

SPECIFICATIONS
FOR

**Parking Garages Lighting Retrofit
Supply Bid Package**



ONE MARITIME PLAZA
TOLEDO, OH 43604

Proposal Set No. _____

TABLE OF CONTENTS

INSTRUCTIONS TO PROPOSERS

FORMS OF PROPOSAL

CONTRACTOR'S CHECKLIST

SUBSTITUTION SHEET

LIST OF SUBCONTRACTORS

AGREEMENT

DBE GOAL AND ASSURANCE FORMS

CONTRACTOR'S AFFIDAVIT

GENERAL CONDITIONS

TECHNICAL SPECIFICATION

SITE PHOTOS

INSTRUCTIONS TO PROPOSERS

OWNER: Toledo-Lucas County Port Authority
One Maritime Plaza
Toledo, OH 43604
Telephone: (419) 243-8251

1. **LOCATION AND DESCRIPTION**

This contract is for the procurement only of retrofit induction lighting fixtures for the project entitled "Parking Garages Lighting Retrofit – Supply Bid Package" at the Vistula, Superior, and Port Lawrence Parking Garages located in the City of Toledo, in accordance with the approved specifications.

This project consists of retrofitting all existing high pressure sodium fixtures at the Vistula, Superior, and Port Lawrence Parking Garages with equivalent induction fixtures. This bid package is for the supply only of the lighting fixtures, and is not to include any installation. The bidder is to provide a combined BASE BID price to supply lighting fixtures for all garages based upon the quantities presented in the unit prices on the bid form. Proposed induction lighting fixtures must be in accordance with the included technical specification.

2. **TIME AND PLACE FOR RECEIPT OF PROPOSALS**

Bids will be received at the office of the Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, OH 43604 Monday, February 20, 2012, at 3:00 PM.

3. **FORM OF PROPOSALS**

Bids shall be typewritten or written in ink on the provided herein, and delivered by hand, fax, email to **mreinbolt@toledoportauthority.org** or by regular mail to the office of the Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, OH 43604.

Submitted by: Name: _____
Address: _____

and shall identify the specific work area being bid:

**Parking Garages Lighting Retrofit
Supply Bid Package**

4. **BUY AMERICAN REQUIREMENT**

Contractor and/or Vendor shall comply with the Buy American provision in the American Recovery and Reinvestment Act of 2009 (section 1605 of Title XVI).

5. **TIME FOR PERFORMANCE – TIME IS OF THE ESSENCE**

The Toledo-Lucas County Port Authority intends and requires 50% of the lighting material to be delivered within thirty (30) calendar days from the date of the Notice to Proceed to allow the lighting installation contractor to begin construction. The remaining balance of light fixtures will be delivered within forty five (45) calendar days from the date of the Notice to Proceed. Successful completion of the project is measured by the final delivery of all fixtures outlined in the scope of work.

6. **LIQUIDATED DAMAGES**

The Port Authority reserves the right to charge the Contractor/Vendor \$1,200.00 per day for any delay in delivery of the 50% lighting material within thirty (30) calendar days or 100% of the lighting material within forty five (45) calendar days.

7. **COMPLIANCE WITH SPECIFICATIONS**

All bids shall be based on the information herein enumerated. Bidders shall not base their bids on verbal information from any employee of the Port Authority. In case errors or omissions are found in the Proposal Form or Specifications, Bidders shall at once inform the President, who will immediately publish the correction to all Bidders.

8. **WITHDRAWAL OF BIDS**

Any bid may be withdrawn prior to the scheduled closing time for the receipt of Bids. The withdrawal of a bid after the scheduled closing time for receipt of bids shall result in the forfeiture of the proposal bond or certified check submitted with the bid.

9. **RIGHT TO ACCEPT AND REJECT PROPOSALS**

The Port Authority reserves the right to reject in whole or in part any or all Bids, to waive any technicalities, and to advertise for new proposals, or proceed with the work otherwise when the best interests of the Port Authority will be promoted thereby.

The lowest responsive and responsible bid shall be determined in accordance with the Toledo-Lucas County Port Authority's Board of Directors Resolution No. 68-00 as found in the General Conditions.

10. **NONDISCRIMINATION**

The Port Authority, in accordance with Title VI of the Civil Rights Act of 1964, hereby notifies all Bidders that it will affirmatively ensure in any contract entered into pursuant to this advertisement, Minority Business Enterprises and Women-Owned Businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, religion, sex, national origin, disability or age in consideration for an award.

11. **INSURANCE REQUIREMENTS**

The undersigned Bidder hereby certifies to the Toledo-Lucas County Port Authority that it shall provide the Port Authority with evidence of Workers' Compensation coverage as required by Ohio law and with a current certificate of insurance evidencing comprehensive general liability insurance in an amount of not less than \$2,000,000 single limit bodily injury and property damage per occurrence.

Fully detailed requirements for Bidder's Workers' Compensation and insurance coverage are explained in their entirety in the attached General Conditions, Article V, Bonds and Insurance.

12. **SALES TAX**

Equipment and materials supplied under this proposal shall be exempt from Ohio Sales Tax under Section 5739.02 of the Ohio Revised Code. The Port Authority shall supply the contractor with the necessary tax exemption forms and it shall be the responsibility of the individual contractor to present the form to its suppliers.

13. **AWARD OF CONTRACT**

The contract will be awarded to the most responsible and responsive bidder meeting the requirements. A Notice to Proceed will be issued to the successful bidder following a review for compliance.

14. **DBE REQUIREMENT**

The Toledo-Lucas County Port Authority's goal for disadvantaged business enterprise (DBE) participation in the project shall be fourteen percent (14%) and bidder shall provide documentation of its ability to achieve that goal or, if the Port Authority's goal is not attainable by bidder, bidder shall provide an affidavit detailing why that goal was not attained. A bid that fails to meet this requirement will be considered non-responsive.

15. **CONTRACTOR'S CHECKLIST**

A Contractor's Checklist, attached hereto in the form of Page CC-1, contains the bid submission criteria required by the Port Authority. **The listed items are not a guideline – they are a requirement.**

ALL ITEMS CONTAINED ON THE CONTRACTOR'S CHECKLIST MUST BE SUBMITTED WITH EACH CONTRACTOR'S BID, OR THE BID WILL BE CONSIDERED NON-RESPONSIVE.

16. **BID PRICES**

Bidder is required to hold its bid price(s) up to a maximum of sixty (60) calendar days.

FORM OF PROPOSAL

NOTES 1: The wording of this Proposal shall be retained throughout, without change, alterations or additions. Any change in the wording may cause the Proposal to be rejected as not complying with the law.

NOTES 2: The form of Proposal shall be accompanied by a properly secured Proposal Bond or certified check in a specific amount (STATED IN DOLLARS AND CENTS) not less than ten percent (10%) of the total of the sum of sums bid on all items of the Proposal. Non-compliance with these requirements may cause a Proposal to be rejected.

PROPOSAL

TO: Toledo-Lucas County Port Authority
One Maritime Plaza
Toledo, OH 43604

Submitted by: _____ on _____
_____, 2011.

Having read the Bid documents and having examined the specifications entitled:

Parking Garages Lighting Retrofit
Supply Bid Package

prepared by the Toledo-Lucas County Port Authority for the Parking Garages Lighting Retrofit – Supply Bid Package, and having also received, read and taken into account Addenda Nos. _____ and likewise having inspected the Project Site and the conditions affecting and governing the removal of said items, the undersigned hereby proposes to furnish all equipment and to perform all labor as specified and described in the said specifications for the said work, for the following sum:

FORM OF PROPOSAL (continued)

**TOLEDO-LUCAS COUNTY PORT AUTHORITY
PARKING GARAGES LIGHTING RETROFIT – SUPPLY BID PACKAGE**

Unit Prices: (The subtotal of Unit Price extensions are to be included in the BASE BID. Unit Prices shall be used solely for the purpose of determining the adjustment to the Contract Sum for differences between the estimated quantities on the Bid Form and the actual quantities provided.)

	Existing Light Type	Qty	Unit Price of Proposed Induction Retrofit Fixture	Unit of Extension
Vistula Garage				
Multiple Levels Area Lights - Pole	250 watt HPS	16	\$ _____	\$ _____
Parking Lot Area Lights - Pole	250 watt HPS	16	\$ _____	\$ _____
Top Level Area Lights - Side mount	250 watt HPS	9	\$ _____	\$ _____
Perimeter small wallpacks	100 watt HPS	263	\$ _____	\$ _____
Overhead Lights throughout	100 watt HPS	145	\$ _____	\$ _____
Large Wallpacks throughout	150 watt HPS	105	\$ _____	\$ _____
Large Wallpacks w/2 conduits	150 watt HPS	5	\$ _____	\$ _____
			VISTULA SUBTOTAL	\$ _____
Superior Street Garage				
Top Level Area Lights - Pole	250 watt HPS	44	\$ _____	\$ _____
NS Overhead Lights w/ex trunion	150 watt HPS	173	\$ _____	\$ _____
NS OH Lights @ EL flush w/2 cond	150 watt HPS	7	\$ _____	\$ _____
NS Wallpacks	150 watt HPS	35	\$ _____	\$ _____
OS Overhead Lights w/ex pendant	100 watt HPS	96	\$ _____	\$ _____
OS Wallpacks	150 watt HPS	56	\$ _____	\$ _____
OS Wallpacks w/2 conduits	150 watt HPS	60	\$ _____	\$ _____
OS Wallpacks w/3 or 4 conduits	150 watt HPS	15	\$ _____	\$ _____
			SUPERIOR SUBTOTAL	\$ _____
Port Lawrence Garage				
Top Level Area Lights - Pole	250 watt HPS	8	\$ _____	\$ _____
Main Garage Lights all levels	100 watt HPS	270	\$ _____	\$ _____
Cylinder lights above walkway	150 watt HPS	11	\$ _____	\$ _____
Wallpacks in stairs	150 watt HPS	14	\$ _____	\$ _____
			PORT LAWRENCE SUBTOTAL	\$ _____

Parking Garages Lighting Supply Base Bid (Provide a BASE BID price to supply all fixtures required for the three parking garages based on the quantities presented in unit price scope of work above, and in accordance with the specifications):

ALL LABOR AND MATERIALS, for the sum of \$ _____

Sum in words: _____
_____ and _____ /100 dollars.

This proposal is made with full knowledge of and in compliance with the Revised Code of the State of Ohio and Rules and Regulations of the Toledo-Lucas County Port Authority.

Bidder

List here full names of every person or
Company interested in this bid:

By: _____

Title: _____

Address: _____

Date: _____

CONTRACTOR'S CHECKLIST

This page contains the bid submission criteria required by the Toledo-Lucas County Port Authority.

The listed items are not a guideline – they are all required to be completed and submitted with Contractor's bid, or the entire bid will be considered non-responsive.

_____	Form of Proposal	Pages P-1 through P-3
_____	Substitution Sheet	Page S-1
_____	List of Subcontractors	Page LS-1
_____	Agreement	Page A-1 through A-3
_____	DBE Goal and Assurance Forms	Pages DBE-2 & DBE-3

SUBSTITUTION SHEET

Bidders desiring to make substitutions for the "Standards" specified shall list such proposed substitutions below, together with the amount to be added to or deducted from their Bid.

If no substitutions are proposed, enter "None" on the first line below.

Standard Specified	Proposed Substitution	Add	Deduct

Date: _____

Signed: _____

BIDDER

LIST OF SUBCONTRACTORS

In the spaces below, the BIDDER shall list the names and addresses of any subcontractors to which the BIDDER proposes to sublet any portion of the work to be done under this CONTRACT. The BIDDER shall also state that portion of the work by Item No. and Description sublet to each contractor.

Item No.	Description	Name of Subcontractor	Subcontractor's Address

Date: _____

Signed: _____
BIDDER

AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2012 by and between the Toledo-Lucas County Port Authority (hereinafter called OWNER) AND _____(hereinafter called CONTRACTOR).

WITNESSETH THAT OWNER AND CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. Work. The CONTRACTOR shall perform all work as specified or indicated in the Contract Documents for the completion of the Project generally entitled **Parking Garages Lighting Retrofit Supply, Toledo, Ohio 43604**, all in strict accordance with the Plans and Specifications including any and all Addenda.

Article 2. Consultant. The project has been designed by RS&H, Inc., who will act as Consultant in connection with completion of the Project in accordance with the Contract Documents.

Article 3. Contract Time. The Toledo-Lucas County Port Authority intends and requires 50% of the lighting material to be delivered within thirty (30) calendar days from the date of the Notice to Proceed to allow the lighting installation contractor to begin construction. The remaining balance of light fixtures will be delivered within forty five (45) calendar days from the date of the Notice to Proceed. Successful completion of the project is measured by the final delivery of all fixtures outlined in the scope of work.

Article 4. Contract Price. OWNER shall pay CONTRACTOR for performances of the work in accordance with the Contract Documents in current funds based on bid prices set forth in the confirmed copy of the Contractor's Proposal hereto attached. The Port Authority reserves the right to charge the Contractor/Vendor \$1,200.00 per day for any delay in delivery of the 50% lighting material within thirty (30) calendar days or 100% of the lighting material within forty five (45) calendar days.

Article 5. Applications for Payment. Contractor shall submit Application for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be provided in the General Conditions.

Article 6. Progress and Final Payments. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Application for Payment as approved by Engineer. All progress payments will be on the basis of estimated percent of work completed.

- 6.1 Prior to Substantial Completion, progress payments will be in an amount equal to 90% of the Work completed, less, in each case, the aggregate of payments previously made.
- 6.2 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to 98% of the Contract Price.
- 6.3 Upon Final Completion of the Work and settlement of all claims, Owner shall pay the remainder of the Contract Price.

Article 7. Contractor's Representations. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary General Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has correlated the results of all observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

Article 8. Contract Documents. The Contract Documents which comprise the contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consists of the following:

- 8.1 This Agreement
- 8.2 Exhibits to this Agreement
- 8.3 CONTRACTOR's Bid and Bonds
- 8.4 Notice of Award
- 8.5 Instructions to Proposers
- 8.6 Substitution Sheet
- 8.7 Non-Collusion Affidavit
- 8.8 Corporation/Partnership Acknowledgement
- 8.9 Experience Record & List of Equipment
- 8.10 List of Subcontractors
- 8.11 DBE Goal and Assurance Forms
- 8.12 Affidavit of Non-Delinquency of Personal Property Taxes
- 8.13 General Conditions
- 8.14 Supplemental General Conditions
- 8.15 Technical Specifications
- 8.16 Plans or Drawings
- 8.17 Addenda number(s) _____ to _____, inclusive, and
- 8.18 Any modifications, including Change Orders, duly delivered after execution of this Agreement.

Article 9. Miscellaneous.

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 Neither OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and, specifically, CONTRACTOR shall not assign any monies due or to become due without prior written consent of OWNER.
- 9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a duly executed written instrument.

Article 10. Other Provisions. The CONTRACTOR acknowledges that he has not received or relied upon any representations or warranties of any nature whatsoever from the OWNER, its agents or employees, and that his Contract is entered into solely upon the CONTRACTOR's own independent business judgment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

TOLEDO-LUCAS COUNTY
PORT AUTHORITY

(CONTRACTOR)

By: _____

By: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

Attest: _____

Attest: _____

DBE GOAL AND ASSURANCE FORMS

In order to assist bidders in making the required judgment concerning good faith efforts, this guideline lists the efforts that bidders may make in obtaining DBE participation. The entire list is not mandatory, exclusive or exhaustive. Other factors or types of efforts may be relevant. In determining whether a bidder has made good faith efforts, the Port Authority will look at not only the different types of efforts that the bidder has made, but also the quantity and intensity of these efforts.

You may be requested to provide **supporting documentation** that you have made good faith efforts. In attempting to determine whether a bidder may be awarded the contract who has failed to meet DBE participation goals, it must be demonstrated that efforts made to obtain DBE participation were in fact good faith efforts to meet the goals. **Any bid that fails to meet these requirements will be considered non-responsive.**

In order to award a contract to a bidder that has failed to meet the specified DBE participation goals, the Port Authority must be convinced that the bidder's efforts were actively and aggressively pursued. The bidder's good faith efforts could be evaluated by the Port Authority according to the below-listed criteria:

1. Whether the bidder attended any pre-bid meetings that were scheduled by the Port Authority;
2. Whether the bidder advertised in general circulation, trade association, and/or minority-focused media concerning the subcontracting opportunities;
3. Whether the bidder provided written notice to a reasonable number of specific DBE's that their interest in the contract was being solicited, giving the DBE's sufficient time to participate effectively;
4. Whether the bidder followed up on initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's were interested;
5. Whether the bidder selected portions of the work to be performed by DBE's in order to increase the likelihood of meeting the DBE contract goals;
6. Whether the bidder provided the interested DBE's with adequate information about the plans, specifications and requirements of the contract;
7. Whether the bidder negotiated in good faith with interested DBE's, and didn't reject any DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Whether the bidder made efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance required by the Port Authority; and/or
9. Whether the bidder effectively used the services of available minority community organizations; minority contractors groups; local, state and federal minority business assistance offices; and any other organizations that provide assistance in the recruitment and placement of DBE's.

DBE GOAL AND ASSURANCE FORMS

A disadvantaged business enterprise ("DBE") participation goal of fourteen percent (14%) has been established for this project. The undersigned _____ has/have familiarized _____ with the DBE utilization requirements of the contract and do(es) assure that in strict accordance with the Contract Documents, if awarded the contract, _____ will utilize not less than _____% of MBE/WBE participation, and did not limit any firms from submitting proposals to other bidders.

Bidder proposes to meet the minority business enterprise/ women business enterprise (DBE) participation goals for the contract as indicated below. Indicate percentage goals in space provided.

	DBE Contract Percentage Goals
1. As a DBE Contractor	()
2. As a qualified DBE Joint Venture	()
3. Through DBE subcontractor(s)	()

If a bidder is a qualified Joint Venture, it should list in the space provided above the percentage of the ownership and controls of the DBE partner or partners in the Joint Venture.

This assurance is made this _____ day of _____, 20____.

Name of Bidder: _____ (print or type)*
 Business Address: _____

 Signed by: _____
 Signed by: _____
 Signed by: _____
 Attest: _____ (Seal)

And who, under the by-laws of said corporation has the authority to sign this document.

*Insert bidder's name; if a corporation, give the state of incorporation using the phrase "a corporation organized under the laws of"; if a partnership, give the names and addresses of the partners, using also the phrase "co-partners trading and doing business under the firm name and style of".

NOTE: Bidders should not add any conditions or qualifying statements to the certificate as otherwise the Bid may be declared irregular in being not responsive to the Notice to Contractors. The penalty for making false statements in offers is prescribed in 23 U.S.C. 1001.

**DBE GOAL AND ASSURANCE FORMS
LISTING OF DBE SUBCONTRACTORS**

Name of DBE Subcontractor/ Supplier/ Manufacturer Contacted	Date of Contact	Description of Work And Amount of Quote	Accepted or Rejected	Why Rejected

CONTRACTOR'S AFFIDAVIT

(To be submitted with Final Application for Payment)

STATE OF _____)
) SS:
COUNTY OF _____)

The undersigned, _____, hereby represents that on _____, he/it was awarded a contract by the Toledo-Lucas County Port Authority, hereinafter called _____ Owner, to _____, in accordance with the terms and conditions of Contract _____ entitled _____, and the undersigned further represents that the subject work has now been accomplished and the said contract has now been completed.

The undersigned hereby warrants and certifies that all of his/its indebtedness arising by reason of the said contract has been fully paid or satisfactorily secured; and that all claims from subcontractors and others for labor and material used in accomplishing the said project, as well as all other claims arising from the performance of the said contract, have been fully paid or satisfactorily settled. The undersigned further agrees that if any such claim should hereafter arise, he/it shall assume responsibility for the same immediately upon request to do so by the Owner.

The undersigned, for a valuable consideration, the receipt of which is hereby acknowledged, does further hereby waive, release and relinquish any and all claims or right of lien which the undersigned now has or may hereafter acquire upon the subject premises for labor and material used in accomplishing said project owned by the Owner.

This affidavit is freely and voluntarily given with full knowledge of the facts, on this _____ day of _____ A.D. 20_____.

CONTRACTOR

By: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____ A.D. 20_____.

(Notary Public)

(Seal)

My Commission Expires: _____

GENERAL CONDITIONS

ARTICLE I DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

Agreement - The written agreement between the Port Authority and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein. Also referred to as the "Contract".

Application for Payment - The form accepted by the Port Authority which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

Bid - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bonds - Bid, performance, maintenance, and payment bonds and other instruments of security.

Change Order - A document recommended by the Port Authority, which is signed by Contractor and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

Contract Documents --The Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

Contract Price - The moneys payable by Port Authority to Contractor under the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.4.1 in the case of Unit Price Work).

Contract Time - The number of days or the date stated in the Agreement for the completion of the Work.

Contractor - The person, firm or corporation with whom Port Authority has entered into the Agreement.

Defective - An adjective which describes Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Port Authority at Substantial Completion in accordance with paragraph 14.8 or 14.10).

Drawings - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by Engineer and are referred to in the Contract Documents.

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.

Engineer - For these Contract Documents the Engineer shall be the Toledo-Lucas County Port Authority Division of Planning and Engineering.

Field Order - A written order issued by Engineer which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.

General Requirements - Sections of Division 1 of the Specifications.

Laws and Regulations; Laws or Regulations - Laws, rules, regulations, ordinances, codes and/or orders.

Notice of Award - The written notice by Port Authority to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, Port Authority will sign and deliver the Agreement.

Notice to Proceed - A written notice given by Port Authority to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents.

Owner - The Toledo-Lucas County Port Authority.

Partial Utilization - Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

Port Authority - The Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, Ohio.

Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

Resident Project Representative - The authorized representative of the Port Authority who is assigned to the site or any part thereof.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a Supplier and submitted by Contractor to illustrate material or equipment for some portion of the Work.

Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor - An individual, firm or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of the Port Authority, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor.

Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

Unit Price Work - Work to be paid for on the basis of unit prices as set forward in the bid.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

Work Directive Change - A written directive to Contractor, issued on or after the Effective Date of the Agreement and signed by Port Authority, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change 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 Time as provided in paragraph 10.2.

Written Amendment - A written amendment of the Contract Documents, signed by Port Authority and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

ARTICLE II
PRELIMINARY MATTERS

Delivery of Bonds

2.1 When Contractor delivers the executed Agreements to Port Authority, Contractor shall also deliver to Port Authority such Bonds as Contractor may be required to furnish in accordance with paragraph 5.1.

Copies of Documents

2.2 Port Authority shall furnish to Contractor up to four (4) copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Time; Notice to Proceed

2.3 The Contract Time will commence to run on the date indicated in the Notice to Proceed.

Starting the Project

2.4 Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be undertaken prior to the date on which the Contract Time commences to run.

Before Starting Construction

2.5 Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from the Port Authority before proceeding with any Work affected thereby; however, Contractor shall not be liable to Port Authority for failure to report any conflict, error or discrepancy in the Contract Documents, unless Contractor had actual knowledge thereof or should reasonably have known thereof.

2.6 On the Effective Date of the Agreement, Contractor shall submit to the Port Authority's Engineer for review:

- 2.6.1 An estimated progress schedule indicating the starting and completion dates of the various stages of the Work;
- 2.6.2 A preliminary schedule of Shop Drawing submissions; and
- 2.6.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by Contractor at the time of submission.

2.7 Before any Work at the site is started, Contractor shall deliver to Port Authority certificates (and other evidence of insurance requested by Port Authority) which Contractor is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4.

Preconstruction Conference

2.8 Within seven (7) days after the Effective Date of the Agreement, but before Contractor starts the Work at the site, a conference attended by Contractor, Engineer and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

Finalizing Schedules

2.9 At least ten (10) days before submission of the first Application for Payment, a conference attended by Contractor, Engineer and others as appropriate will be held to finalize the schedules submitted in

accordance with paragraph 2.6. The finalized progress schedule will be acceptable to the Port Authority as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve Contractor from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to the Port Authority's Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

ARTICLE III
CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent

- 3.1 The Contract Documents comprise the entire agreement between Port Authority and Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.
- 3.2 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 Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws and Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest 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. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Port Authority or Contractor.
- 3.3 If, during the performance of the Work, Contractor finds a conflict, error or discrepancy in the Contract Documents, Contractor shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Port Authority's Engineer.

Amending and Supplementing Contract Documents

- 3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- 3.4.1 A formal Written Amendment;
 - 3.4.2 A Change Order (pursuant to paragraph 10.4); or
 - 3.4.3 A Work Directive Change (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

- 3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
- 3.5.1 A Field Order (pursuant to paragraph 9.5);
 - 3.5.2 The Port Authority's Engineer's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27); or
 - 3.5.3 The Port Authority's Engineer's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents

- 3.6 Neither Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Port Authority shall 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 the Port Authority; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the Port Authority.

**ARTICLE IV
AVAILABILITY OF LANDS;
PHYSICAL CONDITIONS; REFERENCE POINTS**

Availability of Lands

4.1 Port Authority shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of Contractor.

Physical Conditions

- 4.2.1 Exploration and Reports: Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the Port Authority in preparation of the Contract Documents. Contractor may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for Contractor's purposes, except as indicated in the immediately preceding sentence. Contractor shall have full responsibility with respect to subsurface conditions at the site.
- 4.2.2 Existing Structures: Reference is made to the Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by Engineer in preparation of the Contract Documents. Contractor may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for Contractor's purposes. Except as indicated in the immediately preceding sentence. Contractor shall have full responsibility with respect to physical conditions in or relating to such structures.
- 4.2.3 Report of Differing Conditions: If Contractor believes that:
- 4.2.3.1 Any technical data on which Contractor is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate; or
- 4.2.3.2 Any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents; then:
- Contractor shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify Port Authority in writing about the inaccuracy or difference.
- 4.2.4 Engineer's Review: The Port Authority's Engineer will promptly review the pertinent conditions and determine the necessity of obtaining additional explorations or tests.
- 4.2.5 Possible Document Change: If the Port Authority concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.
- 4.2.6 Possible Price and Time Adjustments: In conjunction with paragraph 4.2.5, an increase or decrease in the Contract Price and/or an extension or shortening of the Contract Time will be allowable to the extent that it is attributable to any such inaccuracy or difference.

Physical Conditions - Underground Facilities

- 4.3.1 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 Port Authority by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 - 4.3.1.1 Port Authority shall not be responsible for the accuracy or completeness of any such information or data; and
 - 4.3.1.2 Contractor shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

- 4.3.2 Not Shown or Indicated: If any Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of, Contractor shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such Underground Facility and give written notice thereof to that owner and to the Port Authority. Engineer will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequence of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which Contractor could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, Contractor may make a claim therefor as provided in Articles 11 and 12.

Reference Points

- 4.4 Port Authority shall provide engineering surveys to establish reference points for construction which in the Port Authority's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of Port Authority. Contractor shall report to Port Authority whenever any reference point 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 by professionally qualified personnel.

ARTICLE V
BONDS AND INSURANCE

Performance and Other Bonds

5.1 Contractor shall furnish performance and payment Bonds, each in an amount equal to 100% of the Contract Price, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These Bonds shall remain in effect for, and will not be released until, at least until one (1) year after the date when final payment becomes due and all of the provisions of the Contract Documents have been otherwise fulfilled, except as otherwise provided by Law or Regulation or by the Contract Documents.

Contractor shall furnish a maintenance and guarantee Bond, each in an amount equal to 50% of the Contract Price. These Bonds shall remain in effect for, and will not be released until, at least until one (1) year after the date when final payment becomes due and all of the provisions of the Contract Documents have been otherwise fulfilled, except as otherwise provided by Law or Regulation or by the Contract Documents.

All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act. Attorneys-in-fact who sign a Bond must file with each Bond a certified and effectively dated copy of their power of attorney.

5.2 If the surety on any Bond furnished by Contractor is declared a 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 5.1, Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which must be acceptable to Port Authority.

Contractor's Liability Insurance

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

- 5.3.1 Claims for benefits under Workers' Compensation and Occupational Disease Acts or similar employee benefit acts;
- 5.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- 5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- 5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of any offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason;
- 5.3.5 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;
- 5.3.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 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.

The insurance required by this paragraph 5.3 shall include the specific coverages and be written for not less than the limits of liability and coverages provided below, or as required by law, whichever is greater:

Employer's Liability Insurance on all employees not covered by a Workers' Compensation Act, for occupational accidents or diseases, with limits of liability of not less than \$2,000,000 for any one accident or disease.

*Comprehensive General or Manufacturers and Contractor's Liability Insurance, including contractual liability insurance and completed operations insurance, with limits of liability of not less than \$2,000,000 each occurrence and \$2,000,000 aggregate for bodily injury including death and personal injury, and \$2,000,000 each occurrence and \$2,000,000 aggregate for property damage. Said insurance shall also include the following coverage:

(a) Property damage liability insurance shall include coverage for liability arising out of explosion, collapse, or underground damage (commonly known as the "XCU" hazards). The XCU exclusions must be deleted for any and all general liability insurance classifications subject to these exclusions.

(b) Property damage liability coverage shall include the broad form property damage endorsement, including completed operations.

(c) Products - Completed operations liability must be maintained during the life of the Agreement and kept in force for at least two (2) years after the work has been completed.

*Automobile and truck liability insurance (including hired cars and non-ownership liability insurance if any automobiles or trucks will be hired by Contractor or if his employees will use their personally-owned vehicles in the business of Contractor) with limits of liability of not less than \$2,000,000 each person and \$2,000,000 each occurrence for bodily injury, including death, and \$2,000,000 each occurrence for property damage.

Fire Insurance with "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief, and any other insurance necessary to cover Contractor's and all Subcontractor's tools, equipment, machinery sheds or other temporary structures, scaffolds and stages, protective fences, or bridges, forms, materials for work stored at the site, and miscellaneous materials and supplies necessary or used for the Work.

*In lieu of the above limits of general liability and automobile liability, an umbrella liability policy with a limit of not less than \$2,000,000 per occurrence in excess of primary (underlying) general and automobile liability insurance shall be acceptable.

All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to Port Authority by certified mail. Policies of Insurance, or duly executed certificates for the same, showing compliance with foregoing requirements and listing the Toledo-Lucas County Port Authority and the City of Toledo as additional insureds, shall be furnished by Contractor when he returns the signed Agreement to the Port Authority; said certificates to be inspected and approved by the Port Authority before the Work is commenced. The certificate of insurance shall also contain a statement as follows: "This certificate of insurance conforms to terms and conditions (including coverage of the indemnity agreement) contained in

the contract between the named insured and the Toledo-Lucas County Port Authority."

All such insurance shall remain in effect until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. In addition, Contractor shall maintain his completed operations insurance for at least one (1) year after final payment and furnish Port Authority with evidence of continuation of such insurance at final payment and one (1) year thereafter.

Maintenance of such insurance and the performance by the Contractor of his obligations under the foregoing paragraphs shall not relieve the Contractor of liability under his indemnity agreement set forth in their Contract Documents. Contractor voluntarily, expressly, and specifically waives its Workers' Compensation employer immunity granted under Section 35, Article II of the Ohio Constitution and all Ohio statutory provisions, including Section 4123.74 of the Ohio Revised Code or any other State's similar statutory or constitutional provisions to the extent necessary to permit the Port Authority to be fully indemnified, defended and held harmless hereunder.

Contractor's policies of insurance required by this Article shall be primary over any existing insurance with the Port Authority shall maintain or carry, and Contractor shall obtain from its insurers an endorsement waiving any other insurance clauses which shall be in conflict with this subparagraph, and evidence of such waiver shall be indicated on all policies furnished to the Port Authority.

Contractual Liability Insurance

5.4 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to Contractor's obligations under paragraphs 6.30 and 6.31.

Title to Materials and Owners Insurance

5.5 All materials furnished by the Contractor pursuant to this Agreement shall become the sole property of the Port Authority upon incorporation thereof in the Work, or if Port Authority is furnishing its own materials or if Port Authority has specifically prepaid for any materials which shall become a part of the Project or Work, then the Port Authority by virtue of having title shall arrange for the necessary Builders Risk or other insurance Port Authority deems necessary. Such insurance to be written for sole benefit of the Port Authority.

If the Port Authority makes payment to Contractor on account of materials delivered and suitably stored at the site, such materials shall become the sole property of the Port Authority upon such payment.

ARTICLE VI
CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence

- 6.1 Contractor shall supervise 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, but Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2 Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Port Authority except under extraordinary circumstances. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of Contractor. All communications given to the superintendent shall be as binding as if given to Contractor.

Labor, Materials and Equipment

- 6.3 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. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without Port Authority's written consent given after prior written notice to the Port Authority.
- 6.4 Unless otherwise specified in the General Requirements, Contractor shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.
- 6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Port Authority, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the Port Authority, its agents or other employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.14 or 9.15.

Adjusting Progress Schedule

- 6.6 Contractor shall submit to the Port Authority's Engineer for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items

- 6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the Port Authority's Engineer if sufficient information is submitted by Contractor to allow Engineer to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by the Port Authority's Engineer will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by Engineer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Port Authority's Engineer in evaluating the proposed substitute. The Port Authority may require Contractor to furnish at Contractor's expense, additional data about the proposed substitute.
- 6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Port Authority's Engineer, if Contractor submits sufficient information to allow the Port Authority's Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by Engineer will be similar to that provided in paragraph 6.7.1 as applied by Engineer and as may be supplemented in the Supplementary General Conditions.
- 6.7.3 The Port Authority's Engineer will be allowed a reasonable time for the review of Contract Documents occasioned thereby. Whether or not the Port Authority accepts a proposed substitute, Contractor shall reimburse the Port Authority for the costs in regard to evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others

- 6.8.1 Contractor shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the Port Authority as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom the Port Authority may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom Contractor has reasonable objection.
- 6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to the Port Authority in advance of the specified date prior to the Effective Date of the Agreement for acceptance by the Port Authority and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, the Port Authority'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 person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case Contractor shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by the Port Authority or any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the Port Authority to reject defective Work.

- 6.9 Contractor shall be fully responsible to the Port Authority for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Port Authority and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Port Authority to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 6.10 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.
- 6.11 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Port Authority. In the event of loss, Contractor shall pay each Subcontractor a just share of any insurance moneys received by Contractor on account of losses under any policies issued.

Patent Fees and Royalties

- 6.12 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 the Port Authority 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 the Port Authority in the Contract Documents. Contractor shall indemnify and hold harmless the Port Authority and anyone directly or indirectly employed by either of them, as well as Port Authority officers, directors, or agents, from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of 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, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits

- 6.13 Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. The Port Authority 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. Contractor shall pay all charges of utility owners for connections to the Work.

Laws and Regulations

- 6.14.1 Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, the Port Authority shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- 6.14.2 If Contractor observes that the Specifications and Drawings are at variance with any Laws or Regulations, Contractor shall give the Port Authority prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If Contractor performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to the Port Authority's Engineer, Contractor shall bear all costs arising therefrom; however, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

Taxes

- 6.15 The Port Authority is tax exempt.

Use of Premises

- 6.16 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises 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 land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Port Authority by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold the Port Authority, its officers, directors, agents, representatives, and those employed by it directly or indirectly, harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the Port Authority to the extent based on a claim arising out of Contractor's performance of the Work.
- 6.17 During the progress of the Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Port Authority. Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.
- 6.18 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.

Record Documents

- 6.19 Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to the Port Authority for reference. Upon Completion of the Work, these record documents, samples and Shop Drawings will be delivered to the Port Authority's Engineer.

Safety and Protection

- 6.20 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 6.20.1 All employees on the Work site and other persons and organizations who may be affected thereby;
 - 6.20.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - 6.20.3 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. Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property and to protect them 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 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. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish 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 the Port Authority or anyone employed by the Port Authority or anyone for whose acts the Port Authority may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor). Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Port Authority has issued a notice in accordance with paragraph 14.11 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- 6.21 Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be Contractor's superintendent unless otherwise designated in writing by Contractor to the Port Authority.

Emergencies

- 6.22 In emergencies affecting the safety or protection of persons, the Work, or property at the site or adjacent thereto, Contractor, without special instruction or authorization from the Port Authority, is obligated to act to prevent threatened damage, injury or loss.

Contractor shall give the Port Authority's Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Port Authority's Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Shop Drawings and Samples

- 6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, Contractor shall submit to the Port Authority's Engineer for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary Conditions, five (5) copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Port Authority's Engineer to review the information as required.
- 6.24 Contractor shall also submit to the Port Authority's Engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, and pertinent data such as catalog numbers and the intended use.
- 6.24.1 Before submission of each Shop Drawing or sample, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 6.24.2 At the time of each submission, Contractor shall give Port Authority's Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Port Authority for review and approval of each such variation.
- 6.25 The Port Authority's Engineer will review and approve with reasonable promptness Shop Drawings and samples, but the Port Authority's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required 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. Contractor shall make corrections required by the Port Authority's 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 the Port Authority's Engineer on previous submittals.
- 6.26 The Port Authority's Engineer's review and approval of Shop Drawings or samples shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Document unless Contractor has in writing called the Port Authority's Engineer's attention to each such variation at the time of submission as required by paragraph 6.24.2 and the Port Authority's Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by the Port Authority's Engineer relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.24.1.
- 6.27 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Port Authority's Engineer's review and approval of the pertinent submission will be the sole expense and responsibility of Contractor.
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Continuing the Work

6.28 Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with Port Authority. No Work shall be delayed or postponed pending resolution of any disputes or disagreements.

Indemnification

6.29 To the fullest extent permitted by Laws and Regulations, Contractor shall protect, indemnify, defend, save and hold harmless the Port Authority and its directors, officers, representatives, agents and employees from and against all liability, claims, damages, awards, judgments and decrees, and from and against all losses, costs and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) of whatever nature arising out of or resulting from the performance of the Work, provided that any such liability, claim, damage, award, judgment, decree, loss, cost or expense (a) is attributable to bodily injury, sickness, disease or death, or to damage to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom of others and of the parties hereto, their officers, directors, agents and employees and (b) is caused in whole or in part by any negligent act or omission of Contractor or Contractor's officers, agents, or employees, or of any Subcontractor or Subcontractor's officers, agents, or employees, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.30 In any and all claims against the Port Authority or any of their directors, officers, representatives, agents or employees by any employee of Contractor, any Subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.29 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 or other person or organization under workers' or Workers' compensation acts, disability benefit acts or other employee benefit acts. Contractor voluntarily, expressly, and specifically waives its Workers' Compensation employer immunity granted under Section 35, Article II of the Ohio Constitution and all Ohio statutory provisions, including Section 4123.74 of the Ohio Revised Code or any other State's similar statutory or constitutional provisions to the extent necessary to permit the Port Authority to be fully indemnified, defended and held harmless hereunder.

6.31 The obligations of Contractor under paragraphs 6.29 and 6.30 shall not extend to the liability of the Port Authority's directors, officers, representatives, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications by the Port Authority or its Engineer.

Non-Discrimination

6.32 The Contractor or Subcontractor shall not discriminate on the basis of race, creed, color, national origin, sex, age or handicap in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Port Authority deems appropriate.

6.33 The Contractor shall assure that the obligations of paragraph 6.32 are contained in every sub-contract pertaining to the Work to which the Contractor is a party.

ARTICLE VII
OTHER WORK

Related Work at Site

- 7.1 The Port Authority may perform other work related to the Project at the site by Port Authority's own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim therefore as provided in Articles 11 and 12.
- 7.2 Contractor shall afford each utility owner and other contractor who is a party to such a direct contract proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their 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 the Port Authority and such utility owners and other contractors.
- 7.3 If any part of Contractor's Work depends for proper execution or results upon the work of any such other contractor or utility owner, Contractor shall inspect and promptly report to the Port Authority's Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to so report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

Coordination

- 7.4 If the Port Authority contracts with others for the performance of other work on the Project at the site, the person or organization who will have the authority and responsibility for coordination of the activities among the various prime contracts will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, the Port Authority shall have authority and responsibility in respect of such coordination.

ARTICLE VIII
PORT AUTHORITY'S RESPONSIBILITIES

- 8.1 The Port Authority or its Engineer shall issue all communications to Contractor.
- 8.2 The Port Authority shall furnish the data required of Port Authority under the Contract Documents promptly and shall make payments to Contractor promptly after they are due as provided in paragraphs 14.4 and 14.13.
- 8.3 Port Authority's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to Port Authority's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized in preparing the Drawings and Specifications.
- 8.4 Port Authority is obligated to execute Change Orders as indicated in paragraph 10.4.
- 8.5 Port Authority's and Contractor's responsibility in respect of certain inspections, tests and approvals are set forth in paragraph 13.4.
- 8.6 In connection with Port Authority's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with Port Authority's right to terminate services of Contractor under certain circumstances.

ARTICLE IX
ENGINEER'S STATUS DURING CONSTRUCTION

Port Authority's Representative

9.1 The Port Authority will appoint a representative during the construction period. The duties and responsibilities, and the limitations of authority of Port Authority's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the Port Authority.

Visits to Site

9.2 Port Authority's representative will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Port Authority will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Port Authority's efforts will be directed toward providing for the Port Authority a greater degree of confidence that the completed Work will conform to the Contract Documents.

Project Representation

9.3 The Port Authority will furnish a Resident Project Representative to assist in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

Clarifications and Interpretations

9.4 Port Authority will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Port Authority may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If Contractor believes that a written clarification or interpretation justified an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, Contractor may make a claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work

9.5 Port Authority 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 Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on Port Authority, and also on Contractor, who shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided in Article 11 or Article 12.

Rejecting Defective Work

9.6 Port Authority will have authority to disapprove or reject work which Port Authority believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments

9.7 In connection with Port Authority's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.31, inclusive.

9.8 In connection with Port Authority's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9 In connection with Port Authority's responsibilities in respect of Applications for Payment, etc., see Article 14.

Determination for Unit Prices

- 9.10 Port Authority will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Port Authority will review with Contractor preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Port Authority's written decisions thereon will be final and binding upon Contractor.

Decisions on Disputes

- 9.11 Port Authority's Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims will also be interpreted by the Port Authority's Engineer.

Limitations on Engineer's Responsibilities

- 9.12 Neither Port Authority's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by Port Authority in good faith either to exercise or not exercise such authority, shall give rise to any duty or responsibility of Port Authority's Engineer to Contractor, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.
- 9.13 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Port Authority as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Port Authority's Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.14 or 9.15.
- 9.14 Port Authority's Engineer will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Port Authority will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 9.15 Port Authority's Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

ARTICLE X
CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement and without notice to any surety, Port Authority may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. 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).
- 10.2 If Port Authority and Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12.
- 10.3 Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.
- 10.4 Port Authority and Contractor shall execute appropriate Change Orders (or Written Amendments) covering:
- 10.4.1 Changes in the Work, which are ordered by Port Authority pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;
- 10.4.2 Changes in the Contract Price or Contract Time which are agreed to by the parties; and
- 10.4.3 Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by Port Authority's Engineer pursuant to paragraph 9.11; 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 the Contract Documents.
- 10.5 If notice 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 Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE XI
CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at his expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the Port Authority promptly (but in no event later than thirty (30) days) after the occurrence giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after such occurrence.
- 11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
- 11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.4.1 through 11.4.3, inclusive).
- 11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit).
- 11.3.3 On the basis of the Cost of the Work, plus a Contractor's Fee for overhead and profit (see Supplementary General Conditions).

Unit Price Work

- 11.4.1 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 established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. 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 Port Authority in accordance with Paragraph 9.10.
- 11.4.2 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.
- 11.4.3 Where 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 there is no corresponding adjustment with respect to any other item of Work and if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase.

ARTICLE XII
CHANGE OF CONTRACT TIME

- 12.1 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to the Port Authority promptly (but in no event later than thirty (30) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty (60) days after such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Port Authority's Engineer.
- 12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of Contractor if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to acts or neglect by the Port Authority or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.
- 12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

ARTICLE XIII
WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

Warranty and Guarantee

13.1 Contractor warrants and guarantees to the Port Authority and Engineer that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

Access to Work

13.2 The Port Authority representatives, other representatives of the Port Authority, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. Contractor shall provide proper and safe conditions for such access.

Tests and Inspections

13.3 Contractor shall give the Port Authority's Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Port Authority with the required certificates of inspection, testing or approval. Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Port Authority's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the Contractor as part of the Bid.

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the Port Authority.

13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Port Authority, it must, if required by the Port Authority's representative, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given the Port Authority's representative timely notice of the Contractor's intention to cover the same and Port Authority has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by Port Authority nor inspections, tests or approvals by others shall relieve Contractor from Contractor's obligations to perform the Work in accordance with the Contract Documents.

Uncovering Work

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

- 13.9 If Port Authority considers it necessary or advisable that covered Work be observed by the Port Authority or inspected or tested by others, Contractor, at Port Authority's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Port Authority may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and Port Authority shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, Contractor may make a claim therefor as provided in Articles 11 and 12.

Port Authority May Stop the Work

- 13.10 If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, Port Authority may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Port Authority to stop the Work shall not give rise to any duty on the part of the Port Authority to exercise this right for the benefit of Contractor or any other party.

Correction or Removal of Defective Work

- 13.11 If required by Port Authority, Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Port Authority, remove it from the site and replace it with non-defective Work. Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective work) made necessary thereby. Port Authority shall further be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Port Authority may make a claim therefor as provided in Article 11. Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by Port Authority of Port Authority's rights and remedies hereunder.

One Year Correction Period

- 13.12 If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or 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, Contractor shall promptly, without cost to Port Authority and in accordance with Port Authority's written instructions, either correct such defective Work, or, if it has been rejected by Port Authority, remove it from the site and replace it with non-defective Work. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Port Authority may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. 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 or by Written Amendment.

Acceptance of Defective Work

13.13 If, instead of requiring correction or removal and replacement of defective Work, Port Authority prefers to accept it, Port Authority may do so. Contractor shall bear all direct, indirect and consequential costs attributable to Port Authority's evaluation of and determination to accept such defective Work (such costs to be approved as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Port Authority'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 Port Authority shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Port Authority may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Port Authority.

Correction of Defective Work

13.14 If Contractor fails within a reasonable time after written notice of the Port Authority to proceed to correct defective Work or to remove and replace rejected Work as required by Port Authority in accordance with paragraph 13.11, 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, Port Authority may, after seven (7) days written notice to Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph Port Authority shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, Port Authority 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 and incorporate in the Work all materials and equipment stored at the site or for which Port Authority has paid Contractor but which are stored elsewhere. Contractor shall allow Port Authority, Port Authority's representatives, agents and employees such access to the site as may be necessary to enable Port Authority to exercise the rights and remedies under this paragraph. All direct, indirect, and consequential costs of Port Authority in exercising such rights and remedies will be charged against Contractor in an amount approved as to reasonableness by Port Authority, and a Change Order will be issued incorporating the necessary revisions in the Contract.

ARTICLE XIV
PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values

14.1 Unit Prices shall be the basis of payment or based on the lump sum price on Work progress.

Application for Progress Payment

14.2 At least five (5) days before each progress payment is scheduled (but not more often than once a month), Contractor shall submit to Port Authority 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.

Contractor's Warranty of Title

14.3 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 Port Authority no later than the time of payment, free and clear of all Liens.

Review of Applications for Progress Payment

14.4 Port Authority's recommendation of any payment requested in an Application for Payment will constitute a representation based on on-site observations of the Work in progress and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Port Authority's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended.

14.5 Port Authority's recommendation of final payment will constitute that the conditions precedent to Contractor's being entitled to final payment as set forth in paragraphs 14.12 and 14.13 have been fulfilled.

14.6 Port Authority may refuse the whole or any part of any payment if, in its opinion, it would be incorrect to make such representations. The Port Authority may also refuse any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary to protect it from loss because:

14.6.1 The Work is defective, or completed Work has been damaged requiring correction or replacement;

14.6.2 The Contract Price has been reduced by Written Amendment or Change Order; or

14.6.3 The Port Authority's Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9, inclusive.

Port Authority may refuse to make payment of the full amount because claims have been made against Port Authority on account of Contractor's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling Port Authority to a set-off against the amount recommended, but Port Authority must give Contractor immediate written notice stating the reasons for such action.

Substantial Completion

- 14.7 When Contractor considers the entire Work ready for its intended use, Contractor shall notify Port Authority in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Port Authority issue a certificate of Substantial Completion. Within a reasonable time thereafter, Port Authority, Contractor and Engineer shall make an inspection of the Work to determine the status of completion. If Port Authority does not consider the Work substantially complete, Port Authority will notify Contractor in writing, giving the reasons therefore. If Port Authority considers the Work substantially complete, Port Authority will prepare and deliver 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.
- 14.8 Port Authority shall have the right to exclude Contractor from the Work after the date of Substantial Completion, but Port Authority shall allow Contractor reasonable access to complete or correct items on the tentative list.

Partial Utilization

- 14.9 Use by Port Authority of any finished part of the Work, which has specifically been identified in the Contract Documents, or which Port Authority and Contractor agree constitutes a separately functioning and useable part of the Work that can be used by Port Authority without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
- 14.9.1 Port Authority at any time may request Contractor in writing to permit Port Authority to use any such part of the Work which Port Authority believes to be ready for its intended use and substantially complete. If Contractor agrees, Contractor will certify to Port Authority that said part of the Work is substantially complete and request Port Authority to issue a certificate of Substantial Completion for that part of the Work. Contractor at any time may notify Port Authority in writing that contractor considers any such part of the Work ready for its intended use and substantially complete and request Port Authority to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Port Authority and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Port Authority considers that part of the Work to be substantially complete, the provisions of paragraphs 14.7 and 14.8 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.
- 14.9.2 Port Authority may at any time request Contractor in writing to permit Port Authority to take over operation of any such part of the Work although it is not substantially complete. The Port Authority will make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If Contractor does not object in writing to Port Authority that such part of the Work is not ready for separate operation by Port Authority, Port Authority will finalize a list of items to be completed or corrected and will deliver such list to Contractor together with a written recommendation as to the division of responsibilities pending final payment between Port Authority and Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon Port Authority and Contractor at the time when Port Authority takes over such operation. During such operation and prior to Substantial Completion of such part of the Work, Port Authority shall allow Contractor reasonable access to complete or correct items on said list and to complete other related Work.
- 14.9.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with Article V Bonds and Insurance.

Final Inspection

- 14.10 Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Port Authority will make a final inspection with 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 remedy such deficiencies.

Final Application for Payment

- 14.11 After Contractor has completed all such corrections to the satisfaction of Port Authority and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents - all as required by the Contract Documents, and after Port Authority has indicated that the Work is acceptable (subject to the provisions of paragraph 14.15), Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with any legally effective waivers (satisfactory to Port Authority) of all Liens arising out of or filed in connection with the Work.

Final Payment and Acceptance

- 14.12 If, on the basis of Port Authority's Engineer's observation of the Work during construction and final inspection, and Port Authority's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, Port Authority is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, the parties will proceed with final payment procedures.
- 14.13 If, through no fault of Contractor, final completion of the Work is significantly delayed and if Port Authority so confirms, Port Authority shall, upon receipt of Contractor's final Application for Payment and recommendation of Port Authority's Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Port Authority 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 5.1, 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 Port Authority 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.

Contractor's Continuing Obligation

- 14.14 Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendations of any progress or final payment by Port Authority, nor any payment by Port Authority to Contractor under the Contract Documents, nor any use or occupancy of the Work or any part thereof by Port Authority, nor any act of acceptance by Port Authority, nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Port Authority, nor any correction of defective Work by Port Authority will constitute an acceptance of Work not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.15).
- 14.15 The making and acceptance of final payment will constitute a waiver of all claims by Contractor against Port Authority other than those previously made in writing and still unsettled.

Contractor's Payments to Subcontractors

14.16 The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its contract no later than fourteen (14) days from the receipt of each payment the Contractor receives from the Port Authority. The Contractor agrees further to return retainage payments to each Subcontractor within fourteen (14) days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the Port Authority. This clause applies to both DBE and non-DBE Subcontractors.

ARTICLE XV
SUSPENSION OF WORK AND TERMINATION

Port Authority May Suspend Work

15.1 Port Authority may at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to Contractor which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if Contractor makes an approved claim therefore as provided in Articles 11 and 12.

Port Authority May Terminate

15.2 Upon the occurrence of any one or more of the following events:

- 15.2.1 If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
- 15.2.2 If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
- 15.2.3 If Contractor makes a general assignment for the benefit of creditors;
- 15.2.4 If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
- 15.2.5 If Contractor admits in writing an inability to pay its debts generally as they become due;
- 15.2.6 If Contractor persistently fails 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 2.9 as revised from time to time);
- 15.2.7 If Contractor disregards Laws or Regulations of any public body having jurisdiction;
- 15.2.8 If Contractor disregards the authority of the Port Authority; or
- 15.2.9 If Contractor otherwise violates in any substantial way any provisions of the Contract Documents;

Port Authority may, after giving Contractor (and the surety, if there is one) seven (7) days written notice and to the extent permitted by Laws and Regulations, terminate the services of Contractor, 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), incorporate in the Work all materials and equipment stored at the site or for which Port Authority has paid Contractor but which are stored elsewhere, and finish the Work as Port Authority may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Port Authority. Such costs incurred by Port Authority will be approved as to reasonableness by Port Authority's Engineer and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, Port Authority shall not be required to obtain the lowest price for the Work performed.

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

ARTICLE XVI
Selection of Lowest Responsive AND Responsible Bidder

RESOLUTION NO. 68-00

**Establishing Criteria for Determining Lowest
Responsive and Responsible Bidders**

WHEREAS, the Toledo-Lucas County Port Authority (the "Port Authority") is required by Ohio R.C. 84582.12 to award contracts for the creation, construction, alteration, or repair of any port authority facility which exceeds \$25,000 to the lowest responsive and responsible bidder in accordance with the requirements of that provision and others referred to therein; and

WHEREAS, the Port Authority must comply with federal procurement and bidding processes with respect to various airport-related and other projects involving the use of federal funds; and

WHEREAS, the Port Authority has, based on its experience, determined that selection of the lowest responsive and responsible bidder requires consideration of a number of factors in addition to the dollars amount of the bid, so that the goals of quality workmanship, and effective workforce, efficient operations, timely completion of the project, and site safety are achieved; and

WHEREAS, the Port Authority believes that prospective contractors will be assisted in responding to Port Authority invitations for bids if those additional factors in determining the lowest responsive and responsible bidders are identified;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Toledo-Lucas County Port Authority:

1. That in addition to price, the Port Authority shall consider, among other factors, the following factors in determining whether a bidder on a contract is responsible:
 - a.) The bidder's experience on projects of the nature for which bids are solicited;
 - b.) The bidder's financial condition;
 - c.) The bidder's conduct and performance on previous contracts;
 - d.) The bidder's facilities and management skills;
 - e.) The bidder's ability to execute the contract properly.

2. That, in addition to price, the Port Authority has determined the following factors to also be significant in determining whether a bidder is responsible:
 - a.) The continuity of the bidder's work force;
 - b.) The bidder's participation in the Department of Labor, Bureau of Apprenticeship and Training approved programs for skilled trades;
 - c.) The diversity of the bidder's work force;

- d.) The bidder's familiarity with the project;
 - e.) The bidder's provision of a health plan, retirement plan, and regulatory safety compliance plan for its employees;
 - f.) The number of years the bidder has been in business;
 - g.) The bidder's history with respect to costs, compliance with deadlines, timely responses to "punch lists" items and site cleanup, bonding experience, and timely filing of maintenance bonds;
 - h.) The geographic location from which the bidder's work force is generally drawn;
 - i.) The bidder's compliance with unemployment, workers' compensation, fair labor standards, prevailing wage, and taxation laws, regulations, and requirements.
3. On contracts for the creation, construction, alteration or repair of any port authority facilities which exceed \$25,000.00 and which are not governed by federal procurement and bidding processes, the Port Authority staff will determine the lowest responsive and responsible bidder. In addition to cost, it will consider the items listed in item (1), and may consider the items listed in item (2), in making such factors. Bidders are encouraged to review these factors prior to submitting bids, and to review these factors with subcontractors as well. The consideration of these factors shall not, however, limit the discretion of the Port Authority or its staff with respect to making a lowest responsive and responsible bid evaluation and/or the awarding of contracts.
 4. These factors will not apply to companies which engage their own contractors for their own construction projects and have a financing or economic development relationship with the Port Authority.
 5. The Port Authority staff is instructed to advise all bidders of the existence and terms of the resolution as part of all bid specification packages.