780 E. New Carlisle Rd- she asks if New Carlisle has the ability to limit the # of houses or the lot sizes. Discussions with Bridge on sizes of lots and homes. He notes this will go to the Planning Board and they vote on the site plan.

Brandy Mullet 522 Hamilton- asks if the development can go on even if Council votes no. Bridge notes the city has a Comprehensive Land Use Plan and notes they will go after RPud developments. Developers can go after the city for not "following" their land use plan. In the end they will be able to move forward.

MaryAnne Layton- notes the developer has not purchased the property and only plans to if it can be annexed by the City. Bridge adds they have conflicting information, but knows Miami County will not oppose it if the developer seeks the annexation.

Steve Durall 918 Scarff Rd- Asks which governmental agency controls the zoning. Bridge notes if it gets annexed it will be the City. He asks about a petition 20 years ago adding stipulations of lot sizes of 5 acres or more of the land sold and Bridge was not aware of anything like that. Bridge goes onto explain city zoning, layouts, lot size. Durall asks who to direct questions to and Bridge notes Bethel-Miami. Durall also suggested some environmental impact statements be compiled.

Paul Vicory 8780 E. New Carlisle Rd- Asks if the development will be governed by the city and will he be subject to the city zoning rules. Bridge notes if he

is not in the city limits he will not be subject to city regulations. He notes he is also worried about the wildlife and water.

Steve Callen 1769 Addison New Carlisle Rd- Asks the exact status of the 83 acre development north of town. Bridge notes it is NC-RD2, and the engineering firm has contacted the city. Arbor Homes is the builder. Annexation discussed but nothing filed. They do not have any conceptual plans either. Mr. Callen asks if the planning board will take into consideration the privacy for them as they continue to maintain a rural life. Bridge invites Mr. Callen to Planning Board meetings to be a part of these plans.

13. Executive Session: None

14. Adjournment: 1st Rodewald Grimm asks if everyone has spoken 2nd Grimm @ 8:42 pm Yes: 6 Bahun, Cook, Lindsey, Rodewald, Lowrey, Grimm NAY: 0 Accepted 6-0

Mayor Mike Lowrey

Clerk of Council Emily Berner

2022 Community Housing Impact & Preservation Program

For
Homeowners in Clark County & City of New Carlisle
(Excluding the City of Springfield)



CHIP 2022

APPLICATIONS
Now Being
Accepted!



March 7th – April 15th, 2022



CHIP funds are available to assist income- eligible homeowners with Housing Repairs, Housing Rehabilitation and Homeowner Assistance. Applicants Must:

1. Have a Household Income below 80% of Median Income.

Total income of all wage earners (18 years or older) in the household that falls at or below the income guidelines for the program are eligible to apply. Proof of current income must also be provided to ensure eligibility at the time of application and to determine an income projection for the next twelve months.

1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
37,150	\$42,450	\$47,750	\$53,050	\$57,300	\$61,550	\$65,800	\$70,050

2. Be a Homeowner in Clark County or the City of New Carlisle outside of the City of Springfield.

Applicant must own the home for which they are applying for repair/rehabilitation. The Deed for the property MUST be your name. The Homeowner must occupy the home.

3. Own a Home that needs Repairs or Rehabilitation or you need Assistance to become a Homeowner.

Home MUST be the applicant's Primary Residence for the owner-occupied activities of Owner Rehabilitation and Home Repair. Applicants for Homeownership Assistance will receive assistance to enable them to purchase an eligible home.

4. Have Homeowners Insurance or be able to obtain it.

5. Have all Property Taxes Currently Paid

Other Important Information

How much money can I get?

The program does not guarantee funding to everyone who applies...you may or may not qualify. However, if you qualify, the program may provide funds up to \$15,000 per home for the Home Repairs program; \$55,500 per home for the Owner Rehabilitation program, and up to \$55,500 per home for the Homeownership Assistance program. Funding priority is determined by program guidelines, which include household income, the priority rating of your home, your housing needs and the availability of funds.

When Do I need to apply?

IMMEDIATELY! *Gather ALL required documents and make your appointment to apply right away. Funds are limited and the program is extremely competitive. Applications will be accepted starting on Monday, March 7th, 2022. Applications for 2022 CHIP Program assistance will close on Friday, April 15th, 2022.*

When will I know if I get funded?

Completed applications for Homeowner Repair Projects are processed on a first-come, first-service basis. However, applications for Homeowner Rehabilitation Projects or Homeownership Assistance must be received before the application round deadline. Applications are ranked by priority according to the program guidelines after the eligibility verification process. Selected clients will be contacted to schedule an evaluation of the condition of your home by a county housing rehabilitation specialist. The work will be performed by local contractors according to their schedule, after signing the program contract. The county does all contracting and contract management.

Do I have to pay anything?

At this time, No. You will not be required to pay for anything at this time for the work to be completed on your home. However, in the future, you may be required to pay something. Homeowner Repair Projects are Grants. With Homeowner Rehabilitation Projects you must pay back a percentage of the full grant if you move or sell your property before the 5-year promissory note expires and you must pay back 20% of the grant you receive when you vacate your property or transfer after the 5-year promissory note expires. Repayment of Homeownership Assistance loans are based on the amount of assistance and the loan declines each year in equal increments based upon the required affordability period, for as long as you remain in your home.

Three types of assistance are available through the CHIP Program:

OWNER- OCCUPIED HOME REPAIR PROGRAM

The purpose of the Owner Home Repair activity is to help preserve the affordable housing stock by providing owner-occupied households with income levels at or below 80 percent of Area Median Income with limited assistance to correct significant problems in the home. Unlike Owner Home Rehabilitation, which addresses the entire home, the Owner Home Repair activity can address one or more specific problems that adversely affect occupant health and safety and/or structural integrity. The types of work that are generally considered eligible for the Owner Home Repair activity include:

Structural System Repair: repairs to eliminate hazardous conditions or serious threats to a structural system's integrity.

Examples of common structural system repairs include, patching or replacing leaking roofs, rebuilding collapsed foundations and replacing weakened or deteriorated framing components. It may also include replacing individual nonfunctioning or damaged windows or entry doors.

Mechanical System Repair: eliminate hazardous conditions with the electrical, plumbing or heating systems. Examples of common mechanical system repairs include replacing unsafe or overloaded electrical panels and circuits, repairing or replacing leaking water supply and/or sanitary drain plumbing lines, and repairing or replacing unsafe or inoperable heating equipment

Wells and Septic Systems: repairing or replacing a home's private well and/or septic system that is malfunctioning or has been cited by local or state health departments or the Environmental Protection Agency as outdated and in need of improvement.

Weatherization: utilizing cost-effective measures to improve energy efficiency such as insulating un-insulated attics and sidewalls, and related measures to control air movement, such as sealing holes and bypasses and installing exhaust and ventilation fans.

Accessibility: utilizing measures designed to improve access and mobility for occupants who are physically disabled or infirm. Generally, these measures include exterior ramps, grab bars and specialized bathroom fixtures. In some cases, more extensive work is required to remove architectural barriers, widen doorways, lower cabinets or remodel bathrooms in order to meet household needs.

- Applicants interested in participating in the Owner Repair program must complete and submit an application. Home Repair applications are considered on a first-come first-served basis.
- This program provides assistance in the form of a grant in an amount up to but not exceeding \$15,000 to low-to-moderate income homeowners.
- The applicant cannot be delinquent or in default on present mortgage payment, or homeowners insurance payments.
- Homes purchased under land contract do not qualify unless steps have been taken to legally record the land contract agreement.
- Mobile home properties must be on owned land and be on a permanent foundation, taxed as real estate.
- Owner-Occupied Home Repair Program cannot assist properties with a Life Lease or Land Contract.
- Eligible projects must not exceed the \$15,000 program limit. If the condition of the home cannot be successfully repaired without exceeding this maximum, the implementing agency will enforce a "walk-away policy" and the home will be considered ineligible.

OWNER-OCCUPIED HOME REHABILITATION PROGRAM

The purpose of the Owner Home Rehabilitation activity is to improve and protect the supply of sound, serviceable, and affordable owner-occupied housing stock. Through this activity, assistance is provided to homeowners with income levels at or below 80 percent of Area Median Income to correct substandard conditions so that the homes are safe, healthy, durable, energy efficient and affordable. Owner Home Rehabilitation is intended to address problems throughout the house. In most circumstances, this means that the homes' mechanical systems (electrical, plumbing and heating systems) and exterior and interior structural components (roof, walls, floors and foundation) will be repaired to meet the required standards.

Eligible items for this include: Installation and/or repairs to foundations, roofs, gutters, electrical upgrades, plumbing, furnaces, hot water heaters, insulation, windows, doors, accessibility improvements and lead based paint abatement.

- This program provides assistance (in the form of a deferred/declining/forgiven loan) in an amount up to but not exceeding \$55,500 to low-to-moderate income homeowners for the purpose of eliminating existing substandard housing conditions. Because rehabilitation must correct all substandard conditions that adversely affect the occupant's health and safety and the dwelling's structural integrity, the scope of work is generally comprehensive and the cost is usually high.
- Applicants interested in participating in the Owner Rehabilitation program must complete and submit an application. Following submission, the completed application and all necessary documents will be verified to determine eligibility for the program. You must have a completed application and all necessary documents with you at this time or your application will be denied.
- The applicant cannot be delinquent or in default on present mortgage payment, homeowners insurance payments or property taxes. Eligible applicants must agree to (1) occupy the home for at least five years after the rehabilitation, (2) reimburse the program 20% of the total grant when the home is sold or vacated after 5 years, (3) reimburse the program on a sliding scale up to the total amount of the grant if the home is sold or vacated

before the 5 year anniversary, (4) be willing and able to allow Clark County to retain a mortgage on the property and (5) be willing and able to reimburse the program as agreed if the home is sold or transferred as part of the current owner's estate.

- Eligible applicants will be processed according to the program's priority rating system, designed to benefit the neediest of the current eligible applicants. The system is based upon the applicant's income and quality of life issues, which exist in the housing unit.
- Eligible homes must meet the Ohio Residential Rehab Standards at the completion of the project without exceeding the \$55,500 program limit. If the condition of the home cannot be successfully repaired or renovated to meet these standards without exceeding this maximum, the implementing agency will enforce a "walk-away policy" and the home will be considered ineligible.
- Mobile home properties must be on owned land and be on a permanent foundation, taxed as real estate.
- Owner-Occupied Home Repair Program cannot assist properties with a Life Lease or Land Contract.

HOMEOWNERSHIP ASSISTANCE PROGRAM

The purpose of the Homeownership program is to increase the number of owner-occupied households with income levels at or below 80% of Area Median Income, and to improve and protect that housing stock. The Homeownership program is, in effect, a combination of Down Payment Assistance and/or the Owner Rehabilitation program. The types of houses that are eligible for purchase include single-family homes, town houses, condominiums, and manufactured or modular homes. Down Payment Assistance, by itself, may be provided if the home does not require rehabilitation. This means that the home must either be a new or existing home that already meets applicable standards, or a home that the improvements have been completed through the financing arrangement.

Homeownership Assistance Includes: Financial assistance is provided to households to purchase homes. The assistance may include providing a subsidy to lower the interest rate for the loan and/or principal amount, providing down payments, and paying reasonable closing costs. All loans from financial institutions must, at a minimum, meet the requirements outlined in the State of Ohio policies. The standard to which the purchased home must comply is the State of Ohio Residential Rehabilitation Standards (RRS), and any locally-applicable codes. For homes that do not meet this standard at the time of purchase, the Homeownership program may also provide financial assistance to correct problems with the homes. To ensure that homes are safe, all defects that adversely affect the occupants' health and safety must be corrected immediately following the purchase closing, but prior to the buyer occupying the home. To ensure that the home meets the RRS within a reasonable timeframe, all rehabilitation work must be completed within six months of the purchase closing. In addition, the Homeownership activity will also include homebuyer counseling to help ensure that participants are well informed about private financing and the real estate purchasing process.

- This program provides assistance (in the form of a deferred/declining/forgiven loan) in an amount up to but not exceeding \$55,500 to low-to-moderate income homeowners. The loan will decline in equal increments as per the stated affordability period.
- Applicants interested in participating in the Owner Rehabilitation program must complete and submit an application. Following submission, the completed application and all necessary documents will be verified to determine eligibility for the program. You must have a completed application and all necessary documents with you at this time or your application will be denied.
- Eligible applicants must agree to (1) occupy the home after the rehabilitation, (2) reimburse the program as per the deferred/declining/forgiven of the total grant when the home is sold or vacated, (3) reimburse the program on a sliding scale up to the total amount of the grant if the home is sold or vacated before the end of the affordability period, (4) be willing and able to allow Clark County to retain a mortgage on the property and (5) be willing and able to reimburse the program as agreed if the home is sold or transferred as part of the current owner's estate.

- Eligible applicants will be processed according to the program's priority rating system, designed to benefit the neediest of the current eligible applicants. The system is based upon the applicant's income and quality of life issues, which exist in the housing unit.
- Eligible applicants must clearly understand the program and their obligations, such as attending education sessions, obtaining financing, selecting a home and financially contributing to the transaction.
- Eligible applicants must understand long-term affordability. Not only must the monthly mortgage payments be affordable, but other housing costs inclusive of taxes, insurance and private mortgage insurance must also be affordable. This program defines affordable as payments for principal, interest, taxes and insurance (PITI) that do not exceed 30% of gross monthly household income.

Additional Homeownership Assistance: Partnership with Habitat for Humanity

HOMEOWNERSHIP ASSISTANCE: NEW CONSTRUCTION WITH HABITAT FOR HUMANITY

The purpose of the New Construction-Habitat for Humanity activity is to create new permanent housing to expand the affordable owner-occupied housing stock through extensive planning and coordination between Clark County and Habitat for Humanity of Greater Dayton. Clark County CHIP funding will provide a subsidy up to \$30,000 to Habitat for Humanity of Greater Dayton for new home construction in Clark County or the City of New Carlisle to be purchased by a Habitat partner family with a household income that does not exceed 80% of Area Median Income.

- Habitat for Humanity of Greater Dayton believes that all hardworking individuals and families should have access to the benefits and stability of homeownership. They are committed to partnering with families to build simple, decent, and affordable homes with affordable mortgages.
- Habitat provides a hand-up, not a hand-out. By working with them from beginning to end, they can help prospective homeowners prepare for the various responsibilities of homeownership, including learning about personal finances, mortgages, maintenance and upkeep of homes, and much more. Habitat's path to homeownership is an important and in-depth process, requiring hard work, time, and dedication - all of which help to ensure the long-term success of Habitat homeowners.
- Every family that wishes to become a Habitat homeowner must submit an application directly to Habitat for Humanity of Greater Dayton and go through the homeowner selection process. Families must have a need for adequate housing, must have the ability to pay a mortgage, and must be willing to partner.
- Mortgage principal, interest, taxes and insurance shall not exceed 30% of the household's total monthly gross income, as calculated for determining income eligibility.
- Habitat homes constructed under this activity will comply with all applicable building/construction codes.



FOR MORE INFORMATION

2022 Community Housing Impact & Preservation Program



CHIP 2022 Programs

Clark County Community Development

Dirk Lackovich-Van Gorp, CHIP Program Administrator/Grants Manager
3130 East Main Street - Suite 1A, Springfield, OH 45503

Phone: 937 521 2164

Website: <https://www.clarkcountyohio.gov/156/Community-and-Economic-Development>



CHIP 2022 Programs

City of New Carlisle

Derek Hutchinson, Planning Director
331 South Church Street, New Carlisle, OH 45344

Phone: 937 845 9492

Website: <https://newcarlisle.net/>



Neighborhood Housing Partnership
OF GREATER SPRINGFIELD

CHIP 2022 Homeownership Assistance Program

Neighborhood Housing Partnership

527 East Home Road, Springfield, OH 45503

Phone: (937) 322-4623

Website: <https://springfieldnhp.org/>



Habitat for Humanity®
of Greater Dayton

CHIP 2022 Homeownership - New Construction with Habitat Program

Habitat for Humanity of Greater Dayton

115 West Riverview Avenue, Dayton, OH 45405

Phone: (937) 586 0680

Website: <https://daytonhabitat.org/>



BOARD OF ZONING APPEALS
Monday, March 7th, 2022

PLANNING STAFF RECOMMENDATION REPORT

Case Information

Applicant: Mason Cox, property owner

Location of request: 108 N. Scott Street

Property Description: Single-Family Residential. Total lot square footage 8,712 sq. ft.

Current Zoning: R-5 Medium Density Residential

Request: Variance for a 3 ½ foot rear setback for an accessory structure
Variance for a 22 feet maximum height for an accessory structure

Current Code: Ord. 1280.26(c) Accessory Buildings R-5 Zoning District
Maximum building height 18 feet cannot exceed height of principal building.
Minimum distance from rear lot lines is 10 feet.

Property Information

108 North Scott Street is a 2 story, single-family dwelling situated on a .2-acre interior lot. The height of the house is 30 feet. The rear of the property backs up to the alley that is between North Scott and North Adams Streets. The property did have a detached structure located at the proposed location at one time. The foundation of that structure still exists.

Staff Comments

The proposed structure and location do fall in line with neighboring and surrounding properties. This is an older portion of the City where a large percentage of properties are legal non-conforming and do not meet the R-5 Zoning regulations due to existing prior to the Zoning Code being adopted. The proposed structure would meet all other Zoning regulations.

Staff recommends approving the request for a variance to allow for a minimum 3 ½ foot rear setback and maximum height of 22 feet for an accessory structure to be located at 108 N. Scott Street.

Derek Hutchinson
Planning Director
City of New Carlisle



City of New Carlisle
Planning Department
331 S. Church Street
New Carlisle, Ohio 45344
937.845.9492
dhutchinson@newcarlisle.net

**APPLICATION
BOARD OF ZONING APPEALS
VARIANCE REQUEST**

Received Stamp

Office Use Only

Please read before completing this application.

\$125
Application Fee

- **Required -**
 - Submission of a completed Variance Request Application, including all of the items listed in the application checklist. Variance Request Application fee of \$125.
 - *Note: Fee is not refundable if Variance is denied.*
 - Submission of a completed Zoning Application. Application Fee for Zoning Permit does not requirement payment until after the Variance is granted.
- Submitted applications and all checklist items shall be reviewed by City Staff for completeness. Submittals found to be incomplete will be rejected and the application will not be placed on the Board agenda. If an application is found to be incomplete, the applicant may submit the missing materials to complete application requirements.
- The Board of Zoning Appeals shall hold a public hearing within **thirty (30) days** after the receipt of a **completed** application. **The Applicant or a Representative must be present at hearing.**
- All property owners and interested parties within 500 feet of the proposed variance will be notified of Public Hearing.

Applicant Information

Name: Mason Cox Phone: 765-427-4909
Address: 108 N. Scott St., New Carlisle, OH 45344
Email: mason.cox.2019@gmail.com

Property Information

Address for Variance Request: 108 N. Scott St., New Carlisle, OH 45344
Zoning District: R-5 Lot Number: 238
Owner of Record according to the Clark County Auditor's Office): Mason and Leanne Cox
Owners Mailing Address: 108 N. Scott St., New Carlisle, OH 45344
Owners Phone: 765-427-4909 Email: mason.cox.2019@gmail.com

Variance Requested

Description of the nature of the Variance requested: Rear property setback violation,
Acessory structure height violation

Application Requirements Checklist

✓	Required Items	Staff Use
	Narrative Statement demonstrating that the requested variance conforms to the following standards;	
	a) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;	
	b) That a literal interpretation of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under this Zoning Code;	
	c) That special conditions and circumstances do not result from the actions of the applicant; and	
	d) That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures or buildings in the same district.	
	Site Plan that includes parcel shape and size, primary structure location and dimensions, any accessory structures that exist on the property, driveway and sidewalk locations.	
	Proposed Site Plan that includes all of the items listed in above Site Plan and the Proposed structure. Include all dimensions of proposed structure and the setback dimensions of all sides of the proposed structure.	
	Zoning Permit Application submitted along with this application for the proposed structure.	
	Photos of the area where the variance is being requested.	

I hereby attest to the truth and exactness of all information supplied on and with this application.

Applicant's Signature:  Date: 5 Jan 2022

Property Owner's Signature: _____ Date: _____
(If different than Applicant)

Office Use Only

Fee \$125 Paid Date: _____

This application has been reviewed and is found to be complete.

City Staff: _____ Position: _____ Date: _____

Decision of the Board of Zoning Appeals

Date Decision Ruled on: _____ Action Taken: Approved / Denied

Conditions for Approval: _____



Proposed rear wall in line with neighboring structures (3'6" from assumed line)

Assumed Property line based on 15' alley from utility pole



Proposed side wall
location 5' from side
boundary

Assumed property line
based on utility pole



Assumed property line

Proposed rear wall
Note: wall in line with neighboring structures at 3'6" from alley



View from lower roof. Yellow outline marks structure. Orange paint on left and rear marks property line. Orange on front and right marks door and window positions

view toward rear. Utility pole assumed as corner of property. Yellow tape as side wall.



A narrative statement demonstrating that the requested variance conforms to the following standards:

- a) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.
 - The orientation of the parcel with respect to the neighboring parcel, and the face that Zoning code was adopted after both the property in question and neighboring properties were developed are peculiar to the land involved.
- b) That a literal interpretation of this zoning code would deprive the applicant of rights commonly enjoyed by other properties in the same district as under this Zoning Code.
 - A large percentage of R-5 Zoned properties (especially in the immediate vicinity) either were developed prior to the zoning code adoption or have been granted variances that allow their structures to be legal non-conforming.
 - Their rear accessory structures are closer to the rear boundary than current setbacks, allowing for more useable lot space between Primary and Accessory structures.
 - Setting this accessory structure back to current Zoning Codes creates a sightline blockage and potential safety issues due to neighboring structures sitting proud of the proposed structure in a Code compliant position.
 - Many legal non-conforming structures in immediate vicinity also have a second floor and are therefore over the maximum height for accessory structures.
- c) That special conditions and circumstances do not result from the actions of the applicant.
 - Original legal non-conforming structure was removed by previous owner.
 - The platting of the lot and actions to remove conforming structure were not the actions of the applicant/current owner
- d) That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures, or buildings in the same district.
 - The property immediately North has an accessory structure built along a line parallel to and about 3'6" away from the estimated rear boundary. Due to the rotation of the property immediately South, this same line is followed, but it is considered a side boundary for them. Both structures have second floor room that causes them to be over the height limit for accessory structures.
 - The granting of the variance will allow more usable lot space between primary and accessory structure, and will allow for aesthetic continuity and equal usability as the properties immediately adjacent, as well as others located along the same alley.

SCALE: $\square = 3' \times 3'$

LOT MEASURES ESTIMATED FROM
GIS MAP

GARAGE AT

110 N. SCOTT

45'

133'

SIDE BOUNDARY

PRIMARY
STRUCTURE

GIS REPORTS LOT AREA AT 8719.855 SQ FT

HOME APX 1600 SQ FT ON 1ST FLOOR

PROPOSED GARAGE 768 SQ FT

TOTAL LOT COVERAGE ESTIMATED AT 2400 SQ FT \rightarrow 27.5%

PROPOSED GARAGE HEIGHT APX 22' AT PEAK

- EXCEEDS 18', BUT DOES NOT EXCEED PRIMARY STRUCTURE (~30')
- GARAGES AT 110 N. SCOTT & 315 W. JEFFERSON OF SIMILAR HEIGHT

PROPOSED GARAGE 5' FROM BOTH SIDE BOUNDARIES, APX 3' 6" FROM
REAR BOUNDARY TO BE IN LINE WITH NEIGHBORING STRUCTURES

CEMENT
PAD UNMARKED
DIMENSIONS
VARIABLE

REAR BOUNDARY

ALLEY

GARAGE AT
315 W. WASHINGTON

15'



237

66

-003
238

108

431



Received:



(Office Use)

City of New Carlisle, Planning Department
331 South Church Street, New Carlisle, Ohio 45344
Phone: (937.845.9492), dhutchinson@newcarlisle.net

Permit No. _____

Authorized City Signature
(Office Use)

**APPLICATION FOR
ZONING PERMIT
(RESIDENTIAL ACCESSORY STRUCTURES)**

****IMPORTANT INFORMATION – Please read before completing this application****

- No building or structure shall be erected, moved, added to or structurally altered without first obtaining an approved Zoning Permit.
- Any structures over 200 square feet in size, may require a Building Permit from Clark County Building Department as well. 937-521-2160
- Typically, Zoning Review of applications may take five (5) to 10 (10) working days. The City does have up to thirty (30) days after receipt of the application to approve or disapprove in conformity with the Zoning Code. Delays may be due to missing information or an incomplete application.
- All Zoning Permits shall be conditional upon the commencement of work within six (6) months of City Approval. If the work described in the Zoning Permit has not begun within six (6) months from the date of issuance, such permit shall expire and be revoked. If work has begun within six (6) months of issuance, the work must be completed within one and one half (1 ½) years of the issuance date.
- Contact Ohio Utilities Protection Services (OUPS) before any digging. Free Service Call 811 or 1-800-362-2764
- Please check any Plat Covenants and Restrictions prior to applying.
- The City of New Carlisle is not responsible for any structures erected within an easement.
- Approved Permit will not be issued until all Fees are paid in full.

APPLICANT INFORMATION (REQUIRED)

Name: Mason Cox Company: Homeowner
Phone: 765-427-4909 Email: mason.cox.2019@gmail.com

PROJECT SITE INFORMATION (REQUIRED)

Address for Permit: 108 N. Scott St
Owner of Property: Mason Cox Owners Phone: 765-427-4909
Owners Address: 108 N. Scott St, New Carlisle, OH 45314
Street City State Zip
Email: mason.cox.2019@gmail.com

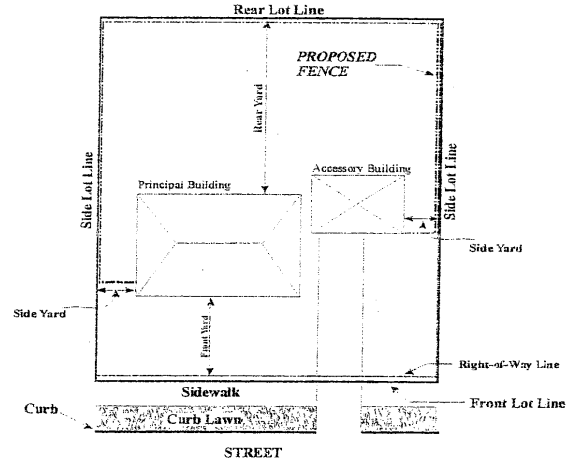
Zoning District: _____
(Office Use)

APPLICATION FOR ZONING PERMIT (ACCESSORY STRUCTURES) CONTINUED

****REQUIRED FOR ALL ZONING PERMITS****

- A detailed site drawing showing lot shape, location of all existing and proposed structures.
- Must include dimensions of lot and all existing and proposed structures.
- Include setback measurements for proposed structures
- Use the example diagram to the right as a reference.
- Attach site plans to this application.
- Application Fee Paid

Example of Diagram



NOTE: Be sure to show the dimensions of the lot and buildings

Zoning Basics & Fees

RESIDENTIAL ONLY

Fences - \$20 Application Fee

- Rear yards only, not to exceed eight (8) feet in height. Front or corner side yard not to exceed two and one-half (2 ½) feet in height.
- All fence posts and/or structural supports shall be located on the inside of the fence facing the interior of the property, with the finished side of fence facing adjacent properties.
- No fence shall cause an obstruction of vision to vehicle or pedestrian traffic.

Swimming Pools - Above Ground \$35 Application Fee / In Ground \$60 Application Fee

- Any pools (permanent, temporary or portable) capable of holding eight-teen (18) inches or more of water or with a diameter larger than twelve (12) feet does require a Zoning Permit and to be completely fenced in with a lockable gate.
- Any pool shall be located at least ten (10) feet from side or rear property lines.
- No pool shall be located underneath or in close proximity of any overhanging power lines.

Accessory Structures (shed/open deck/gazebo) – Under 200 sq ft \$35 Fee / Over 200 sq ft \$45 Application Fee

- Only two (2) accessory structures per lot are permitted.
- Accessory structures may not exceed the height of the primary structure.
- Only in an R-7 Zoning District, Can not be located within 10 Feet of another structure.
- Accessory structures must meet all rear and side setbacks for the Zoning District located.

Please contact the Planning Department for any questions or required setbacks.

937.845.9492 or Email: dhutchinson@newcarlisle.net

PROJECT INFORMATION (REQUIRED)

Type of Project: Garage Scheduled Work Start Date: Spring 2022
Shed, Fence, Swimming Pool, ect...

Structure Dimensions: 22', 24', 32' Structure Materials: wood (post frame)
Height, Width, Length Wood, Metal, Chain Link

Applicant Signature (REQUIRED)

The owner, or owner authorized contractor, certifies the information contained in this application is true and accurate to the best of their knowledge and agrees to comply with the City of New Carlisle's Zoning Regulations.

Authorized Signature:  Date: Jan 4 2022



Report generated: Wednesday, March 2, 2022

Parcel Report



Code	Des	Area
1	Mai	800
58/35	OF	464
26	C	696
3	MP	154
3	EF	70
35	1S	96
55/35	UB	30
AB1	BA	512*
AL1	1S	154*

Base Data

Parcel Number: 0300500035431003
Owner Name: COX MASON R & LEANNE C
Property Address: 108 N SCOTT ST, NEW CARLISLE 45344
Percent Owned %: 100

Geographic

City: NEW CARLISLE CORPORATION
Township: TECUMSEH LSD
School District: TECUMSEH LSD

Legal

Neighborhood: 030R0009
Legal: STOCKSTILL
Description: ALL
Class: 238;
R

Legal Acres: 0.00
Land Use: 510 SINGLE
FAMILY,
PLATTED LOT
Map Number: BNW5-H1

Tax Credits

Homestead Exemption: No
2.5% Reduction: Yes

Land

Description	Effective Lot Size	Act. Frontage	Acres	Sq. Foot	Value
REGULAR LOT	66 * 132	66	0.2	8,712	\$20,330.00

Land Totals

Effective Total Acres: 0.2
Effective Total Square Footage: 8,712
Total Value: \$20,330.00

Residential

Card: 1
Number of Stories: 2
Style: Old Style
Year Built: 1900
Year Remodeled:
Total Number of Rooms: 7
Number of Bedrooms: 3
Number of Full Baths: 1
Number of Half Baths: 1
Number of Family Rooms: 0
Basement: Full BSMT
Exterior Wall: AL/VINYL
Heating System Type: HOT AIR
Heat: CENTRAL HEAT W/ AC
Attic: None
Heating Fuel Type: GAS
Grade: C-
Ground Floor Area: 1,622
Total Living Area: 2,422
Unfinished Area:
Recreation Room Area:
Finished Basement Area:
Brick/Stone Trim:
Fireplace Stacks:
Fireplace Openings:
PreFab Fireplaces:
Percent Complete:

Photos

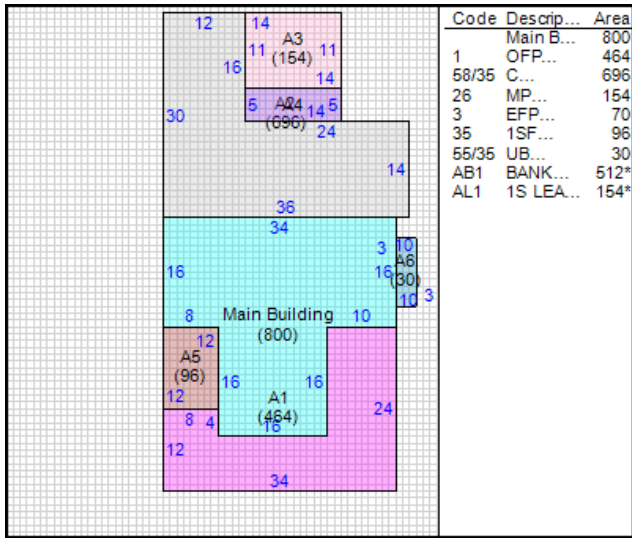


0300500035431003 08/08/2017



0300500035431003 08/08/2017

Sketches



Clark County, Ohio



BOARD OF ZONING APPEALS
Monday, March 7th, 2022

PLANNING STAFF RECOMMENDATION REPORT

Case Information

Applicant: Mark Hensley of Safe and Sound Outfitters, property owner

Location of request: 200 East Lake Avenue

Property Description: Approximately 3,300 square foot commercial building on at 1.88 acre lot.

Current Zoning: CB Central Business

Request: Variance to permit an additional 3 wall signs for a total of 4 wall signs.
Variance to permit a combined wall signs area total of 216 square feet.

Current Code: Ord. 1290.11(b)(1) One permanent wall sign is permitted for each business.
Ord. 1290.11(b)(2) The combined total of wall signs shall not exceed 100 square feet per street frontage.

Property Information

200 E Lake is a commercial structure occupied by Safe and Sound Outfitters. They currently have a 48 square foot free standing sign installed and an 80 square foot wall sign on the front of the building that is not installed yet, but both signs have an approved permit.

The three signs requested are 45.33 square feet each for a combined area of 136 square feet. These signs are a vinyl overlayed on metal.

Staff Comments

These signs were installed without a permit and after applicant was notified that any signs would require an approved permit prior to installation.

Note: If this variance is granted, any future wall or free standing/ground mounted signage will require additional variances.

Derek Hutchinson
Planning Director
City of New Carlisle



City of New Carlisle
Planning Department
331 S. Church Street
New Carlisle, Ohio 45344
937.845.9492
dhutchinson@newcarlisle.net

**APPLICATION
BOARD OF ZONING APPEALS
VARIANCE REQUEST**

Received Stamp

Office Use Only

Please read before completing this application.

\$125
Application Fee

- **Required -**
 - Submission of a completed Variance Request Application, including all of the items listed in the application checklist. Variance Request Application fee of \$125.
 - *Note: Fee is not refundable if Variance is denied.*
 - Submission of a completed Zoning Application. Application Fee for Zoning Permit does not requirement payment until after the Variance is granted.
- Submitted applications and all checklist items shall be reviewed by City Staff for completeness. Submittals found to be incomplete will be rejected and the application will not be placed on the Board agenda. If an application is found to be incomplete, the applicant may submit the missing materials to complete application requirements.
- The Board of Zoning Appeals shall hold a public hearing within **thirty (30) days** after the receipt of a **completed** application. **The Applicant or a Representative must be present at hearing.**
- All property owners and interested parties within 500 feet of the proposed variance will be notified of Public Hearing.

Applicant Information

Name: MARK HENSLEY, SAFE AND SOUND OUTFITTERS Phone: 937-478-7814
Address: 5040 Studeraker Rd Tipp City Ohio 45371
Email: MARK@SAFEANDSOUNDOUTFITTERS.COM

Property Information

Address for Variance Request: 200 EAST LAKE AVE NEW CARLISLE OHIO 45344
Zoning District: CB Lot Number: _____
Owner of Record according to the Clark County Auditor's Office: HENSLEY FAMILY LIMITED
Owners Mailing Address: 5500 Studeraker Rd Tipp City Ohio 45371
Owners Phone: 937-478-7814 Email: MARK@SAFEANDSOUNDOUTFITTERS.COM

Variance Requested

Description of the nature of the Variance requested: INSTALL PICTURES OF OUTDOOR AND NATURE SCENES OVER EXISTING STAINED GLASS CHURCH WINDOWS.

Application Requirements Checklist

Required Items	Staff Use
✓ <input checked="" type="checkbox"/> Narrative Statement demonstrating that the requested variance conforms to the following standards;	
✓ <input checked="" type="checkbox"/> a) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;	
✓ <input checked="" type="checkbox"/> b) That a literal interpretation of this Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under this Zoning Code;	
✓ <input checked="" type="checkbox"/> c) That special conditions and circumstances do not result from the actions of the applicant; and	
✓ <input checked="" type="checkbox"/> d) That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Zoning Code to other lands, structures or buildings in the same district.	
✓ <input checked="" type="checkbox"/> Site Plan that includes parcel shape and size, primary structure location and dimensions, any accessory structures that exist on the property, driveway and sidewalk locations.	
✓ <input checked="" type="checkbox"/> Proposed Site Plan that includes all of the items listed in above Site Plan and the Proposed structure. Include all dimensions of proposed structure and the setback dimensions of all sides of the proposed structure.	
✓ <input checked="" type="checkbox"/> Zoning Permit Application submitted along with this application for the proposed structure.	
✓ <input checked="" type="checkbox"/> Photos of the area where the variance is being requested.	

I hereby attest to the truth and exactness of all information supplied on and with this application.

Applicant's Signature: _____

Date: 2-11-2022

Property Owner's Signature: _____

(If different than Applicant)

Date: 2-11-2022

Office Use Only

This application has been reviewed and is found to be complete.

Fee \$125 Paid Date: 11-15-21

City Staff: _____

Position: PLANNING DIRECTOR Date: 2-12-22

Decision of the Board of Zoning Appeals

Date Decision Ruled on: _____ Action Taken: Approved / Denied

Conditions for Approval: _____

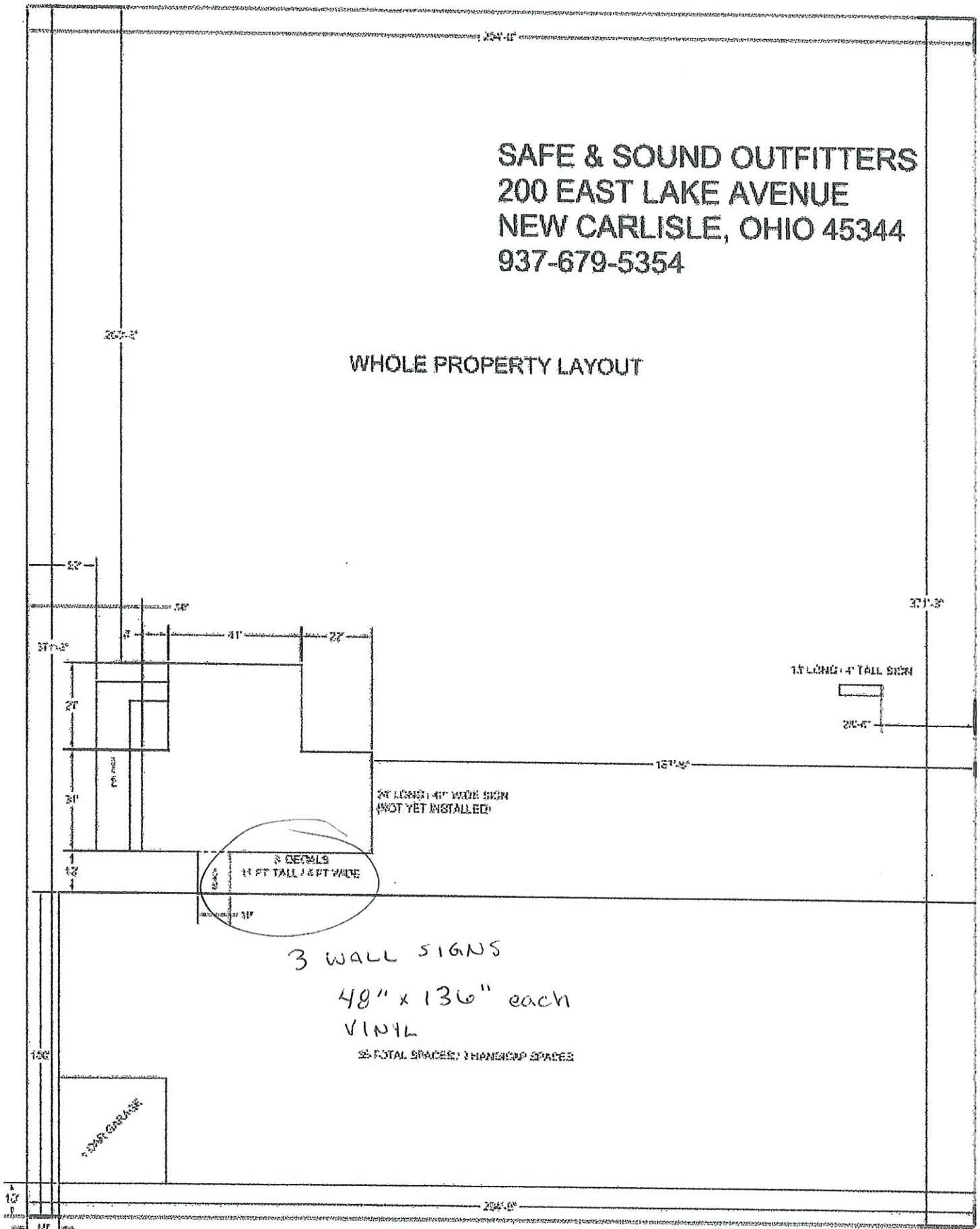
Narrative Statement

- a) The existing structure has the same sized stained-glass windows as our stickers displaying a religious belief, that are embedded in the wall covered with protective glass. It is not feasible to remove these windows at this time without causing aesthetic deformation of the east side of this building.
- b) A literal interpretation of this zoning Code would deprive this new business.
- c) Special conditions would not result from these actions because the religious belief windows are no bigger than our pictures of wildlife and outdoor activities.
- d) Granting this variance would in no way give special privilege to the occupant.



SAFE & SOUND OUTFITTERS
200 EAST LAKE AVENUE
NEW CARLISLE, OHIO 45344
937-679-5354

WHOLE PROPERTY LAYOUT





City Manager's Report

March 7, 2022

A. DEPARTMENTAL REPORTS / YEAR END REPORTS

- The Following Departmental Reports will be given at the next City Council meeting that will be held on Monday, March 21, 2022
 - Finance, Public Service, Planning & Zoning, Fire/EMS, and Police

B. INFORMATIONAL ITEMS

- Discussion Topics
 - Intro of Elizabeth Township Fire/EMS Contract at the March 14, 2022, Special Meeting
 - Miami County Annexation
 - Charter Review – Current Model Revision on New Model Revision – Motion Needed
 - Fireworks
 - Mayor's Court
 - Additional Council Boards
 - TCC Appointment – Alternative Member Selection – Motion Needed
- Upcoming Legislation/Motions for Council Approval
 - Employees Generally Code Section Update – Work in Progress
 - Ohio Deferred Comp ROTH IRA – Work in Progress



RESOLUTION 2022-05R

A RESOLUTION AMENDING RESOLUTION 2021-15R, THE CAPITAL IMPROVEMENT PROGRAM FOR THE CITY OF NEW CARLISLE, OHIO, FOR THE PURPOSE OF ADDING AND REMOVING CAPITAL PURCHASES

WHEREAS, the Capital Improvement Program (CIP) is the five-year financial plan of proposed capital improvements for the City of New Carlisle; and

WHEREAS, City Council approved the 2022-2026 CIP via Resolution 2021-15R; and

WHEREAS, during 2022 Operating Budget review discussions, it was determined that certain revisions to the CIP are needed to best meet the operating needs of the City of New Carlisle.

NOW, THEREFORE, BE IT RESOLVED by the City of New Carlisle City Council that the 2022-2026 Capital Improvement Program (CIP) be amended as described in Exhibit A.

Passed this _____ day of _____, 2022.

Mike Lowrey, Mayor

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2cd: _____

VACANT	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N
Totals:		

Pass

Fail

Capital Expenses Budget 2022-2026

<u>GOVERNMENTAL FUND</u>	<u>GENERAL FUND</u>		<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
City Council - 101.1100.55000	Technology Updates		-	-	-	20,000	-
	City Council Totals		\$ -	\$ -	\$ -	\$ 20,000	\$ -
City Manager - 101.1300.55000	Technology Updates		3,000	3,500	3,000	10,000	3,500
	City Manager Totals		\$ 3,000	\$ 3,500	\$ 3,000	\$ 10,000	\$ 3,500
Finance - 101.1400.55000	Software Support		30,000	35,000	35,000	37,000	37,000
	Network Server Protection		25,000	25,000	26,000	26,000	26,000
	Computer Replacement		-	-	-	-	15,000
	Finance Totals		\$ 55,000	\$ 60,000	\$ 61,000	\$ 63,000	\$ 78,000
Planning - 101.1500.55000	City Wide Enhancements		10,000	10,000	12,000	12,000	14,000
	Drone & Related Items		5,000	-	-	-	7,500
	Planning Totals		\$ 15,000	\$ 10,000	\$ 12,000	\$ 12,000	\$ 21,500
Parks - 101.1800.55000	Shelter House Upgrades		10,000	-	-	-	15,000
	Playground Equipment		-	35,000	8,500	12,000	35,000
	Park Upgrades		-	3,500	3,500	3,500	3,500
	Utility Carts		20,000	-	-	-	-
	Bike Path Equipment		8,000	8,000	8,500	8,500	8,500
	Bucket Truck (Shared Expense w/ Street Department)		30,000	-	-	-	-
	Wood Chipper (Shared Expense w/ Street Fund)		20,000	-	-	-	-
	Parks Totals		\$ 88,000	\$ 46,500	\$ 20,500	\$ 24,000	\$ 62,000
Lands & Buildings - 101.2000.55000	City Garage Hand Tools		3,000	2,500	3,000	3,000	3,000
	City Garage Truck		-	35,000	-	-	-
	Tornado Siren		25,000	-	-	-	-
	Demolition of Old Sub Station Miscellaneous Repairs at 101 S. Main		15,000	-	-	-	-
	City Garage Upgrades		40,000	20,000	-	-	25,000
	New City Entry Signs		40,000	-	-	-	-
	AIRNETIX Outdoor Speakers for Downtown		12,000	-	-	-	-
	Vehicle for Public Service Director		45,000	-	-	-	-
	Generator for City Administration Building		19,950	-	-	-	-
	Lands & Buildings Totals		\$ 199,950	\$ 57,500	\$ 3,000	\$ 3,000	\$ 28,000
Mayor's Court - 101.2200.55000	Miscellaneous Capital Items for Court Operations		5,000	5,000	5,000	5,000	5,000
	Mayor's Court Totals		\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
	General Fund Totals:		\$ 365,950	\$ 182,500	\$ 104,500	\$ 137,000	\$ 198,000

SPECIAL REVENUE FUNDS

<u>STREETS</u>		2022	2023	2024	2025	2026
201.6100.55000	Street Painting Equipment	9,000	-	-	-	12,000
	Snow Plow	-	8,000	-	8,000	-
	Bucket Truck (Shared Expense w/ Parks)	50,000	-	-	-	-
	Wood Chipper (Shared Expense w/ Parks)	20,000	-	-	-	-
	Streets Totals	\$ 79,000	\$ 8,000	\$ -	\$ 8,000	\$ 12,000
<u>EMERGENCY AMBULANCE CAPITAL</u>						
212.3310.55000	Future New Ambulance	-	-	100,000	100,000	100,000
	Emergency Ambulance Capital Totals	\$ -	\$ -	\$ 100,000	\$ 100,000	\$ 100,000
<u>EMERGENCY AMBULANCE OPERATING</u>						
213.3300.55000	Fire Station Renovations / Demolition	15,000	-	-	-	-
	Air Packs (Shared Expense w/ Fire Operating)	60,000	-	60,000	-	70,000
	Air Compressor (Shared Expense w/ Fire Operating)	-	50,000	-	-	-
	New Computers and Equipment	3,000	-	15,000	-	15,000
	Emergency Ambulance Operating Totals	\$ 78,000	\$ 50,000	\$ 75,000	\$ -	\$ 85,000
<u>FIRE CAPITAL</u>						
214.2210.55000	Save for New Fire Engine	100,000	100,000	-	-	-
	Fire Capital Totals	\$ 100,000	\$ 100,000	\$ -	\$ -	\$ -
<u>FIRE OPERATING</u>						
215.2200.55000	New Structural Firefighting Gear	25,000	26,000	27,000	28,000	30,000
	New Power Tools	-	-	-	25,000	-
	Radio Upgrades (EDACS & MARCS)	-	-	25,000	-	25,000
	Tools and Misc. Equipment	15,000	20,000	20,000	25,000	25,000
	Fire Station Renovations / Demolition	15,000	-	15,000	-	15,000
	New Computers and Equipment	3,000	-	6,000	-	8,000
	Air Compressor (Shared Expense w/ Emergency Ambulance Operating)	-	50,000	-	-	-
	Air Packs (Shared Expense w/ Emergency Ambulance Operating)	60,000	-	60,000	-	70,000
	Fire Operating Totals	\$ 118,000	\$ 96,000	\$ 153,000	\$ 78,000	\$ 173,000
<u>POLICE</u>						
250.2500.55000	Equipment Upgrades	17,500	18,000	18,500	19,000	19,500
	New Patrol Vehicle	-	45,000	-	45,000	-
	Equipment for New Patrol Vehicles	-	17,000	-	17,000	-
	Police Totals	\$ 17,500	\$ 80,000	\$ 18,500	\$ 81,000	\$ 19,500
Special Revenue Funds Totals:		\$ 392,500	\$ 334,000	\$ 346,500	\$ 267,000	\$ 389,500

ENTERPRISE FUNDS**WATER**

501.5300.55000

	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
F-450 Dump Truck	36,000	-	-	-	-
New Box Utility Truck	36,000	18,000	-	-	-
Industrial Pipe Saw	10,000	-	-	-	-
6 New 5-1/4 Fire Hydrants	12,000	-	14,000	-	14,000
Chlorine Analyzer	4,500	-	-	-	-
Pipe locator with GPS Cap	10,000	-	-	-	-
Technology Upgrades	7,000	-	8,000	-	10,000
Water Totals	\$ 115,500	\$ 18,000	\$ 22,000	\$ -	\$ 24,000

WASTEWATER

502.5400.55000

Primary Clarifier	-	180,000	-	-	-
Primary Clarifier Purchased with ARP Funds	-	(180,000)	-	-	-
Bio-Tower Pump	10,000	-	-	-	-
Primary Clarifier #2 ARF & Grant	98,500	-	-	-	-
Utility Crane Truck	-	45,000	-	-	-
Equipment Storage Building	-	65,000	65,000	-	-
Technology Upgrades	7,000	-	8,000	-	10,000
Honey Creek Lift Station Engine & Controller	60,000	-	-	-	-
Wastewater Totals	\$ 175,500	\$ 110,000	\$ 65,000	\$ -	\$ -

SWIMMING POOL

Pool Capital Savings - 505.3400.55001

Capital Improvements - 505.3400.5500

Pool Liner Savings	40,000	-	-	-	-
Pool Upgrades	6,000	20,000	6,000	15,000	7,000
Swimming Pool Totals	\$ 46,000	\$ 20,000	\$ 6,000	\$ 15,000	\$ 7,000

CEMETERY

510.2100.55000

Barn	-	30,000	-	-	-
Mower	14,000	-	-	-	-
Backhoe	-	-	20,000	20,000	20,000
Utility Cart	-	-	20,000	-	-
Attachments / Accessories	-	-	5,000	-	-
Cemetery Totals	\$ 14,000	\$ 30,000	\$ 45,000	\$ 20,000	\$ 20,000

WATERWORKS CAPITAL IMPROVEMENT

550.5500.55000

	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>
Mainline Valve Replacement	3,500	3,700	3,900	4,100	4,300
Waterworks Capital Improvement Totals	\$ 3,500	\$ 3,700	\$ 3,900	\$ 4,100	\$ 4,300

WASTEWATER EQUIPMENT REPLACEMENT

561.5610.55506

Equipment Rehab - Drying Bed Rehab	10,000	10,300	10,600	10,600	11,000
Wastewater Equipment Replacement Totals	\$ 10,000	\$ 10,300	\$ 10,600	\$ 10,600	\$ 11,000
Enterprise Funds Total	\$ 364,500	\$ 192,000	\$ 152,500	\$ 49,700	\$ 66,300
Total (All Funds)	\$ 1,122,950	\$ 708,500	\$ 603,500	\$ 453,700	\$ 653,800

DEFINITIONS

City Council	<u>Technology Updates</u> - For the purchase of a technology updates such as new iPads or other similar devices. Paid by General Fund.
City Manager	<u>Technology Updates</u> - For the purchase of a technology updates such as new iPads or other similar devices. Paid by General Fund.
Finance	<u>Software Support</u> - Yearly financial software support for accounts payable, accounts receivable, payroll, cashier, water, and sewer. Does not include hardware support or maintenance of the hardware. Paid for by the General Fund. <u>Network Server Protection</u> - Provide security for the City's network server. Paid for by the General Fund. <u>Computer Replacement</u> - Purchase of new computers as the average life span of a computer is 3 to 5 years. Paid for by the General Fund. <u>SSI Utility Upgrade</u> - Upgrade remaining users to VIP for smoother, quicker, and more efficient operations at the City Building. Paid for by the General Fund.
Planning	<u>City Wide Enhancements</u> - For the purpose of purchasing various items, such as benches, flower baskets, trash receptacles, etc., to visually enhance the city. Paid for by grants and/or General Fund <u>Drone & Related Items</u> - Purchase drone, and drone training, for city planning purposes and pay for Planning Director's license to fly the drone. Paid for by grants and/or General Fund dollars.
Parks	<u>Shelter House Upgrades</u> - Miscellanwous upgrades to actual structure, contents of the structure, and/or accessory uses of the structure such as the parking lot. Paid for by the General Fund. <u>Playground Equipment</u> - Purchase and/or upgrades of playground equipment and/or fall protection. Paid for by the General Fund and/or grant funds. <u>Park Upgrades</u> - Purchase Benches, Tables, and other miscellaneous items for general City Parks improvements. Paid for by the General Fund and/or grant funds. <u>Utility Cart</u> - Purchase Utility Cart to assist with job tasks. Paid for by the General Fund and/or financing. <u>Bike Path Equipment</u> - Purchase equipment needed for ongoing maintenance of the bike trail. Paid for by the General Fund. <u>Bucket Truck</u> - Needed for the trimming and/or removal of trees and to Service traffic lights. Paid for with Street Funds, General Funds, and/or bank financing. <u>Wood Chipper</u> - Shared expense with Street Fund in 2022.
Lands & Buildings	<u>City Garage Hand Tools</u> - Replace various broken/worn out mechanic tools. Paid for by the General Fund. <u>City Garage Truck</u> - Purchase small 4x4 truck for Public Works Department. Paid for by the General Fund and/or financing. <u>Tornado Siren</u> - Purchase new tornado siren for public safety purposes. Paid for by the General Fund and/or grants. <u>Demolition of Old Sub-Station</u> - To improve parking at the Fire Station. Paid for by the General Fund. <u>City Garage Upgrades</u> - Upgrade old section of City Garage. Paid for by the General Fund and/or financing. <u>Vehicle for Public Service Director</u> - Purchase in 2022 with General Fund money. <u>Generator</u> - For use at the City Administration Building. Paid for by the General Fund.
Mayor's Court	Miscellaneous Operational Items - Purchase various items such as a laptop, hand-held security cameras, and other items needed for Court operations. Paid for by the General Fund.
Streets	<u>Street Painting Equipment</u> - Replace current street and curb painting equipment. Paid for by Street Funds (Non-Levy). <u>Snow Plow</u> - Purchase new Snow Plow for increased operational performance. Paid for by Street Funds (Non-Levy) <u>Bucket Truck</u> - Needed for the trimming and/or removal of trees and to Service traffic lights. Paid for with Street Funds, General Funds, and/or bank financing. <u>Wood Chipper</u> - Shared expense with Park Fund in 2022.
Emergency Ambulance Capital	<u>Future New Ambulance</u> - Save for the purchase of a new ambulance. Paid for by EMS/Fire, General funds, loans, and/or grant funds.
Emergency Ambulance Operating	<u>Fire Station Renovations</u> - Updates to Fire Station to improve employee comfort and operations. Paid for by Fire/EMS funds and/or grant funds. <u>Air Packs</u> - Purchase Air Packs in years 2022, 2024, and 2026. Paid for by Fire/EMS funds and/or grant funds. <u>Air Compressor</u> - Purchase air compressor in 2023. Paid for by Fire/EMS funds and/or grant funds. <u>New Computers and Equipment</u> - Purchase new computers for the Fire Station. Paid for by Fire funds and/or grant funds.
Fire Capital	<u>Save for New Fire Engine</u> - Saving of Fire funds to purchase a new Fire Rescue Engine. Paid for by Fire Funds and/or grant funds.
Fire Operating	<u>New Structural Firefighting Gear</u> - Purchase 5 new sets Turn Out Gear as old gear expires. We need to purchase 5 sets each year as old gear expires. Paid for by Fire funds and/or grant funds. <u>New Power Tools</u> - Purchase new power tools such as jaws of life, spreaders and rams. Paid for by Fire funds and/or grant funds. <u>Radio Upgrades (EDACS & MARCS)</u> - Maintain and upgrade radio equipment for hand held radios. Paid for by Fire funds and /or grant funds. <u>Tools and Misc. Equipment</u> - Purchase new hand tools and equipment for the fire engine and truck. Paid by the Fire/EMS funds and/or grant funds. <u>Fire Station Renovations</u> - Updates to Fire Station to improve employee comfort and operations. Paid for by Fire/EMS funds and/or grant funds. <u>New Computers and Equipment</u> - Purchase new desktop computers, or other similar items, for the Fire Station. Paid for by Fire funds and/or grant funds. <u>Air Compressor</u> - Purchase air compressor in 2023. Paid for by Fire/EMS funds and/or grant funds. <u>Air Packs</u> - Purchase Air Packs in years 2022, 2024, and 2026. Paid for by Fire/EMS funds and/or grant funds.
Police	<u>Equipment Upgrades</u> - Includes computers & software; Tasers; patrolman equipment; and equipment needed to process crime scenes. Paid for by the Police Levy. <u>New Vehicles</u> - Purchase police cruisers. Paid for by the Police Levy. <u>Equipment for New Patrol Vehicles</u> - Items necessary to outfit the new cruisers. Paid for by the Police Levy.

Water	<p><u>F-450 Dump Truck</u> - Replace the current 2001 dump truck with new truck. Dump body on current truck to be transferred to new truck. Paid for by Water fund.</p> <p><u>New Box Utility Truck</u> - Replace the current worn out van. A utility style box truck will better serve the Water Dept. Payable utilizing a 3 year low interest loan.</p> <p><u>Industrial Pipe Saw</u> - This saw is designed to cut through pipes in a confined space. It would be used in various projects including mainline breaks, mainline replacements and mainline valve replacements.</p> <p><u>6 New 5-1/4 Fire Hydrants</u> - Necessary for replacing hydrants that are out of service or cost more to repair. Paid for by the water fund.</p> <p><u>Chlorine Analyzer</u> - Purchase in 2022. Paid for with Water funds.</p> <p><u>Pipe Locator with GPS Cap</u> - Purchase in 2022. Paid for with Water funds.</p> <p><u>Technology Upgrades</u> - Update Utility Clerk's water meter software to a web-based system. Cost shared with Wastewater.</p>
Wastewater	<p><u>Primary Clarifier</u> - Clarifier will have been utilized past its useful life and will need replaced. Paid for by Wastewater Fund, American Rescue Plan (ARP) funds, grant money, and/or bank financing.</p> <p><u>Bio-Tower Pump</u> – Replace with new pump. Paid for by Wastewater Fund.</p> <p><u>Primary Clarifier #2 ARF & Grant</u> – Clarifier will have been utilized past its useful life and will need replaced. Paid for by Wastewater Fund, American Rescue Plan (ARP) funds, grant money, and/or bank financing.</p> <p><u>Utility Crane Truck</u> – Purchase replacement truck with crane attachment. Paid for by Wastewater Funds.</p> <p><u>Equipment Storage Building</u> – Construction of new heated building to store equipment such as the new Vac-Con Truck. Bank financed over a two-year period; Repaid by Wastewater Funds.</p> <p><u>Technology Upgrades</u> - Update Utility Clerk's water meter software to a web- based system. Cost shared with Water.</p> <p><u>Honey Creek Lift Station Engine and Controller</u> - <i>Purchase in 2022 with Wastewater Funds.</i></p>
Swimming Pool	<p><u>Pool Liner</u>- Completely line the pool floor to stop leaks from cracks and biannual Painting. Purchase in 2021. Paid with Pool funds and/or General Fund</p> <p><u>Pool Upgrades</u>- Replace entryway floor, Wireless sound system, Exterior Lighting, to enhance visual appeal, Men's changing station, sound quality and safety. Purchase in 2021 with Pool funds.</p>
Cemetery	<p><u>Barn</u> - Replace old barn. Paid for by the Cemetery Fund and/or General Fund.</p> <p><u>Mower</u> - Replace mower. Paid for by Cemetery Fund and/or General Fund.</p> <p><u>Backhoe</u> - Replace 20 year old backhoe. Paid for by Cemetery Fund and/or General Fund.</p> <p><u>Utility Cart</u> - Replace utility cart. Paid for by Cemetery Fund and/or General Fund.</p> <p><u>Attachments / Accessories</u> - Purchase of various equipment and snow plow. Paid for by Cemetery Fund and/or General Fund.</p>
Waterworks Capital Improvement	<u>Mainline Valve Replacement</u> - Set funds aside to start replacement of mainline water valves. Paid by Water Fund.
Wastewater Equipment Replacement	<u>Drying Bed Rehab</u> – Install concrete into existing drying bed in order to load pressed sludge on and off the beds. Paid by Wastewater Fund.



ORDINANCE 2022-09

AN ORDINANCE SUPPLEMENTING CERTAIN APPROPRIATIONS CONTAINED IN NEW CARLISLE CITY ORDINANCE 2021-44

WHEREAS, Ordinance 2021-44 is the Annual Appropriations Ordinance for the City of New Carlisle for the fiscal year ending December 31, 2022; and

WHEREAS, it is necessary to amend certain appropriations contained therein pursuant to Sections 7.09 (a) and 7.09 (c) of the Municipal Charter.

NOW, THEREFORE THE CITY OF NEW CARLISLE HEREBY ORDAINS that the annual appropriations shall be supplemented as follows:

SECTION 1. To bring the City's appropriations in line with the required expenses of the City of New Carlisle during the fiscal period ending December 31, 2022, the 2022 appropriations are hereby increased or decreased for the following fund/fund types by the amounts shown:

FUND	DESCRIPTION		INCREASE	REASON
101	General Fund	101.2000.55000	\$ 45,000.00	Public Service Director New Vehicle
101	General Fund	101.2000.55000	\$15,000 \$19,950	Generator for City Building
101	General Fund	101.1800.55000	\$ 20,000.00	Shared cost for A Wood Chipper
		TOTAL GENERAL FUND	\$ 84,950.00	
201	Street Fund	201.6100.55000	\$ 20,000.00	Shared Cost for a Wood Chipper
502	Wastewater Fund	502.5400.55000	\$ 60,000.00	Honey Creek Lift Station Engine and Controller
		TOTAL MISC. FUNDS	\$ 80,000.00	
		TOTAL ALL FUNDS	\$160,000 \$164,650	

SECTION 2. The Finance Director is hereby authorized and directed to enter the foregoing supplemental appropriations upon the books and accounts of the City of New Carlisle, and issue warrants pursuant to such authorization.

Passed this _____ day of _____, 2022

Mike Lowrey, Mayor

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jake Jeffries, Law Director

1st _____

2nd: _____

VACANT	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:

Pass

Fail

Intro: 2/22/22

Action: 3/07/22

Effective: 3/22/22



ORDINANCE 2022-10

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO PROVIDE CONSENT TO THE DIRECTOR OF THE OHIO DEPARTMENT OF TRANSPORTATION FOR A RESURFACING PROJECT LOCATED WITHIN THE CITY OF NEW CARLISLE

WHEREAS, the City and Ohio Department of Transportation (ODOT) have determined the need of resurfacing SR 235 through the City of New Carlisle including Dayton-Lakeview Road from log point 3.949 to 3.971 and Main Street from 3.971 to 5.089; and

WHEREAS, ODOT has requested the City to grant its consent to allow said work to be completed in accordance with the Consent Legislation document attached hereto and marked as Exhibit A; and

WHEREAS, Council has determined that is in the best interests of the health, safety and welfare of the citizens of New Carlisle to consent to the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW CARLISLE as follows:

SECTION 1. That the City of New Carlisle does hereby give consent to the Director of ODOT to move forward with resurfacing SR 235 through the City of New Carlisle including Dayton-Lakeview Road from log point 3.949 to 3.971 and Main Street from 3.971 to 5.089, which is a project known as PID NO.: 108548 – COUNTY/ROUTE/SECTION CLA SR 235 3.95.

SECTION 2. That the City Manager is hereby authorized to enter into the Consent Legislation document attached hereto and marked as Exhibit A, and any other necessary contracts for the project.

Passed this ____ day of _____, 2022.

Mike Lowrey, Mayor

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2nd: _____

VACANT	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:

Pass

Fail

Intro: 2/22/22
Action: 3/7/22
Effective: 3/22/22

CONSENT LEGISLATION

Ordinance/Resolution No. ORD 2022-10

PID NO. 108548

County/Route/Section: CLA SR 235 3.95

The following Ordinance 2022-10 enacted by the City of New Carlisle of Clark County, Ohio, hereinafter referred to as the Local Public Agency (LPA).

SECTION I – Project Description

WHEREAS, the City of New Carlisle and the State of Ohio have determined the need for the project described below:

This project will resurface SR 235 through the City of New Carlisle including Dayton-Lakeview Road from log point 3.949 to 3.971 and Main Street from 3.971 to 5.089.

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS as follows:

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above-described project.

SECTION II – Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the above-described project as follows:

The LPA agrees to participate in the cost of the project. The LPA further agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

The LPA further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

The LPA further agrees to pay 100% of the cost to install and/or repair curb ramps at all necessary intersections to ensure compliance with the Americans with Disabilities Act.

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees to acquire and/or make available to ODOT, in accordance with current State and Federal regulations, all necessary right-of-way required for the described Project. The LPA also understands that right-of-way includes eligible utility costs.

The LPA agrees to be responsible for all utility accommodation, relocation and reimbursement and agrees that such accommodation, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – Maintenance

Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

SECTION VI Authority to Sign

The City Manager of said City of New Carlisle is hereby empowered on behalf of the City of New Carlisle to enter into contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project and to enter into contracts with the Director of Transportation which are necessary to complete the above-described project.

Upon request of ODOT, the City Manager is also empowered to assign all rights, title, and interests of the City of New Carlisle to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and administration of the consultant contract. Further the LPA agrees to incorporate ODOT's "Specifications for Consulting Services" as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT's current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

The foregoing is accepted as a basis for proceeding with the project herein described.

For the City of New Carlisle of Clark County, Ohio.

Attested: _____ Date: _____
(City Manager)

For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)

**CERTIFICATE OF COPY
STATE OF OHIO**

The City of New Carlisle of Clark County, Ohio

I, Emily Berner, as Clerk of the City of New Carlisle, of Clark County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance 2022-10 adopted by the legislative Authority of the said City of New Carlisle on the 7th day of March, 2022.

That the publication of such Ordinance 2022-10 has been made and certified of record according to Law; that no proceedings looking to a referendum upon such Ordinance 2022-10 have been taken; and that such Ordinance 2022-10 and certificate of publication thereof are of record in the minutes of City Council.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 22nd day of March 2022.

Emily Berner, Clerk of Council
City of New Carlisle of Clark County, Ohio

(CITY SEAL)



ORDINANCE 2022-11

AN ORDINANCE AUTHORIZING THE EXPENDITURE OF FUNDS OF OVER TWENTY THOUSAND DOLLARS (\$20,000) FOR THE PURPOSE OF PURCHASING A NEWER VEHICLE FOR THE DIRECTOR OF PUBLIC SERVICE

WHEREAS, the current vehicle used by the Director of Public Service, a 2001 Jeep Cherokee, is 22 years old and requires extensive maintenance to keep up with demanding municipal work; and

WHEREAS, the City would like to replace the 2001 Jeep Cherokee with a newer vehicle that will meet the current and future needs of the City; and

WHEREAS, due to the current unstable market and lack of inventory, it would be advantageous for the City Manager to have prior approval to purchase a newer vehicle for the Director of Public Service for a price not to exceed \$45,000.00.

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS that:

SECTION 1. The City Manager be, and hereby is, authorized to proceed with acquiring a newer vehicle for the Director of Public Service by signing any purchase agreement and related documents necessary to accomplish this. The dollar amount for said purchase is not to exceed Forty-Five Thousand and XX/100 Dollars (\$45,000.00).

Passed this _____ day of _____, 2022.

Mike Lowrey, MAYOR

Emily Berner, Clerk of Council

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2cd: _____

VACANT	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:

Pass Fail

Intro: 2/22/22
Action: 3/07/22
Effective: 3/22/22

ORDINANCE 2022-12

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR THE DEMOLITION OF A NONOPERATIONAL SECONDARY CLARIFIER AND THE INSTALLATION OF A NEW SECONDARY CLARIFIER FOR THE WASTEWATER TREATMENT PLANT, AND DECLARING AN EMERGENCY

WHEREAS, the City's wastewater department currently maintains two 40-year-old secondary clarifiers; and

WHEREAS, one of the 40-year-old secondary clarifiers has stopped working and, as a result, the City is using only one secondary clarifier; and

WHEREAS, this has put the City in an emergency situation because it is only a matter of time before the operational 40-year-old secondary clarifier reaches its end of life; and

WHEREAS, Council authorized the purchase of a new secondary clarifier via ORD 2021-42E; and

WHEREAS, the nonoperational 40-year-old secondary clarifier will need to be demolished, and the new secondary clarifier will need to be installed before it can be used; and

WHEREAS, the City is working closely with the Ohio EPA to best navigate this situation and the Ohio EPA recommends that the City expedite the installment of the new secondary clarifier; and

WHEREAS, RC § 735.051 permits the City to enter into contracts for work to be done without formal bidding and advertising when an emergency arises; and

WHEREAS, Peterson Construction Co. submitted a proposal that meets or exceeds the requirements for this project, including all equipment for the demolition of the nonoperational secondary clarifier and the installation of the new secondary clarifier, for a price of Forty-Nine Thousand Seven Hundred Ninety-Three Dollars (\$49,793.00).

NOW, THEREFORE, THE CITY OF NEW CARLISLE HEREBY ORDAINS as follows:

Section 1. The City faces an emergency in which it must immediately have its new secondary clarifier installed to preserve the City's wastewater treatment operations for the City's sewer system.

Section 2. Peterson Construction Co. submitted the attached proposal, which is necessary to address the instant emergency faced by the City, that meets or exceeds the wastewater requirements for this project for a price of Forty-Nine Thousand Seven Hundred Ninety-Three Dollars (\$49,793.00).

Section 3. Because this matter is an emergency as provided for by law due to the fact that City operations will be jeopardized without immediate action, the City accepts the proposal from Peterson Construction Co.

Section 4. That the City Manager be, and he hereby is, authorized to enter into a contract and execute all related documents for this project immediately, without formal bidding and advertising pursuant to RC § 735.051 because an emergency exists, with Peterson Construction Co. for the demolition of the nonoperational secondary clarifier and the installation of the new secondary clarifier for a price not to exceed Forty-Nine Thousand Seven Hundred Ninety-Three Dollars (\$49,793.00).

Passed this _____ day of _____, 2022.

Mike Lowrey, MAYOR

Emily Berner, CLERK OF COUNCIL

APPROVED AS TO FORM:

Jacob M. Jeffries, DIRECTOR OF LAW

1st _____

2nd: _____

VACANT	Y	N
Bahun	Y	N
Lindsey	Y	N
Mayor Lowrey	Y	N
Vice Mayor Grimm	Y	N
Rodewald	Y	N
Cook	Y	N

Totals:		
	Pass	Fail

Intro: 03/07/22
Action: 3/07/22
Effective: 03/07/22

AGREEMENT
BETWEEN THE CITY OF NEW CARLISLE AND PETERSON CONSTRUCTION CO.
FOR CONSTRUCTION

OWNER: City of New Carlisle
331 S. Church St.
New Carlisle, OH. 45344

PROJECT: Secondary #2 Clarifier Replacement Project
City of New Carlisle Project# 2022SC#2

LOCATION: Wastewater Treatment Plant
City of New Carlisle, Ohio

CONTRACTOR: Peterson Construction Co.
18817 S.R. 501 N. Box 2058
Wapakoneta, Ohio 45895-0558

WORK TO BE COMMENCED: Upon Receipt of Secondary Clarifier

WORK TO BE COMPLETED: 90 Days After Receipt of the Clarifier

THE CONTRACT SUM: \$49,793.00

CONTRACT DATE: March 23, 2022

THIS AGREEMENT made this day __23rd day__ of __March__, 2022, by and between Peterson Construction Co., having its principal offices at 18817 S.R. 501 N. Box 2058 Wapakoneta, Ohio 45895-0558, hereinafter called the CONTRACTOR, and The City of New Carlisle, a Municipal Corporation, having its principal offices at 331 S. Church St., New Carlisle, Ohio 45344, hereinafter called the OWNER.

The Contractor and the Owner, for the consideration stated herein, agree as follows:

ARTICLE 1 - SCOPE OF THE WORK:

The Contractor shall furnish all equipment in order to perform all of the work described on Peterson's proposal to install the secondary #2 clarifier.

ARTICLE 2 - TIME OF COMPLETION:

The Work to be performed under this Contract shall be commenced under the date of the "Notice to Proceed" and shall be substantially completed and ready for use on or before Completion Date.

ARTICLE 3 - THE CONTRACT SUM:

The Owner shall pay the Contractor for performance of the Contract, subject to additions and deductions provided therein, in the amount of Forty-Nine Thousand Seven Hundred Ninety-Three Dollars (\$49,793.00)

ARTICLE 4 - PROGRESS PAYMENTS:

The Owner shall make payments on account of the contract as provided in Article 14 of the Standard General Conditions (1/98).

ARTICLE 5 - ACCEPTANCE AND FINAL PAYMENTS:

(a) Final payment shall be due thirty (30) days after substantial completion of the Work, provided the work be then fully completed and the Contract fully performed.

(b) Upon receipt of written notice that the Work is ready for final inspection and acceptance, the City of New Carlisle shall promptly make such inspection and when it finds the Work acceptable under the Contract and the Contract fully performed, it shall promptly issue a final certificate, over its own signature, stating that the Work provided for in this Contract has been completed thereof, and that the entire balance found to be due the Contractor, and noted in said final certificate, is due and payable.

(c) If after the Work has been substantially completed, full completion thereof is materially delayed, through no fault of the Contractor, the Owner shall, and without terminating the Contract, make payments of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

(d) Before issuance of any certificate, the Contractor shall fully comply with the Standard General Conditions (1/98) regarding waivers of lien and sworn statements.

ARTICLE 6 - THE CONTRACT DOCUMENTS:

The Contract Documents, together with this Agreement, form the Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated. The following is an enumeration of the

Contract Documents:

City of New Carlisle Standard General Conditions
City of New Carlisle Supplemental General Conditions
Project Specifications and Drawings
Contractor's Form of Proposal, Dated
Contractor's Performance and Payment Bonds
Contractor's Certificate(s) of Insurance
Contractor's List of Major Subcontractors/Suppliers
Prevailing Wage Schedule

The Contractor's signature on this Agreement indicates that the Contractor has read and will comply with each of these documents.

The Contract Amount is determined on the basis of the following:

NET CONTRACT AMOUNT: \$49,793.00

The parties hereto have executed this Agreement the day and year first above written.

Peterson Construction Co.

Printed Name:

Title:

Signature:

City of New Carlisle

Printed Name:

Title:

Signature:

Approved: _____

Law Director

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

2. Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. Agreement—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Asbestos—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. Bid—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. Bidder—The individual or entity who submits a Bid directly to Owner.

7. Bidding Documents—The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. Change Order—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. Claim—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. Contract—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. Contract Documents—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. Contract Price—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. Contract Times—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. Contractor—The individual or entity with whom Owner has entered into the Agreement.
16. Cost of the Work—See Paragraph 11.01 for definition.
17. Drawings—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. Effective Date of the Agreement—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. Engineer—The individual or entity named as such in the Agreement.
20. Field Order—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. General Requirements—Sections of Division 1 of the Specifications.
22. Hazardous Environmental Condition—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. Hazardous Waste—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. Laws and Regulations; Laws or Regulations—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. Liens—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. Milestone—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. Notice of Award—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. Notice to Proceed—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. Owner—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. PCBs—Polychlorinated biphenyls.
31. Petroleum—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. Project—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. Project Manual—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. Radioactive Material—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. Resident Project Representative—The authorized representative of Engineer who may be

assigned to the Site or any part thereof.

37. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. Specifications—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

45. Successful Bidder—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. Supplementary Conditions—That part of the Contract Documents which amends or supplements these General Conditions.

47. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. Underground Facilities—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. Unit Price Work—Work to be paid for on the basis of unit prices.

50. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. Work Change Directive—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen

subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents; or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
- c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide:

- 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
- 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
- 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
- 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

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

B. Evidence of Insurance: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. Preliminary Schedules: Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

B. A preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

C. a preliminary Schedule of Submittals; and

D. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to

act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment, a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to the Engineer, as provided below, the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

B. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:

1. Contractor's Review of Contract Documents Before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. Contractor's Review of Contract Documents During Performance of Work: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

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

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or

make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

5. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

5. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice: If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

5. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. Engineer's Review: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. Possible Price and Times Adjustments:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if

any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

5. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

- a. reviewing and checking all such information and data;
- b. locating all Underground Facilities shown or indicated in the Contract Documents;
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site 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 (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility 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 Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference

points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. Reports and Drawings: The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

5. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

5. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a

reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. Notwithstanding anything contained herein to the contrary, the parties expressly agree and understand that Article XII, Section 11 of the Ohio Constitution prohibits Ohio cities from agreeing to open-ended indemnification and hold harmless terms for the benefit of other parties, and that such terms are unenforceable against Ohio cities. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members,

partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

5. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial

Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

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

5.03 Certificates of Insurance

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

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

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

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

5.04 Contractor's Insurance

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

6. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

6. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

6. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

6. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

6. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

6. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

6. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of

them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

6. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

6. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or

causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

6. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party

shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified,

shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. "Or-Equal" Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
- 3) it has a proven record of performance and availability of responsive service.

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items:

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that

named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed

substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will

contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. Notwithstanding anything contained herein to the contrary, the parties expressly agree and understand that Article XII, Section 11 of the Ohio Constitution prohibits Ohio cities from agreeing to open-ended indemnification and hold harmless terms for the benefit of other parties, and that such terms are unenforceable against Ohio cities. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold

harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for

monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose

duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings:

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples:

- a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures:

- 1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review

and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;
2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

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

6.21 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications,

certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer. C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and
2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

8. the individual or entity who will have authority and responsibility for coordination of the

activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 Compliance with Safety Program

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 Owner's Representative

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 Visits to Site

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and

are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority nor responsibility under this Article 9 nor under any other provision of

the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

11. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's

correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

11. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

A. Engineer's Decision Required: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. Notice: Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. Engineer's Action: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;
2. approve the Claim; or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or

denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment,

machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically

and expressly included in Paragraphs 11.01.A.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances:

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance:

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an

adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner

to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

14. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and,

prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units

completed.

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments

nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

- a. to supervise, direct, or control the Work, or
- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request

Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
- b. consent of the surety, if any, to final payment;
- c. a list of all Claims against Owner that Contractor believes are unsettled; and
- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give

written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

16. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

16. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

16. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other

dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
2. agrees with the other party to submit the Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

A. This Contract is to be governed by the laws of the State of Ohio.

17.06 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of this Contract.

17.07 Severability Clause

A. Should any reviewing court find any of the terms or conditions stated in this contract to be unenforceable, the parties agree all remaining terms and conditions remain in full force and effect.

17.08 Non-Discrimination

A. Both parties agree that: in the hiring of employees for the performance of work under the contract or in any subcontract, no contractor or subcontractor, by reason or race, color, religion, sex, age, disability, or military status as defined in section 4112.01 of the Ohio Revised Code, national origin or ancestry, shall discriminate against any citizen of this state in the employment of a person qualified and able to perform the work to which the agreement relates; and no contractor, subcontractor, or person acting on behalf of any contractor or subcontractor, in any manner, shall discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the agreement on account of race, color, religion, sex, age, disability or military status as defined in section 4112.01 of the Ohio Revised Code, national origin, or ancestry.

17.09 Ethics Law

A. By signing this Agreement, both parties certify that they are currently in compliance with, and will continue to adhere to the requirements of the Ohio Ethics Law as provided by Ohio Revised Code Sections 102.03 and 102.04.

17.10 Civil Rights

A. Both parties agree that in the performance of this agreement there shall be no discrimination against any client or any employee because of race, color, sex, religion, national origin, or any other factor

specified in the Civil Rights Act of 1964 and subsequent amendments. Also included is the Americans with Disabilities Act. It is further agreed that both parties will fully comply with all applicable Federal and State laws regarding such discrimination and the right to and method of appeal will be made available to all persons served pursuant to the terms of this agreement.

17.11 Assignment

Neither party may assign or transfer its interest in this Contract without the prior written consent of the other party.

17.12 No Partnership

This Contract shall not be construed as creating a partnership between the parties hereto.

17.13 Successors and Assigns

Subject to the provision regarding assignment, this Contract shall be binding on the heirs, executors, administrators, legal representatives, successors, and assigns of the respective parties.