

TO: Board of Commissioners

FROM: Rob Sperl, Director of Parks & Planning
Steve Hinchee, Superintendent of Planning

THROUGH: Michael Benard, Executive Director

RE: Kelly Park Bridge Replacement

DATE: October 28, 2019



SUMMARY:

During bridge inspections performed by the engineering firm Rempe Sharpe this fall it was determined that the 27 year-old Kelly Park bridge has the following issues:

- The timber deck is in poor condition with the majority of planks being rotten or split.*
- The superstructure is in poor condition. There is a 6 in crack in one of the stringers.
- There is an issue with the load bearing position in that the superstructure is not seated directly on the concrete pier.
- The timber lagging on the east side is rotting and failing.

Rempe Sharpe is recommending that we replace the bridge.

The manufacturer of the existing bridge, Contech has quoted a price of \$24,727 for a replacement in kind. The necessary engineering work has already been completed as part of the bridge inspection work. This is the same type of bridge that we have throughout the park district. Other locations have been inspected and are in good shape at this time.

**Note – staff has replaced the rotten planks and the engineer states that the bridge is still safe for pedestrian traffic this year. This bridge is too narrow for any vehicular traffic and is not used as such.*

PREVIOUS COMMITTEE/BOARD ACTION:

A contract with Rempe Sharp was approved at the June 19, 2019 board meeting.

REVENUE OR FUNDING IMPLICATIONS:

Capital Projects	40-800-820-57-5701-0000	\$35,000
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STAKEHOLDER PROCESS:

N/A

LEGAL REVIEW:

N/A

ATTACHMENTS:

Bridge inspection report from Lochner the engineering firm.
Quote from Contech bridges

ALTERNATIVES:

Issuing a bid for replacement bridges is estimated to be significantly higher in overall cost. The engineer performing the bridge inspections estimates there would be at least another \$10,000 in engineering costs to purchase a bridge from another manufacturer. Additionally, if a bridge from a different manufacturer were installed it would require extensive stormwater permitting and additional costs with the county.

RECOMMENDATION:

It is recommended that the Wheaton Park District Board of Commissioner's approve the purchase of a Contech replacement bridge in the amount of \$24,727.00.

Kelly Park Bridge



Bridge Inspection Report

July 17, 2019

Prepared by:

LOCHNER

Brad L. J. Noack, P.E., S.E. – Team Leader

Prepared for:



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BRIDGE INSPECTION REPORT

PARK: KELLY PARK
BRIDGE NAME: Kelly Park Bridge
LOCATION: Wheaton, IL

Construction / Reconstruction / Repair History:

- This structure is a single span weathering steel pony truss (by Continental Bridge) supported on reinforced concrete shafts.
- It was originally constructed in 1992 and no major rehabilitation has been undertaken. The structure spans approximately 41 feet over Spring Brook No. 1, a tributary of West Branch DuPage River.

III. Structure Condition Data.

The structure was inspected on July 17, 2019.

Deck: The timber deck is in POOR condition. The deck is rated a 4 as majority of planks are rotted or split.

Superstructure: The superstructure is in POOR condition. The beams are rated a 4 based on the presence of 6" long crack in Stringer 2, from north (near west end of bridge).

Substructure: The substructure is in POOR condition. The substructure is rated a 4 due to bearing position, which is not seated directly on concrete shaft. Moreover, timber lagging is rotted and failing at the east end of the bridge.

Bridge Railing Adequacy: The bridge railing meets AASHTO criteria. The bridge railing is rated an 8 due to the presence of no significant defects.

IV. Discussion and Recommendation Scope of Work:

Due to the substructure condition rating of 4 (POOR), the recommended inspection cycle is 12 months.

Based on the existing structure condition, the following maintenance repairs are recommended:

- Replace prefabricated steel truss superstructure.
- Retrofit concrete shafts with reinforced concrete corbels to support new truss bearings.
- Replace timber lagging earth retention system at east end of bridge.

STRUCTURE INVENTORY AND APPRAISAL INSPECTION FORM		
Wheaton Park District		
Kelly Park Bridge	B. Noack	7/17/2019
Bridge Name	Inspector Name	Inspection Date
Identification		
Park Kelly Park	Latitude (16) 41.853	Longitude (17) -88.107
Age and Service		
Year Built (27) 1992	Type of Service On (42A) Pedestrian Exclusively	Type of Service Under (42B) Waterway
Original/Repair Plans in Bridge File? None	Vehicular Design Load or Desired Capacity 5 Ton Vehicle	Last Load Rating Date (66C) N/A
Pedestrian Capacity/Desired Capacity Unknown	Equestrian Capacity/Desired Capacity Unknown	Vehicular Capacity/Desired Capacity Unknown
Geometric Data		
Total Structure Length (49) 41.0	Width Out to Out (52) 6.7	Deck Area (Sq. Ft.) 280
Length of Maximum Span (48) 39.5	Clear Deck Width (51) 5.5	Skew (34) 0
Bridge Railing Height (in.) 42	Bridge Railing Max. Vertical Opening (in.) 4	
Structure Type and Material		
Number of Spans (45) 1	Super Material & Design Type (43A/B) Cor-ten Steel Truss	Fracture Critical Bridge Type (92A1) Flrbeams/Truss Tension Members
Sub Material & Design Type (60A/B) Reinforced Conc. Shafts	Deck Type (107) Timber	Wearing Surface (108A) None
Inspector's Appraisals (NBI ratings per IDOT Structure Information and Procedure Manual, as applicable) idot.illinois.gov/assets/uploads/files/transportation-system/manuals-guides-&-handbooks/highways/isis_manual_internet.pdf		
Deck Condition (58)		
Prev	Comments	
New 4	Comments	Majority of planks are rotted or split necessitating replacement of entire deck
Superstructure Condition (59)		
Prev	Comments	
New 4	Comments	6" long. crack in Stringer 2 (counting from north) near west end of bridge
Substructure Condition (60)		
Prev	Comments	
New 4	Comments	Concrete shafts not positioned under bearings; timber lagging is rotted/failing
Channel Condition (61)		
Prev	Comments	
New 8	Comments	No significant defects noted
Waterway Adequacy (71)		
Prev	Comments	
New 9	Comments	Deck and approaches above flood elevation
Bridge Railing Adequacy (36A-modified)		
Prev	Comments	
New 8	Comments	Meets AASHTO criteria; no significant defects noted
Recommended Inspection Frequency		Access Equipment/Notes
12 months		Waders are required
Historical Significance	Historical Rating	1
None		
Essentiality for Public = 8		Sufficiency Rating = 53
Maintenance/Repair Recommendations		
Replace prefabricated steel truss superstructure		
Replace timber lagging earth retention system at each end of bridge		
Retrofit concrete shafts with reinforced concrete corbels to support new truss bearings		

Kelly Park Bridge



PHOTO 3

WEST APPROACH LOOKING EAST



PHOTO 4

EAST APPROACH LOOKING WEST

Kelly Park Bridge

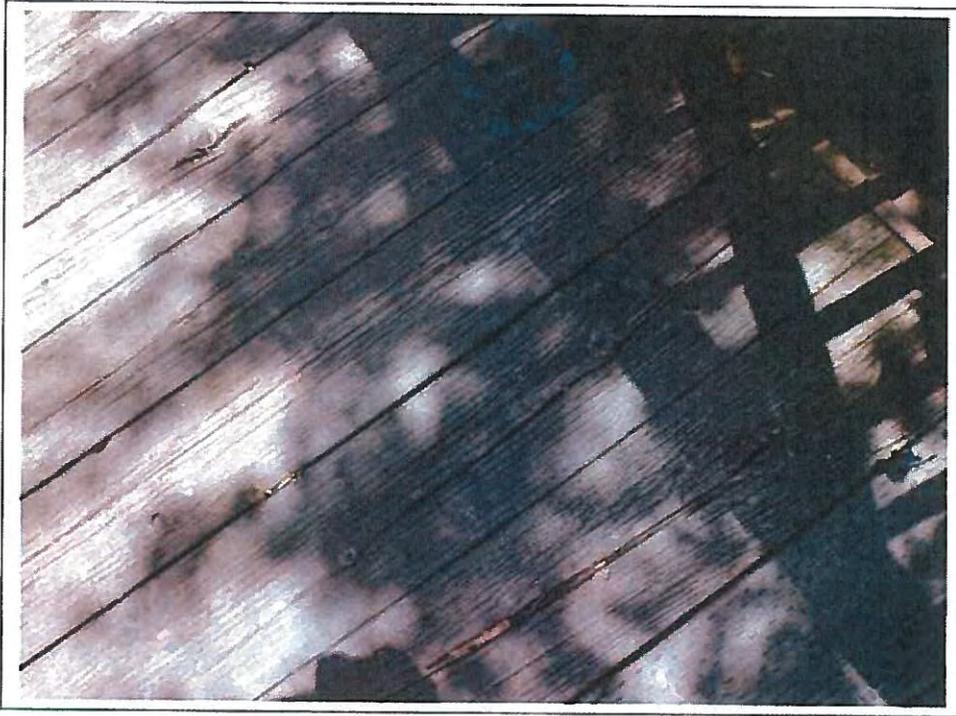


PHOTO 5 TYPICAL DECK CONDITION, MANY PLANKS SPLIT/ ROTTED

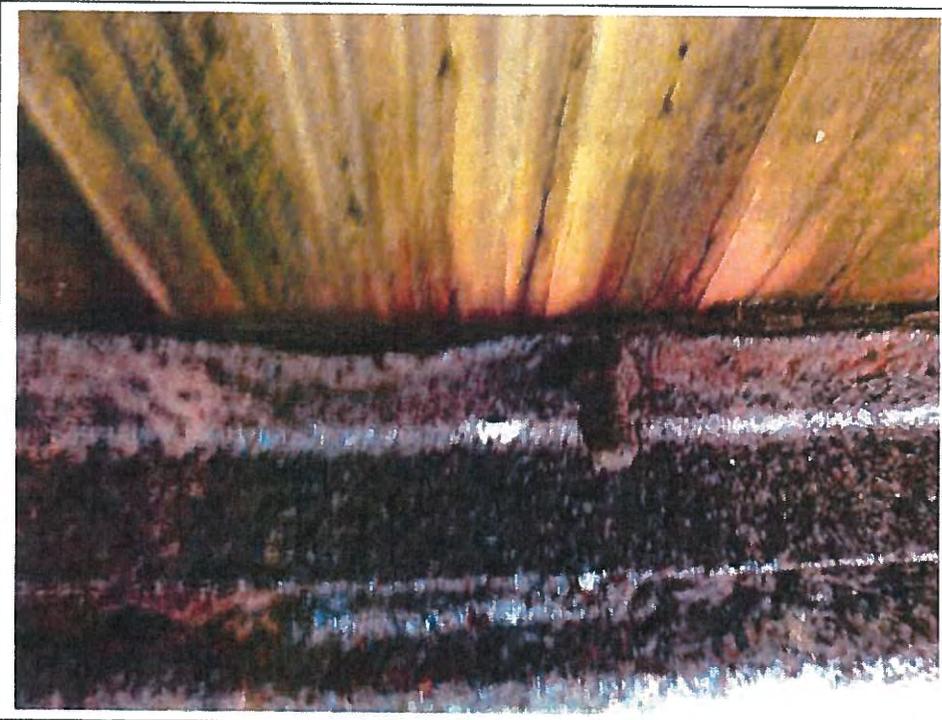


PHOTO 6 SEVERE CORROSION CONDITION AT DECK SUPPORT ANGLES

Kelly Park Bridge



PHOTO 7 UNDERSIDE OF SUPERSTRUCTURE, TYPICAL CONDITION



PHOTO 8 APPROXIMATELY 6 INCH. CRACK ALONG STEEL STRINGER

Kelly Park Bridge



PHOTO 9 TYPICAL FLOOR BEAM, OPEN END DETAIL WITH UPTO 10% SECTION LOSS

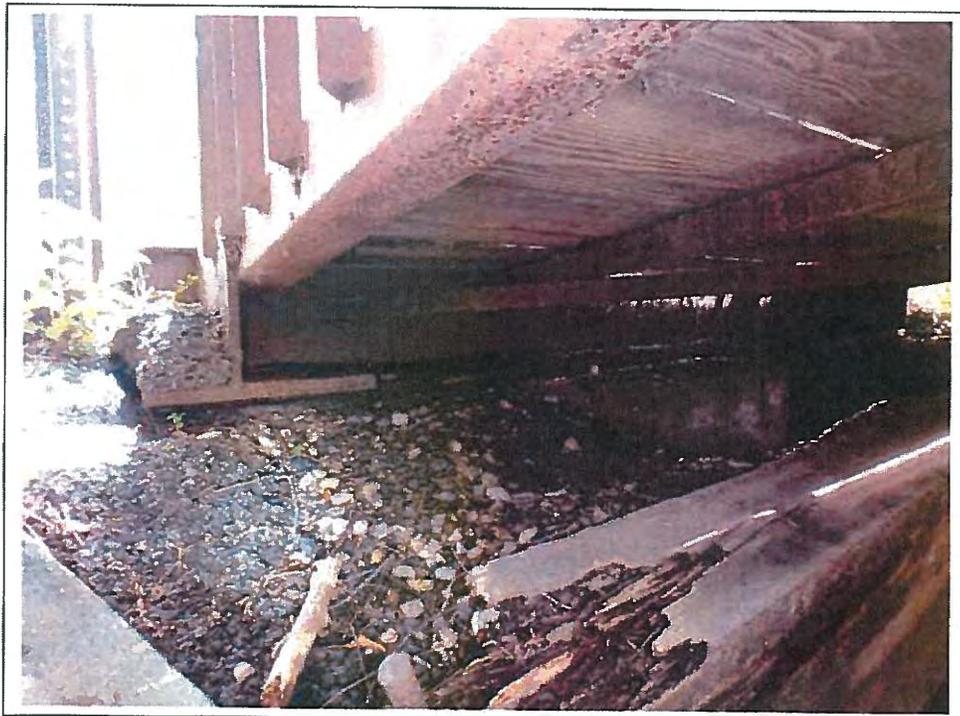


PHOTO 10 E. ABUT. CONCRETE SHAFT, APPROXIMATELY 2FT. FROM BEARING

Kelly Park Bridge



PHOTO 11 ROTTEN AND FAILING TIMBER CRIBBING AT EAST ABUTMENT



PHOTO 12 UNSUPPORTED BEARING AT WEST ABUTMENT

Kelly Park Bridge



PHOTO 13

BRIDGE RAILING, TYPICAL CONDITION



PHOTO 14

TYPICAL REVETMENT ALONG SLOPEWALL

Quote # QUO-374517-MOW9B0					
Date	9/19/2019	Account Name	Wheaton Park District	Reply-To	
Quote #	QUO-374517-MOW9B0	Contact Name	Wheaton Park District	Contech Rep.	Dennis Brever
		Phone	(630) 510-4973	Address	8301 State Highway 29 N, Alexandria, MN, 56308
Project Name	Kelly Park Pedestrian Bridge Replacement	Fax	(630) 665-8946	Phone	(320) 345-9337
Project #	629692	Email		Fax	
Project City/State	Wheaton, IL			Email	DBrever@conteches.com

Contech's offer to sell the products described in this quotation is expressly conditioned upon Buyer's assent to the Contech Conditions of Sale ("Contech COS") included herewith and/or viewable at www.conteches.com/cos. A valid tax exemption certificate must be issued to Contech or sales tax will be added.

Item #	Description	Pieces	Quantity	Extended Unit Price	Unit	Unit Total
	Continental Pedestrian Bridge Length – 40'-0" Long Width – 6'-0" Wide Style – Connector with underhung floor beam Finish – Self Weathering Steel AASHTO LRFD Design 90 PSF Live Load 6,000 LB Vehicle Load 35 PSF Wind Load Bridge to be designed to accept a nominal 2x10 Treated wood decking Wood decking to be supplied and installed by others on site ¼" x 6" Steel Toe Plate Nominal 5/4x6 IPE Wood Rub Rail Horizontal steel safety rails placed at a 4 inch maximum opening placed on the outside of the truss Supply Two hot dipped Galvanized plate assemblies at the end of the bridge Bridge to be shipped in one section with an approximate lifting weight = +/- 7,600 LBS	1.00	1.00	\$24,727.00	EA	\$24,727.00
Total						\$24,727.00
(Tax not included)						Net Total \$24,727.00

Standard Notes
1.All orders must be shipped within 30 days of manufacture or a storage charge applies equal to a maximum of 5% per month of the selling price of the stored material.
2.Allowable unloading time for delivery trucks is two (2) hours. Demurrage charges of \$75.00 per hour thereafter will be added.
3.Design submittal drawings will be provided, signed and sealed by a Professional Engineer licensed to practice in the State where the project is located.
4.In addition to any other procedures outlined or remedies provided, at the time of order, Contech will request a desired delivery date for the quoted materials from the purchasing customer. After drawing approval and prior to manufacturing Contech may again confirm the requested delivery date with the purchasing customer. If purchasing customer cannot take delivery of finished materials on requested date, and after Contech has manufactured the product(s), Contech will invoice for the total amount of the order with payment due within 30 days. Additionally, Contech may also assess fees in the amount of 10% of the total order for materials that are not shipped within 30 days after the requested delivery date for storage and handling.
5.LRFD Guide Specification for the Design of Pedestrian Bridges - Item 4.2 - Fracture: Fracture Critical Member designation shall be in accordance with Provision 12.3.2 of AASHTO/AWS D1.5M/D1.5:2015 which requires each Fracture Critical Member (FCM) to be individually designated by the Engineer prior to bidding. In the absence of such designation, the Fracture requirements of Item 4.2 shall be deemed to have been waived.
6.Preliminary Assembled ship weight: Approximately +/- 7,600 lbs. subject to final design. Contech will not be liable for any additional construction or installation costs incurred related to a change from a preliminary bid design weight to a final design, regardless of the reason for the change.
7.Prices are f.o.b. origin with freight allowed to the jobsite with unloading by others at a truck accessible location.
8.The estimated lead time for the submittal package is 2-3 weeks from the receipt of a signed purchase document and receipt of the required design documents and project information. Approval review process is in addition to stated timeframes. The estimated manufacturing lead time for this material is 10-12 weeks from the receipt of approved submittal documents.
9.This quotation expires 30 days from the date shown. Prices are firm for shipment within 60 days of the date of quotation and are subject to a maximum escalation of 8% for each 30 days thereafter.

Quote # QUO-374517-M0W9B0

Scope Of Work

Continental Pedestrian

Truss bridge pricing includes the steel truss bridge manufactured in sections sized at the discretion of Contech to facilitate optimum shipments. Sections may require final assembly at the jobsite by others using fasteners supplied by Contech.

The following work is not a part of this offer and is to be performed by others at no cost to Contech:

1. All construction surveying, including field measurement and verification of abutments and anchor bolt placement.
2. Design of the bridge foundations unless otherwise stated herein.
3. Excavation and construction of the bridge foundations.
4. Anchor bolt design, supply, installation or templates.
5. Erection and installation of the bridge structure(s).
6. Touch up painting of any and all surfaces damaged during handling, loading, transport, unloading, rigging, fit up or installation. Touch up paint guidelines are available from Contech.
7. Supply and installation of any expansion joint materials required by the contract.
8. Supply and installation of concrete and reinforcing for bridge deck slab or abutments.
9. Any and all costs associated with special inspection or testing by an independent agency.
10. Bridge approach railing or wing wall rails unless specifically included elsewhere on this proposal.
11. All other associated or appurtenant items not specifically referenced and included elsewhere in this proposal.

PAYMENT TERMS ARE 1/2%-10, NET 30 DAYS FROM DATE OF INVOICE UNLESS MATERIAL IS OTHERWISE NOTED AS NON-STANDARD ABOVE. IF NON-STANDARD, PAYMENT TERMS ARE 1/2% AT ORDER ACCEPTANCE AND PRIOR TO START OF PRODUCTION, 2/3 NET 30 DAYS FROM DATE OF INVOICE. THIS OFFER IS SUBJECT TO CREDIT APPROVAL. PRICES QUOTED APPLY ONLY TO THE REFERENCED PROJECT AND ARE IN EFFECT FOR 30 DAYS FROM THE DATE OF QUOTATION. SELLER RESERVES THE RIGHT TO ADJUST PRICES AFTER 30 DAYS FROM THE DATE OF QUOTATION BUT THE CONTECH COS REMAIN APPLICABLE. PRICES ARE BASED ON ESTIMATED QUANTITIES SHOWN. IF A DIFFERENT QUANTITY IS PURCHASED, CONTECH RESERVES THE RIGHT TO ADJUST THE PRICES. THIS QUOTATION CONTAINS THE ENTIRE AGREEMENT WITH RESPECT TO PURCHASE AND SALE OF PRODUCTS DESCRIBED AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, BUYER'S SIGNATURE BELOW, DIRECTION TO MANUFACTURE, OR ACCEPTANCE OF DELIVERY OF GOODS DESCRIBED ABOVE, SHALL BE DEEMED AN ACCEPTANCE OF THE CONTECH COS. SELLER EXPRESSLY REJECTS ANY OTHER TERMS AND CONDITIONS. PRICES ARE F.O.B. ORIGIN WITH FREIGHT ALLOWED TO THE JOBSITE WITH UNLOADING BY OTHERS AT A TRUCK ACCESSIBLE LOCATION. THIS QUOTATION IS ISSUED BY CONTECH ENGINEERED SOLUTIONS LLC FOR ITSELF AND/OR ON BEHALF OF ONE OR MORE OF ITS SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO KEYSTONE RETAINING WALL SYSTEMS LLC.

<u>Acceptance</u>		<u>Contech Engineered Solutions LLC.</u>	
WE HEREBY ORDER THE DESCRIBED MATERIAL SUBJECT TO ALL TERMS AND CONDITIONS OF THIS QUOTATION AND IN THE Contech COS INCLUDED HEREWITH AND VIEWABLE AT www.conteches.com/cos		By	Dennis Brever
Company		(O)	(320) 345-9337
By		(F)	
Title		(Cell)	
Date		Title	

Quote # QUO-374517-M0W9B0

Contech - CONDITIONS OF SALE

1. ACCEPTANCE. This quotation is an offer to sell to potential customer(s). BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO BUYER'S ASSENT TO THE TERMS AND CONDITIONS PRINTED HEREON AND THE ATTACHED OR ACCOMPANYING QUOTE, AND NO TERMS ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN.

2. LIMITED WARRANTIES. Seller warrants that it can convey good title to the products sold under this contract and that they are free of liens and encumbrances. Seller also warrants that the products sold under this contract are substantially free from defects in material and workmanship for a period of one year after the date of delivery. There are no express or implied warranties with respect to products sold hereunder which are misused, abused or used in conjunction with mechanical equipment improperly designed, used or maintained, or which are used, supplied for use or made available for use in any nuclear application of which Seller has not been notified in writing by Buyer at the time of order for the products sold hereunder. SELLER MAKES NO OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE ARE DISCLAIMED BY SELLER AND EXCLUDED FROM THIS CONTRACT.

3. LIMITATION OF BUYERS REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to the obligation to repair or replace only those products proven to have been defective in material or workmanship at the time of delivery, or allow credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any product or service sold or required to be sold under this contract shall NOT in any case exceed the purchase price paid by Buyer for such products or services. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER BUYERS CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE. IT IS EXPRESSLY AGREED THAT BUYERS REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYERS SOLE AND EXCLUSIVE REMEDIES.

4. LIMITATION OF BUYERS REMEDIES AND SELLER'S LIABILITY FOR FAILURE OR DELAY IN DELIVERY. NO DELIVERY DATES ARE GUARANTEED BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY SHALL BE LIMITED AS SET FORTH IN PARAGRAPH 3 OF THIS CONTRACT

5. FORCE MAJEURE. In any event and in addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is (i) due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law, local labor shortage, fire, flood or other casualty, governmental regulation or requirement, shortage or failure or raw material, supply, fuel, power or transportation, breakdown of equipment, or any cause beyond Seller's reasonable control whether of similar or dissimilar nature to those above enumerated, or (ii) due to any strike, labor dispute, or difference with workers, regardless of whether or not Seller is capable of settling any such labor problem.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OR WARRANTIES AND REMEDIES. In order to protect Seller against claims by Buyer's buyer, if Buyer resells any of the products purchased under this agreement, Buyer shall include the language contained in paragraphs 2 and 3 of this agreement, dealing with Seller's limitations of warranties and remedies, in an enforceable agreement with Buyer's buyer, or otherwise include language in an enforceable agreement with its buyer that makes Seller's limitation of warranties and remedies binding on its buyer. Buyer shall also include a provision in its agreement with its buyer applying Ohio law to any claims its buyer might assert against Seller with respect to products manufactured by Seller, and requiring its buyer to bring any such action against Seller either in federal district court in Cincinnati, Ohio or the common pleas court for Butler County, Ohio. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorneys' fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph.

7. PASSAGE OF TITLE. Title to the products sold hereunder shall pass upon delivery to the carrier at the point of shipment. Neither

Buyer nor the consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading without permission of the Seller. Unless otherwise agreed Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. Buyer represents that Buyer is solvent and can and will pay for the products sold to Buyer in accordance with the terms hereof. If Buyer shall fail to comply with any provision or to make payments in accordance with the terms of this contract or any other contract between Buyer and Seller, Seller may at its option defer shipments or, without waiving any other rights it may have, terminate this contract. All deliveries shall be subject to the approval of Seller's Credit Department. Seller reserves the right, before making any delivery, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this contract. A late charge of 1-1/2% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts, and Buyer is responsible for all costs of collection including without limitation reasonable attorneys' fees and court costs.

9. TRANSPORTATION CHARGES. Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.

10. CLAIMS BY BUYER. Buyer shall thoroughly inspect products sold under this contract immediately upon receipt to verify conformance with the specifications of the contract. Buyer must notify Seller of claims for failure or delay in delivery within 30 days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective products within 30 days after the nonconformity or defect was or should have been discovered. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the material, or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless the Buyer shall have entered full details thereof on its receipt to the carrier.

11. MECHANICAL PROPERTIES; CHEMICAL ANALYSES. Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures; any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.

12. PATENTS. Seller shall indemnify Buyer against attorneys' fees and any damages or costs awarded against Buyer in the event any legal proceeding is brought against Buyer by a third person claiming the material delivered hereunder in itself constitutes an infringement of any U.S. patent, provided Buyer gives Seller prompt notice of any such suit being brought, gives Seller the opportunity to defend any such suit, and cooperates with Seller with respect to any such defense; unless the material is made in accordance with material designs, or specifications required by Buyer, in which case Buyer shall similarly indemnify Seller.

13. PERMISSIBLE VARIATIONS. The products sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

14. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the products it is purchasing under this contract meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller, other than the standard product specifications set forth in the most recent addition of Seller's published product brochures, in making that determination.

15. TAXES. No taxes imposed with respect of the sale of the products or services sold hereunder are included in any quotation by Seller. All applicable taxes shall be added and paid by Buyer in addition to the purchase price.

16. BUYER'S RIGHT OF TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall thereupon cease work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following:
(1) the contract price for all products which have been completed prior to termination;
(2) the cost to Seller of the material or work in process as shown on the books of Seller in accordance with the accounting practice

consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the contract price;
(3) the cost f.o.b. Seller's plant of materials and supplies acquired especially for the purpose of performing this contract; and
(4) reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made hereunder.

17. SELLER'S RIGHT OF TERMINATION. In addition to the other rights of termination provided for in this contract, and if this contract is made pursuant to any governmental rule or regulation, plan, order or other directive, upon the directive, effected or impaired termination thereof, Seller shall have the option of canceling this contract in whole or in part.

18. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

19. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the wanted date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:
(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Seller's discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings; or
(b) cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were especially fabricated for the Buyer.

20. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller relating to this contract or the products sold hereunder, including, without limitation, any action for breach of contract or warranty, or otherwise in connection with the products sold under this contract, must be commenced by Buyer against Seller within one year after the cause of action therefore accrues or one year of delivery of the products sold hereunder, if less.

21. CONFLICTING PROVISIONS OFFERED BY BUYER. Any terms and conditions of any purchase order or other instrument issued by the Buyer, in connection with the subject matter of this document, which are in addition to or inconsistent with the terms and conditions expressed herein, will not be binding on Seller in any matter whatsoever unless accepted by Seller in writing.

22. SEVERABILITY. In case any provision of this contract shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

23. APPLICABLE LAW. This contract shall be governed by, and construed and enforced in accordance with, the laws of Ohio. Buyer and Seller specifically agree that any legal action brought relating to this contract shall be brought and tried exclusively in the federal district court in Cincinnati, Ohio, or, in the absence of jurisdiction, the Butler County Court of Common Pleas in Hamilton, Ohio

REV. 03/15