

OHIO SUPPLEMENTAL TERMS AND CONDITIONS

VERSION 1.0, REVISED JULY 1, 2018

1. REVISIONS TO THE STANDARD TERMS AND CONDITIONS.

1.1 Replace *Section 3.4 Time for Payment* of the *Standard Terms and Conditions* in its entirety with the following:

“3.4 Partial payments for satisfactory performance, subject to withholdings or off-sets as provided herein, shall be due within seven (7) days following receipt of payment from the Owner by Contractor. No partial payment made under this Subcontract Agreement shall be considered an acceptance of the Work, in whole or in part, and Subcontractor agrees that Contractor’s receipt of payment from the Owner is a condition precedent to Subcontractor’s right to payment from Contractor. Subcontractor further agrees and acknowledges that it is not entitled to receive any payments for work performed in the event that Contractor is not paid by the Owner for such work; it is relying solely on the credit of the Owner, not the Contractor, in entering into this Subcontract; and that payment from the Owner to Contractor is the sole and exclusive source of funding from which the Subcontractor shall be paid.”

1.2 Replace *Section 3.8 Final Payment* of the *Standard Terms and Conditions* in its entirety with the following:

“3.8 Final payment, subject to withholdings or off-sets permitted hereunder, shall be made after Subcontractor’s work has been completed and approved by the Owner, satisfactory proof of payment of all amounts owed by Subcontractor in connection with the Subcontract Agreement has been provided, and the Work is complete. Receipt of final payment from the Owner shall be a condition precedent to any obligation of Contractor to pay Subcontractor. Subcontractor agrees and acknowledges that it is not entitled to receive final payment in the event that Contractor is not paid by the Owner for such work; it is relying solely on the credit of the Owner, not the Contractor, in entering into this Subcontract; and that payment from the Owner to Contractor is the sole and exclusive source of funding from which the Subcontractor shall be paid.”

2. PROMPT PAYMENT.

The Contractor, notwithstanding the contingent payment clause in the Agreement, will endeavor to make payments to the Subcontractor in accordance with applicable law, including OHIO REV. CODE § 4113.61. Progress payments to the Subcontractor for satisfactory performance of the Agreement work shall be made no later than ten (10) days after receipt by the Contractor of payment from the Owner for the Subcontractor’s work.

3. NONDISCRIMINATION.

The Subcontractor shall comply with applicable law regarding equal employment opportunity, including OHIO REV. CODE § 153.59 and, to the extent applicable, all executive orders issued by the governor of the state of Ohio.

4. PUBLIC WORKS CONTRACTS.

When the Owner is a public body, the following clauses also apply to the Subcontractor’s Work:

4.1 **Drug Free Workplace Requirements.** The Subcontractor shall enroll in and remain in good standing in the drug-free workplace program of the Bureau of Workers' Compensation (the “Bureau”) or a comparable program approved by the Bureau that requires the Subcontractor to do all of the following:

(a) Develop, implement, and provide to all employees a written substance use policy that conveys full and fair disclosure of the Subcontractor’s expectations that no employee be at work with alcohol or drugs in the employee's system, and specifies the consequences for violating the policy.

(b) Conduct drug and alcohol tests on employees in accordance with OHIO REV. CODE § 153.03 and under the following conditions: (i) Prior to an individual's employment or during an employee's probationary period for employment, which shall not exceed one hundred twenty days after the probationary period begins; (ii) At random intervals while an employee provides labor or on-site supervision of labor for a public improvement contract. The Subcontractor shall use the neutral selection procedures required by the United States Department of Transportation to determine which employees to test and when to test those employees; (iii) After an accident at the site where labor is being performed pursuant to a public improvement contract. For purposes of this Article, “accident” has the meaning established in rules the administrator of workers' compensation adopts pursuant to OHIO REV. CODE §§ 4121. & 4123 for the Bureau's drug-free workplace program, as

those rules exist on March 30, 2007; (iv) When the Subcontractor has reasonable suspicion that prior to an accident an employee may be in violation of the employer's written substance use policy. For purposes of this division, "**reasonable suspicion**" has the meaning established in rules the administrator adopts pursuant to OHIO REV. CODE §§ 4121. & 4123 for the Bureau's drug-free workplace program, as those rules exist on March 30, 2007; (v) Prior to an employee returning to a work site to provide labor for a public improvement contract after the employee tested positive for drugs or alcohol, and again after the employee returns to that site to provide labor under that contract, as required by either the Subcontractor, Contractor, or conditions in the contract.

(c) Use the following types of tests when conducting a test on an employee under the conditions described in OHIO REV. CODE §§ 153.03: (i) drug and alcohol testing that uses the federal testing model that the administrator has incorporated into the Bureau's drug-free workplace program; (ii) testing to determine whether the concentration of alcohol on an employee's breath is equal to or in excess of the level specified in division (A)(1)(d) or (h) of section OHIO REV. CODE § 4511.19, which is obtained through an evidentiary breath test conducted by a breath alcohol technician using breath testing equipment that meets standards established by the United States Department of Transportation, or, if such technician and equipment are unavailable, a blood test may be used to determine whether the concentration of alcohol in an employee's blood is equal to or in excess of the level specified in OHIO REV. CODE § 4511.19.

(d) Require all employees to receive at least one hour of training that increases awareness of and attempts to deter substance abuse and supplies information about employee assistance to deal with substance abuse problems, and require all supervisors to receive one additional hour of training in skill building to teach a supervisor how to observe and document employee behavior and intervene when reasonable suspicion exists of substance use;

(e) Require all supervisors and employees to receive the training described in OHIO REV. CODE §§ 153.03 before work for a public improvement contract commences or during the term of a public improvement contract;

(f) Require that the training described in OHIO REV. CODE §§ 153.03 be provided using material prepared by an individual who has credentials or experience in substance abuse training;

(g) Assist employees by providing, at a minimum, a list of community resources from which an employee may obtain help with substance abuse problems, except that this requirement does not preclude an employer from having a policy that allows an employer to terminate an employee's employment the first time the employee tests positive for drugs or alcohol or if an employee refuses to be tested for drugs, alcohol, or both.

The Subcontractors shall ensure its Lower Tier Subcontractors are enrolled in and remain in good standing in the Bureau's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in OHIO REV. CODE § 153.03 prior to any Lower Tier Subcontractor providing labor at the project site of the public improvement.

5. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.

Each and every provision of laws and clauses required by law to be inserted in this Subcontract Agreement and will be deemed to be inserted herein and incorporated by reference. The Subcontract Agreement will be read and enforced as though it were included and if—through mistake or otherwise—any such provision is not inserted or not correctly inserted, then upon the application of other party the Subcontract Agreement will be amended to make such insertion.