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**GENERAL TERMS AND CONDITIONS TO THE
AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

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ARTICLE 1
DEFINITIONS

1.1 The following terms, when used in this Agreement or in the Contract Documents shall have the meanings set out below.

1.1.1 “Actual Costs” shall mean costs for on-site storage of materials and supplies, on-site office and supervision costs, premium wages paid, increased costs for necessary machinery and equipment, and costs of the applicable taxes, insurance, burden on labor wages paid, bond premiums and overhead incurred by the Contractor for the direct benefit of the Project.

1.1.2 “Applicable Laws” means and includes all: (i) applicable professional and industry standards, codes, specifications or manuals recognized by any technical organization, association or society; and (ii) all applicable local, state, and federal laws, rules, orders, regulations, building and zoning codes in the jurisdiction in which the Project is located pertaining to the Work furnished by Contractor pursuant to the Contract Documents.

1.1.3 “Application for Payment” shall mean a written request for a progress payment or final payment submitted in a form approved by Owner and accompanied by the supporting documentation required by the Contract Documents.

1.1.4 “Base Contract Price” shall mean Contractor’s total cost to perform the bid items included in the Contract Documents, excluding Specific Allowances, the General Allowance and Contractor’s Bond premiums and is stated in Article 2 of the Agreement between Owner and Contractor.

1.1.5 “Approved Satisfactory,” “Equal to,” Proper and Similar Terms shall mean the decision is vested in the Owner and such decision shall be binding upon the Contractor and its Subcontractors and suppliers.

1.1.6 “Calendar Day” means any calendar day including Saturdays, Sundays and legal holidays. Calendar Day is the default interpretation if not specified as a Calendar Day or Work Day in the Contract Documents.

1.1.7 “Change Order” is defined in Article 12.

1.1.8 “Claim Documents” is defined in Article 9.

1.1.9 “Complete,” “Completion” or “Final Completion” shall mean when all of the Work of the Contract Documents completely fulfills all of the terms of the Contract Documents without exception.

1.1.10 “Construction Change Directive” is defined in Article 12.

1.1.11 “Construction Testing Lab” shall mean the independent construction testing and inspection firm that is provided by the Owner and coordinated by the Contractor during the performance of the Work when required by the Contract Documents.

1.1.12 “Contract Documents” consist of the Agreement Between Owner and Contractor, the General Conditions to the Agreement between Owner and Contractor, Supplementary Conditions, if any, Contractor’s Bid Form, the Specifications, the Drawings, all Addenda issued prior to execution of this Agreement between Owner and Contractor, the Notice to Proceed, Contractor’s Payment and Performance Bonds, and all Change Orders, Work Orders, Construction Change Directives, and Field Orders issued thereafter by the individuals authorized on behalf of Owner. Geotechnical Baseline Reports (GBR), if provided, and Geotechnical Data Reports (GDR), if provided, are also considered part of the Contract Documents. Approved Shop Drawings and other Contractor submittals are not part of the Contract Documents.

- .1 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order of precedence: (i) the Agreement Between Owner and Contractor; (ii) the General Conditions to the Agreement Between Owner and Contractor; (iii) Special Conditions, if any; (iv) the Specifications; (v) Geotechnical Baseline Reports (if provided); (vi) Geotechnical Data Reports (if provided) (vii) the Drawings.
- .2 The documents listed in Subparagraph 1.1.12 are bound herein, except for Change Orders, Work Orders and minor changes in the Work which may be issued after the execution of this Agreement. Documents not attached are incorporated by reference. There are no Contract Documents other than those specifically listed in this Agreement as Contract Documents.
- .3 The Contract Documents represents the entire and integrated agreement between the parties to this Agreement and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended or modified only by a Change Order, Work Order or minor changes in the Work as defined in the General Conditions to the Agreement between Owner and Contractor.

1.1.13 “Contract Sum” is the amount stated in Article 2 of the Agreement between Owner and Contractor.

1.1.14 Whenever the term **“Contractor”** is used, it shall be used and understood as referring to the person or organization that enters into the Agreement between Owner and Contractor to provide a portion or portions of the Work necessary to complete the construction of the Project.

1.1.15 The words **“Contractor shall”** are implied and shall be so understood wherever a direction is stated in the imperative and wherever the words **“Provide,” “Furnish”** or **“Install”** are used. Minor items and accessories or devices reasonably inferable as necessary to the complete and proper installation and operation of any system, shall be provided by the Contractor for such system whether or not they are specifically called for by the Contract Documents.

1.1.16 “Contractor’s CPM Schedule” is defined in Paragraph 8.9.

1.1.17 “Corrective Action” shall mean action taken to correct Work that does not comply with the requirements of the Contract Documents.

1.1.18 “Dispute Resolution Board (DRB)” is a panel of three experienced, respected, and impartial reviewers, organized before construction begins and meets at the jobsite periodically for the purpose of resolving problems before they escalate into major disputes.

1.1.19 “Drawings” shall mean the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent and character of the Work to be performed by Contractor. Shop drawings and other Contractor submittals are not drawings or Contract Documents.

1.1.20 “Engineer” shall mean the individual or entity named as such in the Agreement Between Owner and Contractor.

1.1.21 “Federal Labor Standards” shall mean the requirements of the Davis-Bacon Act, the Copeland Anti-Kickback Act, the Stark Self-Referral Law, the Contract Work Hours Standard Act, Executive Order No. 11246, Section 601 of the Civil Rights Act and all Federal Labor Standards in effect prior to Award.

1.1.22 “Final Completion Date” shall mean the number of calendar days or date defined by the Owner for the completion of the Work as stated in Article 1 of the Agreement Between Owner and Contractor.

1.1.23 “Field Order” shall mean a written order issued by the Owner and approved by Owner’s Director of Engineering and Construction or his/her designee, which requires a minor change in Work but which does not require approval of a Work Order and does not involve a change in the Contract Sum or a time extension.

1.1.24 “Float” shall mean the amount of time that a schedule activity may be delayed from its early start date without delaying the project finish date, or violating a schedule constraint.

1.1.25 “Furnish” means **“furnish only”**. Materials or items to be furnished by the Owner shall be consigned to the Contractor and delivered to the site.

1.1.26 “General Allowance” shall mean the funds added to the Base Contract Price for unspecified extra or additional Work that was not foreseeable at time of the bid, but that is necessary to complete the Project as originally contemplated. The General Allowance is the Base Contract Price times a defined percentage, not to exceed ten percent (10%) of the Base Contract Price unless authorized by the Owner’s Executive Director and approved, by Board resolution, by Owner’s Board of Trustees. The use of the General Allowance shall be documented by a Work Order signed by both the Owner’s Director of Engineering and Construction and Owner’s Executive Director. The General Allowance is stated in subparagraph 2.1.2 of the Agreement between Owner and Contractor.

1.1.27 “Hazardous Materials/Regulated Substances” a “Regulated Substance” as referred to in this clause is a generic term used to describe all materials that are regulated by federal or any state or local government or Applicable Laws during transportation, handling and/or off-site disposal. These include, but are not limited to, all materials that are or contain radioactive materials, petroleum, mercury, asbestos-containing materials (ACM), or lead paint, including ACM mastic, sealants, coatings and paintings as well as materials that are regulated as (a) “hazardous material” or “hazardous substance” under the Hazardous Material Transportation Act, as amended, for the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), as amended, and the Control of Radioactive Contamination of Environmental Law, as amended (b) “chemical hazards” under the Occupational Safety and Health Administration standards, as amended, (c) “chemical substances and mixtures” under the Toxic Substances Control Act, as amended, (d) “pesticides” under the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and (e) “hazardous waste” as defined or listed under the Resource Conservation and Recovery Act (RCRA), as amended, and the Hazardous Waste Control Law, as amended.

1.1.28 “Indemnitees” are defined in Paragraph 16.1.

1.1.29 “Install” means **“install only”** materials and/or items furnished by others. Such materials or items shall be received at the site, unloaded, stored, protected, and installed in place by the Contractor, and shall include final connections, unless such Work is specifically excluded. Minor items and accessories or devices reasonably inferable as necessary to the complete and proper installation and operation of any system, shall be provided by the Contractor for such system whether or not they are specifically called for by the Contract Documents.

1.1.30 “Markup Fee” is defined in Subparagraph 12.1.8.5.

1.1.31 “Materials Status Report” shall mean the list of delivery dates for materials and equipment required to be furnished and installed by the Contract Documents which shall conform to Contractor’s Submittal Schedule and Contractor’s CPM Schedule.

1.1.32 “Notice to Proceed” shall mean written notice from the Owner to the Contractor to commence its Work in accordance with the Contract Documents. In issuing the Notice to Proceed, stipulations may be included as to time and other requirements that may condition commencement of the Work at the Site.

1.1.33 “Notice of Termination for Convenience” shall mean written notice from Owner to Contractor of its decision to terminate Contractor’s performance of Work for the Project specifying the extent of termination and the effective date.

1.1.34 “Owner” is the public entity identified in the Agreement between Owner and Contractor and for whom the Work is to be performed by Contractor. The Owner may also be referred to as the NEORSD or the District.

1.1.35 “Payroll Tax Obligations” shall mean the timely payment of compensation and benefits, including, but not limited to: (a) overtime, medical, and any other benefit, and (b) all matters relating to compliance with all employer obligations to withhold employee taxes, pay employee and employer taxes, and file payroll tax returns and information returns under local, state, and federal income tax laws, unemployment compensation insurance, state disability insurance tax laws, social security and Medicare tax laws, and all other payroll tax laws or similar laws with respect to all the Contractor’s personnel providing Work for the Project.

1.1.36 “Prevailing Wage Coordinator” shall mean the individual identified in Paragraph 8.18.

1.1.37 “Product” includes materials, systems, and equipment.

1.1.38 “Product Data” shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

1.1.39 “Program Management Office” or “PMO” shall mean CH2M HILL, INC., the Owner’s designated program manager for the project.

1.1.40 The **“Project”** is the design and construction included in the Contract Documents approved by the Owner of which the Work performed by Contractor under the Contract Documents is a part.

1.1.41 “Project CPM Construction Schedule” is defined in Paragraph 8.9.

1.1.42 “Project Records” shall mean all information, materials and data of every kind and character and form (hard copy, as well as computer readable data), including without limitation, records, books, papers, documents, notes, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, payrolls, subcontractor files, original estimates, Applications for Payment, Change Orders, job cost reports, project notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matter that may in Owner’s judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract Documents to the extent necessary to adequately permit evaluation and verification of: (a) Contractor compliance with the Contract Documents; (b) compliance with Owner’s business ethics policies; and (c) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or his payees.

1.1.43 “Project Specific Safety Program” is defined in Paragraph 14.1.

1.1.44 The term **“provide”** or **“perform”** shall mean to furnish and install complete, including as applicable all connections to utilities or service, complete anchorage and suspension, fastening or anchor device, controls, trim, supports, operation and other related items or labor, unless specifically specified otherwise in the Contract Documents.

1.1.45 “Samples” shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.1.46 “Shop Drawings” shall mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.1.47 “Schedule of Values” shall mean a schedule prepared and approved by Owner allocating portions of the Contract Sum to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment

1.1.48 “Site” means the area within the Owner’s property lines or portions of such area which are enclosed within a limit line in the Contract Documents, including any structures or encumbrances within such areas.

1.1.49 “Specialist” means an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing or fabrication of items required by the Contract Documents. Where the Contract Documents require installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the item, or an individual or firm performing the work for the manufacturer.

1.1.50 “Specific Allowances” include specified items of Work generally known to be required for the Project but whose quantities and/or pricing is unknown until after the items of Work have been performed. Specific Allowances should be used only for work related to the bid items specified by the Allowance. The use of the Specific Allowances shall be documented by a Work Order signed by Owner’s Director of Engineering and Construction. The Specific Allowances are stated in Subparagraph 2.1.3 of the Agreement between Owner and Contractor.

1.1.51 “Specifications” shall mean the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

1.1.52 “Standard of Care” means that Contractor shall exercise the degree of care and diligence in the rendition of all Work under this Agreement in accordance with the industry standards expected of contractors with significant experience with projects involving design and construction work which is similar in design, size, function and complexity as the Project.

1.1.53 “Stored Materials” shall mean materials or equipment stored safely off-Site in a secure warehouse or on the premises of a fabricator or some other secure facility reasonably acceptable to the Owner and not yet incorporated into the Work.

1.1.54 “Subcontractor” shall mean a person or organization who has a direct contract with the Contractor to perform any of the Work at the Site, or to furnish materials, equipment or systems specifically fabricated for the Work.

1.1.55 “Sub-Subcontractor” shall mean the Subcontractor’s sub-subcontractors and suppliers at whatever tier.

1.1.56 “Submittal Schedule” shall mean Contractor’s schedule for submitting Shop Drawings, Product Data, Samples, markups, models and other submittals which is coordinated with the Contractor’s CPM Schedule and which allows the Owner reasonable time for review.

1.1.57 “Substantial Completion” shall mean the Work of the Contract (or a specified part of the Work as provided in the Contract Documents or otherwise determined by Owner) has progressed to the point where the Work (or a specific part of the Work) is essentially and satisfactorily complete in accordance with the Contract Documents, as modified by approved Change Orders, Field Orders or a Minor Change in Work, and is ready for full occupancy or use by the Owner in the manner intended without inconvenience or discomfort and includes all local, state and federal approvals, permits and licenses required by all governmental agencies having jurisdiction over the Project; provided, however, that the determination of Substantial Completion of the Work shall not be withheld if the failure to obtain same is due to design errors or other causes not the fault of or responsibility of the Contractor. The determination by the Owner on the status of Substantial Completion shall generally but not specifically mean or include: all materials,

equipment, systems, controls, features, Underground Facilities, accessories and similar elements are installed in the proper manner and in operating condition; spaces and surfaces (except minor areas or spaces) have been painted or otherwise finished throughout; masonry and concrete cleaned with any sealer or other finish applied; casework installed, complete with tops, sinks, fittings and other related items installed and services connected; utilities and systems connected and functioning; site work essentially complete; permanent heating, ventilating, air conditioning and other systems properly operating with proper controls; lighting and electrical systems installed, operable and controlled; and other work to a similar state of essential and satisfactory completion. A minor amount of work, as determined by and at the discretion of the Owner, such as installation of minor accessories or items, a minor amount of painting, seeding, landscaping, minor replacement of defective work, minor adjustment of controls, completion or correction of minor site or exterior work that cannot be completed due to weather conditions, will not delay the determination of Substantial Completion.

1.1.58 “Substantial Completion Date” shall mean the number of calendar days or the date after the issuance of the Notice to Proceed defined by the Owner for completion of the Work as stated in Article 1 of the Agreement Between Owner and Contractor.

1.1.59 “Tier 1 Decision” shall mean the dispute resolution decision defined in Article 9.

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

1.1.61 “Unforeseen Conditions” shall mean conditions encountered at the Site which are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents and the reports described in Article 3 and were otherwise unknown or not detected by the Contractor during the performance of the Work; or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in the Northeast Ohio area.

1.1.62 “Warranty Period” shall mean a period of one (1) year from the Substantial Completion Date of the entire Work (or a specific part of the Work) or the longer periods of time as may be required by specific warranties contained in the Contract Documents, provided by manufacturers or suppliers, or as otherwise stated in the Certificate of Substantial Completion when Contractor shall remove or correct all Work performed by Contractor under the Contract Documents which the Owner deems to be defective in material or workmanship or not in conformance with the Contract Documents and without an increase to the Contract Sum.

1.1.63 The term **“Work”** includes all labor, materials, tools, equipment, special equipment and supervision necessary to produce and fully complete the construction required or inferred by the Contract Documents as determined by the Owner.

1.1.64 “Work Day” means any calendar day excluding Saturdays, Sundays, and legal holidays.

1.1.65 “Work Order” is defined in Article 12.

1.1.66 Words in the singular shall include the plural whenever applicable.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

- 2.2** The Contractor's services shall be provided in conjunction and cooperation with the services of Owner's Engineer and Owner's PMO.
- 2.3** The Contractor shall provide sufficient organization, personnel and management to carry out the requirements of the Agreement in an expeditious and economical manner consistent with the best interests of the Owner. The Contractor shall submit to the Owner upon execution of the Agreement an organizational chart of its principals, employees and consultants performing Work on behalf of the Owner for the Project. The organizational chart shall identify the individuals with authority to make decisions on behalf of Contractor and the lines of communication and authority among the individuals performing Work for the Project. Contractor's organizational chart shall be accompanied by a summary of the responsibilities assigned to each individual. Once approved by the Owner, Contractor's organizational chart shall not be modified without prior written notice, good cause and the written approval of the Owner, which shall not be unreasonably withheld.
- 2.4** The Contractor hereby represents to the Owner the following:
- 2.4.1** That the Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform the obligations required by the Contract Documents, including, but not limited to its indemnity obligations to the Owner pursuant to Article 16;
- 2.4.2** That the Contractor is able to furnish the plant, tools, materials, supplies, equipment, labor, supervision and management required to complete the Work and perform the obligations required by the Contract Documents and shall employ only employees, principals and consultants with sufficient experience and competence to perform the Work required for Projects similar in design, size, function and complexity;
- 2.4.3** That the Contractor is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor, the Work and the Project;
- 2.4.4** That the Contractor's execution and performance of this Agreement is within Contractor's duly authorized powers;
- 2.4.5** That the Contractor shall perform all Work in strict compliance with the Applicable Laws and the Standard of Care required by the Contract Documents;
- 2.4.6** That the Contractor agrees that if there is any conflict between the Applicable Laws, the Contractor will notify the Owner of the conflict and identify the particular code, standard, rule, order, or regulation which is the more stringent requirement so long as it satisfies the requirements of the Applicable Laws;
- 2.4.7** That the Contractor represents and warrants that no officer, director, employee or agent of the Owner has been or will be employed, retained or paid a fee, or otherwise has received or will receive, any personal compensation or consideration, by or from the Contractor or any of the Contractor's officers, directors, employees or agents in connection with the obtaining, arranging or negotiation of the Agreement between Owner and Contractor or other documents entered into or executed in connection with the Agreement. In the event of Contractor's non-compliance, the Agreement may be cancelled, terminated, or suspended in whole or in part and the Owner may pursue all rights and remedies that the law or the Contract Documents provide; and
- 2.4.8** That the Contractor is engaged in an independent business and will perform all obligations under this Agreement as an independent contractor and not as the agent or employee of the Owner. The Contractor's personnel performing Work shall be considered solely the employees or agents of the Contractor and not employees or agents of the Owner. The Contractor has and retains the right to exercise full control of and supervision over the performance of the Work and full control over the employment, direction, assignment, compensation, and discharge of all personnel performing the Work. The Contractor

is solely responsible for all matters relating to compensation and benefits of all the Contractor's personnel who perform Work. This responsibility includes, but is not limited to compliance with the Payroll Tax Obligations required by the Contract Documents.

2.5 The Contractor agrees that the representations and warranties in Paragraph 2.4 shall survive the execution and delivery of the Agreement.

2.6 During the performance of the Agreement, the Contractor agrees as follows:

2.6.1 The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2.6.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

2.6.3 The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

2.6.4 The Contractor will comply with all provisions of Executive Order 11246 dated September 24, 1965, and all of the rules, regulations, and relevant orders governing federal contractors.

2.6.5 The Contractor will furnish all information and reports required by Executive Order 11246 dated September 24, 1965, and by rules, regulations, and orders governing federal contractors, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2.6.6 The Contractor shall comply with the ordinances, laws, regulations and directives of any jurisdiction where Contractor is performing Work relating to length of workday, minimum wage and non-discrimination. Contractor agrees that in the case of differing or contradictory requirements imposed by the various local, state or federal agencies participating in the Project or Work subject to the Contract Documents, the most stringent requirements for the Contractor shall govern.

2.6.7 In the event Contractor desires to operate its workforces beyond a normal work week of five (5) eight (8) hour days, Contractor shall do so only after providing the Owner with at least forty-eight (48) hours advance written notice. In addition, if the overtime Work will violate the ordinances in the jurisdiction where Contractor is performing Work, Contractor shall be solely responsible for obtaining written permission to extend the maximum length of the workday or work week.

2.6.8 If Contractor does not comply with the affirmative action and nondiscrimination clauses of the Contract Documents or with any of the nondiscrimination rules, regulations, or orders, the Agreement may be cancelled, terminated or suspended in whole, or in part. In addition, the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 dated September 24, 1965, and the other sanctions that may be imposed and remedies invoked as provided in Executive Order 11246 dated September 24, 1965, or by rule, regulation, or order governing federal contractors, or as otherwise provided by all Applicable Laws.

2.6.9 The Contractor will include Paragraph 2.6 and Subparagraphs 2.6.1 through 2.6.9 in every subcontract or purchase order unless exempted by rules, regulations, or orders governing federal contractors. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct, including sanctions for noncompliance provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request that the United States enter the litigation to protect the interests of the United States.

ARTICLE 3 **OWNER**

- 3.1** If requested by the Contractor, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract Documents.
- 3.2** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a reasonable manner pertaining to documents submitted by the Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the Contractor's Work.
- 3.3** If available, the Owner shall furnish surveys describing physical characteristics, legal limitations and known utility locations for the site of the Project, and a written legal description of the Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.
- 3.4** The Owner shall furnish all legal, accounting and insurance services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractors' Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.
- 3.5** Prompt written notice shall be given by the Owner to the Contractor if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

ARTICLE 4 **OWNER'S ENGINEER**

4.1 SERVICES OF ENGINEER

- 4.1.1** Owner may retain an Engineer whose services, duties and responsibilities are described in the separate Agreement Between Owner and Engineer and in this Agreement.
- 4.1.2** Engineer shall not have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work performed by Contractor.
- 4.1.3** Engineer shall at all times have access to the Work wherever and whenever it is in preparation or progress. Contractor shall ensure safe facilities are available to the Engineer for access to the Work.
- 4.1.4** The Engineer may issue interpretations and clarifications of the Contract Documents when requested by the Contractor or Owner.
- 4.1.5** In conjunction with Owner, Engineer shall conduct inspections to determine the dates of Substantial Completion and Final Completion.

4.1.6 In conjunction with Owner, Engineer shall review Contractor's original operation of any equipment or systems such as initial start-up, testing, adjusting or balancing.

4.1.7 Engineer shall be consulted by Owner and shall assist Owner in the review and approval of Contractor's Application for Payment and other aspects of the Project.

4.1.8 Engineer may request through Owner to call, schedule, and conduct job meetings to be attended by Contractor, representatives of its Subcontractors, and Owner, to discuss such matters as procedures, progress, problems, coordination, budget and scheduling.

4.1.9 Engineer is not authorized to revoke, alter, change, relax or release any requirements of the Contract Documents, nor is Engineer authorized to approve or accept any portion of the Work not executed in strict accordance with, nor to issue instructions contrary to the Contract Documents. Contractor may not claim that Engineer's approval is a modification or conclusive evidence of satisfactory performance.

4.2 SERVICES OF OWNER'S PMO

4.2.1 Unless otherwise stated in SC-1, Owner shall retain a Project Management Office whose services, duties and responsibilities are described in the separate Agreement between Owner and CH2M HILL for the program management services and in this Agreement.

4.2.2 Unless otherwise directed in writing, all communications related to the Project shall be copied to Owner's PMO.

4.2.3 Owner's PMO shall not have control or charge of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work performed by Contractor.

4.2.4 Owner's PMO shall at all times have access to the Work wherever and whenever it is in preparation or progress. Contractor shall ensure safe facilities are available to Owner's PMO for access to the Work.

4.2.5 The PMO may issue interpretations and clarifications of the Contract Documents when requested by the Contractor or Owner, which shall be coordinated with Owner's Engineer.

4.2.6 In conjunction with Owner, Owner's PMO shall conduct inspections to determine the dates of Substantial Completion and Final Completion.

4.2.7 Owner's PMO shall assist Owner in the review and approval of Contractor's Application for Payment and other aspects of the Project.

4.2.8 Owner's PMO is not authorized to revoke, alter, change, relax or release any requirements of the Contract Documents, nor is Owner's PMO authorized to approve or accept any portion of the Work not executed in strict accordance with, nor to issue instructions contrary to the Contract Documents. Contractor may not claim that Owner's PMO's approval is a modification or conclusive evidence of satisfactory performance of the Work for the Project.

4.2.9 Owner's PMO may request through Owner to call, schedule and conduct job meetings to be attended by Contractor, representatives of its Subcontractors and Owner to discuss such matters as procedures, progress, problems, coordination, budget and scheduling.

ARTICLE 5
PROGRESS PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 The Owner shall make progress payments to Contractor based on the Contract Sum as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one thirty (30) day period ending on the twentieth (20th) day of the month. No more than one (1) Application for Payment will be submitted to Owner during any thirty (30) day period.

5.1.3 Provided an Application for Payment is received by Owner not later than the twentieth (20th) day of a month, the Owner shall make payment to the Contractor not later than the twentieth (20th) day of the following month and in the amount of the approved Application for Payment. If an Application for Payment is received by Owner after the application date fixed above, Owner shall use its best efforts to make payment to Contractor not later than thirty (30) days after the Owner receives the Application for Payment.

5.1.4 Prior to submittal of the first Application for Payment, the Contractor shall submit to the Owner for its approval, Contractor's Schedule of Values. The Schedule of Values shall be based on the Contract Sum as supported by Subcontracts, Purchase Orders and the Bid Item Numbers listed in Contractor's Bid Form and that are included in Contractor's Base Contract Price. The Contractor shall also provide the Owner with all supporting data reasonably requested by the Owner to substantiate the accuracy of the Schedule of Values. The Schedule of Values may be amended by mutual agreement of the Owner and the Contractor through a properly executed Change Order to reflect the actual Contract Sum as established through Subcontracts and Purchase Orders issued by the Contractor. Unless otherwise mutually agreed by the Owner and the Contractor, the Payment/Performance Bond, the General Allowance, each Specific Allowance, all DRB invoices and each Change Order and Construction Change Directive shall be accounted for as a separate component of the Schedule of Values. Each Application for Payment shall report the status of the General Allowance, each Specific Allowance, each Change Order and each Constructive Change Directive in addition to the original Schedule of Values.

5.1.5 In taking action on the Contractor's Application for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in support of any Application for Payment or that the Owner has made exhaustive or continuous on-site inspections to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract Sum.

5.1.6 On or before the 20th day of each month during the performance of the Work or on such other regular monthly schedule as may be agreed, the Contractor shall submit to the Owner Contractor's Application for Payment. Contractor's Application for Payment shall set forth the Contract Sum incurred to the date of such Application for Payment, allocated among the categories set forth in the Schedule of Values approved by Owner. Each Application for Payment shall be accompanied 1) a cover letter listing all documents transmitted; 2) a signed Application for Payment form; 3) backup documentation for each pay item billed; 4) an updated Schedule of Values showing status of each sub-bid item billed; 5) spreadsheets showing status of each Specific and General Allowance item; 6) original, executed affidavits from Contractor and all Subcontractors attesting that the minimum and/or prevailing wages required by the Contract Documents have been paid and are in compliance with prevailing wage rates; 7) a statement of estimated cash flow; 8) a Labor Compliance Statement; 8) an SBE Utilization Report and Tracking Sheet; 9) a schedule of proposed revisions to the Contractor's CPM Schedule and schedule narrative; 10) an updated Submittal Schedule; and 11) an updated Stored Materials Status Report. Each Application for Payment shall contain an allocation of the percentage of completion of each portion of Work as of the end of the period covered by the Application for Payment.

5.2 RETAINAGE AND SECURITY

5.2.1 Estimates and Security: The Owner shall evaluate Applications for Payment, which shall contain full, accurate and detailed estimates of the various kinds of labor performed and material furnished under the Contract, stating the amount for each kind of labor and material as well as the materials and amount due in the aggregate, which estimates shall be based upon actual measurement of such labor and materials, and shall give the amounts of the preceding estimate, and the amount of labor performed and materials furnished since the last estimate. The Owner shall, at its sole discretion, delete from such estimate any items which are in dispute with respect to either performance or amount due and shall pay the balance not in dispute. From the date the Contract is fifty percent (50%) complete, as evidenced by payments in the amount of at least fifty percent (50%) of the Contract, all funds retained for the faithful performance of work shall be deposited in escrow pursuant to Section 153.63 of the Ohio Revised Code. After the Contract is fifty percent (50%) complete, no further funds shall be retained. When a major portion of the Project is, in the opinion of the Owner, substantially completed and occupied, or in use, or otherwise accepted, and the Owner sees no other reason to withhold retainage, the retainage percentages held in connection with such portion shall be released from escrow and paid to the contractor, withholding only that amount which, in the sole opinion of the Owner, is necessary to assure completion. Funds in the escrow account not heretofore paid, with accumulated interest, shall be paid thirty (30) days from the Date of Final Completion.

5.2.2 Payment for Labor: For the first fifty percent (50%) of the Contract, partial payment to the Contractor for labor performed under either a unit or lump-sum price shall be made at the rate of ninety-two percent (92%) of the estimates prepared by the Contractor and approved by the Engineer. All labor performed after the job is fifty percent (50%) completed shall be paid for at the rate of one hundred percent (100%) of the estimates submitted by the Contractor and approved by the Engineer.

5.2.3 Payment for Materials: In addition to all other payments on account of Work performed, there shall be allowed a sum at the rate of ninety-two percent (92%) of the invoice costs, not to exceed 92% of the item cost delineated in the Schedule of Values, for material delivered on the site of the Work, or other point in the vicinity of the Work or other previously approved storage site, provided such materials have been inspected and found to meet the Specifications. The balance of such invoiced value shall be paid when such material is incorporated into and becomes a part of such building, construction, addition, improvement, alteration, or installation.

5.2.4 Progress Payments for Specifically Manufactured Items: Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the Site. At the option of the Owner, progress payments during the fabrication of items specialty manufactured for incorporation into this Project, which cannot practicably be diverted to another project, and which have a lengthy fabrication period, may be made by the Owner. Items for this Project which the Owner considers to be eligible for progress payments are listed in the contract documents. In addition, the Contractor may request progress payments for other items prior to commencing fabrication, which request may be approved or disapproved by the Owner at its option. Submission of request for progress payments must be accompanied by a notarized statement furnished by the manufacturer of the item that the amount of progress payment claimed constitutes not more than the requested percentage of the manufacturer's invoice and setting forth all previous payments that have been made by the Contractor to the manufacturer.

5.2.5 Security for Payments for Stored Materials: Payments for Stored Materials will not be made unless:

- .1** The Owner has either (i) received executed conditional bills of sale (subject only to receipt of payment) or other reasonably satisfactory proof of the Owner's otherwise unencumbered title in and to the Stored Materials or (ii) been granted a first priority security interest and has been provided with an executed, recordable UCC-1 financing statement, in the Stored Materials prior to or simultaneous with the Owner's payment;

- .2 The Stored Materials are fully insured in an amount and with an insurance company reasonably satisfactory to the Owner, under a policy containing a standard mortgagee endorsement or the equivalent, and the Owner is provided a certificate of insurance evidencing the required insurance has been purchased by Contractor; and
- .3 The Stored Materials have been clearly marked with, among other things, the Owner's name and the job number so as to segregate and distinguish the Stored Materials from the property of others, and the Owner has the opportunity to inspect the Stored Materials and approve the identity, quality and quantity of the Stored Materials.

5.2.6 Except with the Owner's prior approval, Contractor's payments to Subcontractors shall be subject to retention of not more than eight (8%) on labor only for the first fifty percent (50%) of the Contract Sum. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

5.2.7 When Contractor's Application for Payment includes material delivered to the Site, under the possession and control of the Contractor but not yet incorporated into the Work, the delivered materials shall become property of the Owner. If the delivered material is stolen, destroyed or damaged by casualty before being used, Contractor shall replace the delivered material at its own cost and expense.

5.3 PAYMENTS WITHHELD

5.3.1 The Owner may decline to approve an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interests or if the representations by the Contractor cannot be reasonably accepted and will notify Contractor of Owner's determination. If agreement cannot be reached on a revised amount, the Owner will process the Application for Payment for such amount as it reasonably deems appropriate. The Owner may elect to withhold payment in full or in part on an Application for Payment when Owner subsequently discovers evidence or subsequent inspections of the Work covered under a previous Application for Payment reveal, in the Owner's reasonable opinion, that it may be necessary to protect the Owner from loss because of:

- .1 Defective work not remedied;
- .2 Third party claims filed;
- .3 Failure of Contractor to make undisputed payments properly to Subcontractors for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 Damage to the Owner or another Contractor working at the Project;
- .6 Failure to submit affidavits and waivers of liens with Contractor's Application for Payment;
- .7 Persistent failure to carry out the Work in accordance with the Contract Documents; or
- .8 The existence of a material breach by Contractor of any material provision of the Contract Documents and/or Applicable Laws.

5.4 FINAL PAYMENT

5.4.1 Final payment shall be made by the Owner to the Contractor when: (1) the Work required by the Contract Documents has been fully performed by the Contractor, except for Contractor's obligations during the Warranty Period; (2) a final Application for Payment and a final accounting for the Contract Sum have been submitted by the Contractor and reviewed by the Owner; (3) a final Certificate for Payment has then been approved by Owner; (4) Contractor has submitted a final affidavit attesting that Contractor has fully completed all Work required by the Contract Documents and setting forth the name, address and amounts owed to any unpaid Subcontractors or material/equipment suppliers ("Affidavit of Contractor"); (5) Contractor has submitted notarized lien waivers and Affidavit of Contractor forms executed by its Subcontractors and its or their material and equipment suppliers; and (6) Contractor has executed and submitted a release of all claims against the Owner arising under or by virtue of this Contract, except claims which are specifically excepted by the Contractor as are set forth therein.

5.4.2 The amount of the final payment shall be calculated as follows:

- .1** Take the Contract Sum substantiated by the Contractor's final accounting for all Work Orders, Change Orders, and Actual Costs.
- .2** Subtract amounts, if any, for which the Owner withholds, in whole or in part, from the final Application for Payment as provided by the provisions of the Contract Documents and other amounts properly withheld by the Owner under the Contract Documents.
- .3** Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the Owner.

5.4.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 Calendar Days after delivery of the final accounting to Owner. Provided the conditions precedent to final payment required by Article 5 have been performed by Contractor, the Owner will, within twenty (20) Work Days after receipt of the written report of the Owner's accountants, either pay Contractor the amount determined to be due by Owner's accountants or identify, in writing, the reasons why the Owner disputes the written report of Owner's accountants.

5.4.4 If the Owner's audit of the Contractor's final accounting is determined to be less than claimed by the Contractor, the Contractor shall proceed in accordance with Article 9. Unless agreed to otherwise, a demand for review by the DRB of the disputed amount shall be made by the Contractor within 30 Calendar Days after the Contractor's receipt of Owner's payment or written notification pursuant to Article 5. Failure to make such demand within the 30 Calendar Day period shall result in either the final accounting reported by the Owner's accountants or Owner's determination becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount determined by Owner's accountants or the amount the Owner has identified as undisputed.

5.4.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 8 and not excluded by Article 8: (1) to correct Work not conforming to the Contract Documents; or (2) arising from the resolution of disputes, the Owner shall reimburse the Contractor such costs, if any, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Contract Sum.

5.4.6 Neither Owner's acceptance of the Work, nor payments for Work or any part of the Work, nor any possession of the Project taken by Owner shall operate as a waiver of rights or obligations under any portion of the Contract Documents or Applicable Laws. Nor shall Owner's waiver of any breach of the Contract Documents by Contractor constitute a waiver of any other or any subsequent breach of contract.

ARTICLE 6
DISCOUNTS, REBATES AND REFUNDS

- 6.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor.
- 6.2** Amounts which accrue to the Owner in accordance with the provisions of Paragraph 6.1 shall be credited to the Owner as a deduction from the Contract Sum.

ARTICLE 7
ACCOUNTING RECORDS

- 7.1** The Contractor shall keep full and detailed Project Records and exercise such controls as may be necessary for proper business and financial management under the Agreement. The Owner, Owner's accountants or any local, state or federal governmental authority, or their duly authorized representatives shall be afforded access to Contractor's Project Records and Contractor shall preserve the Projects Records and shall make them available for inspection or copying for a period of three years after Substantial Completion, or for such longer period as may be required by Applicable Laws. All Project Records related to financial matters will be maintained in accordance with generally accepted accounting principles and audit standards, consistently applied. There will be an "open book" policy in effect at all times with regard to all Project Records maintained by the Contractor, or anyone on its behalf and the Owner, Owner's accountants or any local, state or federal governmental authority, or their duly authorized representatives will be afforded full and complete access to the Project Records at all reasonable times. The Owner, Owner's accountants or any local, state or federal governmental authority, or their duly authorized representatives will have the right to audit the Project Records of Contractor, Subcontractors and Sub-Subcontractors. If the audit results in a finding that an overcharge or error of any nature has occurred, Owner will adjust Contractor's Application(s) for Payment accordingly.
- 7.2** If the Contractor carries out any of the duties of this Agreement through a Subcontract with a value of \$25,000.00 or more over a 12-month period, the subcontract will also contain a clause compelling the Subcontractor to abide by the provisions of Article 7.
- 7.3** Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities to inspect and copy Project Records, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Agreement and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with Article 7.
- 7.4** Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's Project Records shall be made within a reasonable amount of time (not to exceed 30 Calendar Days) from the presentation of Owner's undisputed findings to the Contractor.

ARTICLE 8
ADMINISTRATION OF THE CONSTRUCTION CONTRACT

The Contractor shall provide administration of its own work forces and of all Subcontractors and Sub-Subcontractors in cooperation with the Owner as set forth below.

8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

8.1.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Paragraph 3.3, if such information is available, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors,

omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to Owner as a request for information and in the format required by Owner.

8.1.2 Contractor shall promptly report in writing to Owner and Engineer any and all conflicts, errors, omissions, ambiguities or discrepancies which Contractor discovers, or has actual knowledge of, and shall obtain a written response to request for information from Engineer before proceeding with the Work affected thereby. The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to Owner.

8.1.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by Owner in response to the Contractor's notices or requests for information pursuant to Subparagraphs 8.1.1 and 8.1.2, the Contractor shall provide the notice in the time frame required by Paragraph 13.2. If the Contractor fails to provide the required notice, the Contractor shall have no right to additional compensation or a time extension. Fulfillment of the notice requirements of Paragraph 13.2 is an express condition precedent to Contract entitlement to an increase to the Contract Sum or a time extension. The Contractor shall not be liable to the Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor did or should have recognized such error, inconsistency, omission or difference and failed to report it to Owner.

8.1.4 As an ongoing obligation, the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner and shall at once report to the Owner, any and all errors, inconsistencies, or omissions discovered or reasonably apparent. If the Contractor performs any construction activity which involves a recognized or reasonably apparent error, inconsistency or omission in the Contract Documents which is due to an asserted error or omission in the Contract Documents without such notice to the Owner, the Contractor waives any right to an increase to the Contract Sum or a time extension. After reporting any error, inconsistency, or omission discovered in the Contract Documents, the Contractor shall not proceed with any Work so affected without the written clarification or determination of the Owner.

8.1.5 The Contractor shall take field measurements and verify field conditions and shall carefully compare the field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing Work activities. Errors, inconsistencies or omissions discovered by the Contractor shall be immediately reported to the Owner, including, without limitation, utility locations, the exactness of grades, elevations, dimensions or locations given on any Contract Document issued by the Engineer or the work installed by the Owner's separate contractors. The Contractor shall provide field measurements of existing conditions upon the request of the Owner. The Contractor shall satisfy itself as to the accuracy of all utility locations, grades, elevations, dimensions and locations contained in the Contract Documents prior to performing any affected Work. In all cases of interconnecting Work, the Contractor shall verify at the Project Site all dimensions relating to the existing or other Work. Any deficient Work caused by the Contractor's failure to verify all existing utility locations, grades, elevations, dimensions, or locations contained in the Contract Documents shall be promptly rectified by the Contractor as part of the Contract Sum.

8.1.6 Unforeseen Conditions

- .1** If Unforeseen Conditions are encountered at the Site, Contractor shall Provide Owner prompt notice before conditions are disturbed and in no event later than seven (7) Calendar Days after first observance of the conditions. Owner will promptly conduct a review and, if they constitute Unforeseen Conditions as defined in the Contract Documents and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or a time extension, or both. If the Owner determines that the conditions at the Site do not constitute Unforeseen Conditions as defined in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall so notify the

Contractor in writing, stating the reasons. Claims by the Contractor in opposition to Owner's determination must be made within fourteen (14) Calendar Days after the Owner has given Contractor notice of the Owner's decision. Any timely opposition to the Owner's decision shall be subject to further proceedings pursuant to Article 9.

- .2 The Contractor shall identify the information supplied by the Owner which describes the subsurface or otherwise concealed physical conditions that Contractor claims constitutes Unforeseen Conditions as defined in the Contract Documents. When the actual conditions at the Site are reasonably consistent with the information supplied by the Owner, then the conditions shall not be deemed to be Unforeseen Conditions as defined in the Contract Documents.

8.1.7 The Contractor will assist the Owner to communicate with and address local and government officials with jurisdiction over the Project. Due to the sensitive nature of these communications, the Contractor agrees and acknowledges that all communications will be at the direction and discretion of the Owner.

8.2 SUPERVISION AND CONSTRUCTION PROCEDURES

8.2.1 The Contractor shall supervise, inspect and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

8.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

8.2.3 The Contractor shall not be relieved of its obligations to perform the Work strictly in accordance with the Contract Documents by the performance or non-performance of the services or determinations of the Engineer, or by tests, inspections or approvals required or performed by persons other than the Contractor or its Subcontractors.

8.2.4 The Contractor shall be responsible to inspect portions of the Work performed under this Agreement or any other Contract to determine that such portions are in proper condition to receive subsequent Work pursuant to this Agreement. The Contractor assumes the full responsibility for the cost and expense to correct any deficient Work caused by its failure to properly inspect the Work for suitability prior to performing Contractor's Work.

8.2.5 The Contractor shall provide proper facilities, take all necessary precautions and assume the entire cost for protecting the Work against adverse weather conditions and for handling all storm and flood water, sewage, seepage, ice or snow that may be encountered up to the date of Final Completion of the Work subject to the Contract Documents.

8.3 LABOR AND MATERIALS

8.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

8.4 SUBSTITUTIONS

8.4.1 Wherever materials, products, articles, equipment, systems or similar items are identified by reference to proprietary terms or similar reference, it is intended to establish the minimum standard or measure of quality that has been determined as requisite or intended for the Work. Competition is encouraged from subcontractors, suppliers, manufacturers and producers whose products, systems, reputations, performance and service warrant acceptance for the conditions, intent of design, requirements and other considerations of the Work under the conditions specified in the Instruction to Bidders.

8.4.2 The determination of products for use may be based on the construction, design, function, type, size, capacity, performance, strength, durability, efficiency, sound level, finish, aesthetic quality, service, matching existing work, the Owner's standards for repair, replacement and maintenance or other characteristics and criteria. Acceptance or rejection of proposed alternate or similar products, equipment or system that are equal to those specified in the Contract Documents may be based on any of the foregoing factors and criteria. The final decision on acceptance or rejection of proposed alternate or similar products, equipment or system that are equal to those specified in the Contract Documents shall be vested in the Owner and its determination may or may not express the reason for the decision, at Owner's option.

8.4.3 The product, equipment, system, or manufacturer used as the basis for the design or specification shall generally set the criteria. It shall be expressly understood that any product, equipment, system or manufacturer listed in the Contract Documents as acceptable shall meet and be in full compliance with the requirements and criteria, including those established by the product, equipment, system or manufacturer used as the basis for the specification. The Owner shall have the right to reject any proposed deviations from specified criteria or characteristics, or deviations from the criteria and characteristics of the product, system or manufacturer used as the basis of the Contract Documents.

8.4.4 Following the Notice to Proceed, only specified items will be used for the Project. If, however, an alternate or substitution is to be used during construction, it will only be approved by Owner under the following circumstances:

- .1** The required product, material or method cannot be provided in a timely fashion, but not as a result of Contractor's failure to pursue the work promptly or coordinate various activities; or
- .2** The required product, material or method cannot be provided in a manner which is compatible with other materials of the Work, or cannot be properly coordinated with the Work; or
- .3** The required product, material or method has not received required approval by a governing authority, and the requested substitution can be approved; or
- .4** Contractor establishes the substitution will provide substantial advantage to the Owner, in terms of cost, time or other valuable considerations, and after Contractor deducts offsetting responsibilities the Owner may incur, including additional compensation to the Engineer for redesign and evaluation services, increased cost of other work by the Owner or separate Contractors, and similar considerations.

8.4.5 If the substitution is approved, Contractor shall certify to Owner that the proposed substitution is Equal To or better than the required product, material or method, that the proposed substitution is suitable for the intended purpose at the intended location and that Contractor warrants the substituted design.

8.4.6 Any modifications necessary as a result of Owner approving a substitution shall be paid by Contractor.

8.4.7 If the substitution is not approved by Owner, the Contractor shall use the material, article, or piece of equipment specified in the Contract Documents.

8.5 WARRANTY

8.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under the Contract Documents shall be new and unused, unless otherwise specified, and that upon Substantial Completion of each portion of the Work such portion will be free from faults and defects in materials, and workmanship and in conformance with the Contract Documents and Applicable Laws in effect on the date of this Agreement and as thereafter modified through the Final Completion of Contractor's Work. Contractor agrees without adjustment in the Contract Sum to remove or correct all Work performed by it under the Contract Documents which the Owner deems to be defective in material or workmanship or not in conformance with the Contract Documents and Applicable Laws during the Warranty Period. Contractor also agrees during the Warranty Period to remove or correct any portions of the Work that may be damaged or destroyed by such defective Work or by the removal or correction of such defective Work. Owner shall approve the Work performed during the Warranty Period and, if the Work is unacceptable, the Warranty Period shall be extended until the Work is acceptable to Owner. Upon request by Owner, the Contractor and Owner shall jointly inspect the Work during the eleventh month following the Date of Substantial Completion to identify and investigate any defective or non-conforming Work covered during the Warranty Period. Contractor's warranty excludes remedy for normal wear and tear and normal usage.

8.5.2 If Owner does not require defective Work to be removed or corrected by Contractor, an equitable reduction in the Contract Sum shall be made as reasonably determined by Owner. All reductions in the Contract Sum shall be evidenced by a written Change Order signed by Owner.

8.5.3 If Contractor does not fully perform its obligations under Subparagraph 8.5.1 within a reasonable time following written notice by the Owner to Contractor then, in addition to, and not in lieu of any other right or remedy available to the Owner pursuant to this Agreement, at law or in equity, the Owner may perform or cause such obligations to be performed at the sole cost and expense of Contractor. The amount of such cost and expense shall be deducted from the Contract Sum or, at the Owner's option, shall be due and payable by the Contractor to the Owner on demand.

8.5.4 Nothing contained in Paragraph 8.5 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The Warranty Period relates only to the obligation of the Contractor to correct the Work following Substantial Completion of the Project.

8.5.5 Contractor will collect all written guaranties, warranties and equipment manuals and deliver them to Owner prior to Substantial Completion of the Project.

8.5.6 Contractor, with the assistance of Owner's maintenance personnel, will direct the checkout of those utilities and operations of systems and equipment supplied and/or installed by Contractor, for readiness, and will perform the initial training, start-up and testing.

8.5.7 Contractor shall undertake all punch list work expeditiously upon Substantial Completion of the Project in the manner and fashion set forth in the Contract Documents, Certificate of Substantial Completion and as directed by Owner.

8.6 TAXES

8.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. To the extent that the Work is exempt from sales, consumer, use and similar taxes, the Owner shall provide to the Contractor, a certificate of exemption.

8.7 PERMITS, FEES AND NOTICES

8.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper

execution and completion of the Work which are customarily secured after execution of the Agreement between Owner and Contractor and which are legally required when bids are received or negotiations concluded.

8.7.2 The Contractor shall comply with and give notices required by Applicable Laws during the performance of the Work.

8.8 SUPERINTENDENT

8.8.1 The Contractor shall employ competent superintendents who shall be identified in Contractor's organizational chart pursuant to Paragraph 2.3. The Superintendent shall be the representative of Contractor and all communications given to the Superintendent shall be as binding as if given to Contractor. Unless specifically approved by the Owner, the Contractor's superintendent shall be present during all working hours from the Date of Commencement to Substantial Completion of the Work, including those times when only Contractor's Subcontractors are performing work at the Site or minor activity is in progress.

8.9 CONTRACTOR'S CPM SCHEDULE AND THE PROJECT CPM CONSTRUCTION SCHEDULE

8.9.1 Unless otherwise specified, Contractor, within thirty (30) Calendar Days after Owner's Notice to Proceed, shall prepare and submit for Owner's acceptance, written and electronic program versions in a format and version acceptable to Owner of Contractor's preliminary Critical Path Method (CPM) Schedule for the Work, which shall provide for expeditious and practicable execution of the Work in accordance with and fully coordinated with all information previously supplied to Contractor, any milestone dates identified in the Contract Documents and the date of Substantial Completion and Final Completion of the entire Project. Within sixty (60) Calendar Days of Notice to Proceed Contractor shall prepare and submit for Owner's acceptance, a final CPM Schedule for the Work.

8.9.2 Contractor's CPM Schedule shall be a critical path method arrow diagram network or other mutually agreed upon form of a schedule that identifies the "logic ties" between activities with complete electronic program and paper copies as required by Owner. Contractor's CPM Schedule shall identify each activity in ample detail necessary to accurately describe Contractor's Work and will allow for the determination of the earned value of the Project. Contractor shall include activities for all required procurement and approval of materials and equipment necessary to perform Contractor's Work. If required by the Owner, Contractor shall identify all labor, equipment, material and crew requirements necessary to perform each activity on the critical path of the Contractor's CPM Schedule within the time duration identified and any other information reasonably requested by Owner.

- .1** Contractor acknowledges that the Contract Sum is not dependent upon Contractor's CPM Schedule or any other schedule. Contractor further acknowledges that Contractor's CPM Schedule is merely a tool for the Owner's benefit to measure Contractor's progress and to coordinate Contractor's Work with the work of Owner's other contractors. Owner's review of Contractor's CPM Schedule does not alter, modify or change the terms and conditions of this Agreement nor make the Contractor's CPM Schedule a Contract Document. Contractor shall monitor, update, and maintain Contractor's CPM Schedule consistent with the Contract Documents. Contractor acknowledges that the Project owns the Float in Contractor's CPM Schedule.
- .2** Owner shall have the right, but not the obligation, to coordinate Contractor's CPM Schedule with the construction schedules of Owner's other contractors into an overall Project CPM Construction Schedule. Owner shall have the right to modify or alter the sequence, duration and logic ties between activities in Contractor's CPM Schedule in order to coordinate Contractor's Work with the work of Owner's other contractors in the creation of the Project CPM Construction Schedule and to manage the Work. All such modifications or alterations shall be immediately incorporated by Contractor into Contractor's CPM Schedule.

8.9.3 The Contractor shall submit with each Application for Payment a schedule of revisions to the Contractor's CPM Schedule for any proposed changes in the critical path of the Contractor's CPM Schedule along with a narrative report describing work accomplished during the current month as well as work projected to be accomplished during the following month. The narrative report should highlight any potential obstacles to the timely delivery of Work on the CPM critical path. Any changes in the Contractor's CPM Schedule involving an extension of time shall be pursuant to the requirements of this Agreement.

8.9.4 The Contractor shall prepare within thirty (30) Calendar Days after Owner's Notice to Proceed and update on, at least, a monthly basis Contractor's Submittal Schedule. Contractor shall issue to the Owner a monthly updated Contractor's Submittal Schedule which identifies both submitted and to be submitted items and the approval status of each item. Contractor shall specifically identify all submittals which include Work that is on the critical path of the Contractor's CPM Schedule. Contractor shall confer with the Owner on all elements of Contractor's Submittal Schedule. Submittals which are not timely submitted in accordance with Contractor's Submittal Schedule may be subject to delays in the review and processing and shall not be a basis for an extension of time or increase in the Contract Sum.

8.9.5 The Contractor shall submit a Stored Materials Status Report to Owner not later than thirty (30) Calendar Days after Notice to Proceed. Delivery dates provided on the Stored Materials Status Report shall conform to Contractor's Submittal Schedule and the Contractor's CPM Schedule. An updated Stored Materials Status Report shall accompany each Application for Payment.

8.9.6 The Contractor shall coordinate the Work, the Contractor's Submittal Schedule and Stored Materials Status Report with the requirements of the latest Owner accepted Contractor's CPM Schedule. Owner shall be entitled to withhold any sums due or to become due to Contractor, for any claims asserted by any third party for delay, disruption, extended general conditions, lost overhead and related damages arising from Contractor's failure to submit and obtain approval of all Shop Drawings, Product Data, Samples, markups, models and other submittals in strict conformance with the latest Owner accepted Contractor's CPM Schedule. Any expediting required to be performed by Contractor due to its failure to maintain the Contractor's CPM Schedule and needed to timely complete all of the Work shall be performed by Contractor without adjustment to the Contract Sum or extension of time.

8.9.7 The Contractor shall absorb all extra costs in excess of the Contract Sum resulting from its lack of diligence or failure to provide needed labor, equipment, materials or to meet the requirements of the Contractor's CPM Schedule. If at any time Contractor's personnel or equipment, in the reasonable opinion of the Owner, is considered inadequate for achieving necessary progress to complete the Work as scheduled, Contractor shall provide to Owner for its review and approval a schedule recovery plan within five (5) Calendar Days after being required to do so, detailing how the schedule of Contractor's remaining Work shall be expedited, without adjustment in the Contract Sum, in order to meet the Substantial Completion Date.

8.10 DOCUMENTS AND SAMPLES AT THE SITE

8.10.1 The Contractor shall maintain at the Site or at such other locations as it may be approved by Owner from time to time, for its use and the use and inspection of the Engineer, Contractor, Owner, and all governmental authorities with jurisdiction over the Project one copy of all Drawings, Specifications, Addenda, reviewed Shop Drawings, Change Orders and other Modifications, in good order and marked on a monthly basis to record all changes made during construction. Reviewed Shop Drawings, Product Data, Samples, Drawings and any other Contract Documents marked to record changes between as built conditions and design conditions shall be delivered to the Owner on a monthly basis through the Final Completion of the Work.

8.10.2 Prior to Final Completion of the Work and before the final Application for Payment is approved, Contractor shall turn over to Owner, all sets of Drawings, in Contractor's possession, which were stamped and approved by the Building Department, and all permits or certificates issued for the Work. Upon Final Completion of the Project and prior to negotiating the final payment from Owner, Contractor shall prepare

and deliver promptly to Owner a set of “red-lined” as-built Drawings, including CADD survey files, reflecting the actual location of all installed equipment, piping and facilities, especially work installed below ground.

8.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

8.11.1 The Contractor shall review and submit to Owner with reasonable promptness and in such sequence required by the Contractor’s CPM Schedule, all Shop Drawings, Product Data, Samples and Contractor’s other submittals required by the Contract Documents.

8.11.2 By reviewing and submitting Shop Drawings, Product Data, Samples, and Contractor’s other submittals required by the Contract Documents, Contractor represents that it has determined and verified all materials, field measurements, and field construction criteria related to the Work, or will do so, and that it has checked and coordinated the information contained within the Shop Drawings, Product Data, Samples and Contractor’s other submittals with the requirements of the Work and of the Contract Documents.

8.11.3 The Contractor shall make any corrections reasonably required by the Owner and shall resubmit the required number of corrected copies of Shop Drawings, Product Data, Samples or Contractor’s other submittals required by the Contract Documents. Resubmittal of Shop Drawings, Product Data, Samples and Contractor’s other submittals necessitated by required corrections shall not be a cause for extension of time. Contractor shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data, Samples or Contractor’s other submittals, to revisions other than the corrections requested on previous submittals.

8.11.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by Owner’s review or approval of Shop Drawings, Product Data, Samples or Contractor’s other submittals required by the Contract Documents, unless Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. All Shop Drawings, Product Data, Samples or Contractor’s other submittals required by the Contract Documents which do not strictly conform with the requirements of the Contract Documents do not alter the terms and conditions of this Agreement regardless of Owner’s review or approval of same. Contractor shall not be relieved from responsibility for errors or omissions in the preparation of Shop Drawings, Product Data, Samples or Contractor’s other submittals required by the Contract Documents, including, without limitation, the failure to comply with Applicable Laws or by the Owner’s review or Owner’s approval.

8.11.5 Shop Drawings, Product Data, Samples and Contractor’s other submittals required by the Contract Documents shall be dated and bear: Name of Project; description or names of equipment, materials and items, and complete identification of locations at which materials or equipment are to be installed.

8.11.6 Submission of Shop Drawings, Product Data, Samples and Contractor’s other submittals required by the Contract Documents shall be accompanied by transmittal letter in duplicate, containing Project name, Contractor’s name, number of Drawings, Product Data, Samples, and Contractor’s other submittals, titles and other pertinent data. Each and every submission shall be included on Contractor’s Submittal Schedule.

8.11.7 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

8.12 TESTING AND INSPECTION OF CONSTRUCTION

8.12.1 As required by the Contract Documents, the Contractor is solely responsible for the quality of the constructed Work. The Contractor shall inspect the Work on a continuous basis, and the Contractor shall prepare daily reports that summarize the Contractor’s observations as outlined in the Contract Documents.

8.12.2 If required by the Contract Documents, the Contractor shall coordinate the services of a construction testing laboratory provided by the Owner. The construction testing laboratory shall maintain an appropriate testing system throughout the performance of the Work to ensure the Contractor's strict compliance with the Contract Documents. The Contractor shall require that the construction testing laboratory perform all of the construction testing required by the Contract Documents. This includes, but is not limited to: the type of test; the percentage of units to be tested and/or the number of samples required; the time of the test and/or whether tests are required to be periodic or continuous. The construction testing laboratory shall provide Owner with copies of each and every testing report or summary simultaneously with the issuance to the Contractor.

8.12.3 The Contractor shall maintain in good order Contractor's testing and daily reports. All testing and daily reports shall remain at the Project Site with the Contractor and shall be made available to the Owner upon request for review. Copies of Contractor's testing and daily reports will be provided to the Owner on a weekly basis.

8.12.4 Owner, in its sole discretion, may, but is not required to, perform its own tests and inspections and the Contractor agrees to assist Owner in uncovering Work required for Owner to perform any such additional tests and inspections. Contractor's costs for uncovering the Work shall be governed by Paragraph 8.17. Owner's tests and inspections are for the sole benefit of Owner, and such additional tests and inspections shall not be deemed a substitute for the Contractor's testing and inspection obligations pursuant to the Contract Documents. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's performance of any testing and inspection.

8.12.5 The Contractor shall bring the Work that does not comply with the requirements of the Contract Documents immediately to the attention of the Owner and make a written report of the recommended Corrective Action. All Corrective Action shall be subject to Owner's prior review and shall be performed by Contractor in the time frame directed by the Owner. All Corrective Action performed by Contractor shall be subject to the Owner's subsequent inspection and approval.

8.13 USE OF SITE

8.13.1 The Owner has included in the Contract Documents, the identity and location of the existing underground utility facilities located in the construction area as disclosed by the owner of the underground utility facility, as well as the name, address and telephone number of each owner of any underground utility facilities in the construction area that does not subscribe to a Registered Underground Utility Protection Service. Owner shall provide written notice of Contractor's name and address by certified mail, return receipt requested to the owners of underground utility facilities known to be located in the construction area of the Project. In the event that the Work will require temporary or permanent relocation of any underground utility facility located in the construction area, the Contractor shall cooperate with the Registered Underground Utility Protection Services and the owners of underground utility facilities that are not members of a Registered Underground Utility Protection Service in order to coordinate Contractor's Work with such relocation and in strict compliance with the written notice, mailing and time requirements of Ohio Revised Code § 153.64. Contractor shall be responsible for direct and indirect losses, costs and expenses caused when: (i) Contractor fails to comply with Paragraph 8.14; (ii) Contractor fails to comply with the notice and time of notice requirements of Ohio Revised Code § 153.64; (iii) the underground utility facility was located as marked by the owner of the underground utility facility in connection with Contractor's construction operations; or (iv) Contractor had actual knowledge of the location of the underground utility facility in connection with Contractor's construction operations. Contractor and its Subcontractors shall immediately alert the occupants of nearby premises as to any emergency that the Contractor or its Subcontractor may create or discover at or near such underground utility locations in connection with Contractor's construction operations. The Contractor and its Subcontractors shall immediately report to the owner or operator of the underground utility facility any break or leak on its lines or any dent, gouge, groove or other damage to such lines or to their coating or cathartic protection made or discovered in the course of any excavation or tunneling related to the Project.

8.13.2 Contractor shall provide support and protection for all existing work as reasonably required, including all Underground Facilities. The owners of all utility fixtures shall be notified in writing by Contractor before any Underground Facilities are removed, relocated or disturbed. If it becomes necessary to change the position of or temporarily remove any Underground Facilities, the Contractor shall immediately notify the Owner of the location, circumstances and duration and shall suspend Work in the construction area if necessary until satisfactory arrangements have been made by the owners of the Underground Facilities. Contractor shall not be entitled to an increase in the Contract Sum or extension of time when the Underground Facilities are shown in the Contract Documents.

8.13.3 If applicable to the Work specified in the Contract Documents, Contractor's Work shall minimize erosion and sediment run-off and Contractor shall assume the entire cost of handling any sewage, seepage, storm, surface and flood flows which may be encountered at any time during the construction Work. Contractor shall be responsible for obtaining any required permits as per Applicable Law and shall be liable for any fines and penalties assessed by any authority with jurisdiction over the Project due to noncompliance or violation of such requirements. Contractor shall limit both area and duration of bare soil exposure, employ appropriate erosion control through staged clearing, grading and excavating procedures, soil-pile protection, mulching and temporary vegetation. Groundwater, storm water and sediment bearing drainage from dewatering operations shall be filtered or impounded to allow removal of silt, sediment, debris, and other pollutants in an acceptable, stabilized location prior to disposal.

8.13.4 The Contractor shall establish all required base lines and elevation bench lines necessary for the performance of the Work. Contractor shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the written approval of the Owner. Established reference points which may be lost, covered, destroyed or disturbed in the course of performance of the Work or which require shifting because of necessary changes in grades or locations shall, subject to prior approval of the Owner, be replaced and accurately located or relocated (as appropriate) at Contractor's expense, by an Ohio Licensed Engineer or Land Surveyor. If the original base lines or benchmark are lost, covered, destroyed or distributed, Contractor shall re-establish these reference points at no increase in the Contract Sum.

8.13.5 The Contractor shall confine operations and storage of materials, equipment, tools and debris at the Site to areas designated by the Owner, permitted by Applicable Laws or the Contract Documents and shall not unreasonably encumber the Site with any materials, equipment, tools or debris. All excavated materials, construction equipment and materials and equipment to be incorporated into the Work shall be placed so as not to injure any part of the Work or existing facilities and to provide free access to all parts of the Work and to all public utility installations in the vicinity of the Work.

8.13.6 The location of all temporary roadways and similar facilities shall be subject to Owner's review. The Contractor shall keep temporary Work from blocking access to completed Work or from interfering with other work being performed by Owner, other contractors or other public entities. If, however, conflict with normal traffic access occurs, Contractor shall provide temporary bypass routing until such temporary Work is completed. Contractor shall remove all temporary Work from the Project Site after it is no longer needed, and before completion of the Work.

8.13.7 Owner shall have the authority to limit the number of Contractor and Subcontractor employee vehicles present at the Project site. Contractor shall enforce all such limitations. In cases of a dispute between Owner and Contractor regarding vehicle limitations at the Project Site, the Owner's determination shall govern and be binding on Contractor.

8.14 CLEANING UP AND BACKCHARGES

8.14.1 The Contractor shall keep the premises, the surrounding area and surrounding streets, lawns, and sidewalks free from accumulation of waste materials, rubbish, dirt, mud, vegetation and construction debris caused by operations under the Contract Documents. Before Final Completion, the Work, including stream channels and banks at drainage structures and all borrow and waste areas, storage sites, temporary plant sites, haul roads and other grounds occupied by Contractor in connection with the Work shall be cleaned of

all waste materials, rubbish, temporary structures, the Contractor's tools, construction equipment, machinery and surplus materials. These areas shall have suitable vegetative cover established by seeding and mulching or by other approved methods and all parts of the Work shall be left in an acceptable condition as determined by the Owner. When sewers are built in paved or unpaved streets, Contractor shall remove dirt, mud, vegetation and construction debris accumulating from its operations upon all streets, intersecting streets, lawns or sidewalks as often as ordered by Owner.

8.14.2 If the Contractor fails to clean up as provided in the Contract Documents, use the streets, lawns and sidewalks at and adjacent to the Project site as provided in the Contract Documents, creates a nuisance, causes or contributes to water or air pollution, creates a health hazard or violates Applicable Laws, the Owner may implement the Corrective Action it deems appropriate and the reasonable cost of performing the Corrective Action shall be charged to the Contractor and the Contract Sum adjusted accordingly or at Owner's option, paid by Contractor to Owner. Owner shall have the right to allocate the reasonable cost of the Corrective Action among any or all entities performing Work on Site on a pro rata basis. If the unpaid balance of the Contract Sum is insufficient to pay the full cost of the Corrective Action performed by Owner on behalf of Contractor, then Contractor shall pay the difference to Owner upon written demand.

8.15 ACCESS TO WORK

8.15.1 The Contractor shall provide the Owner and Engineer and all authorities with jurisdiction over the Project with safe and reasonable access to the Work in preparation and progress wherever located.

8.16 ROYALTIES, PATENTS AND COPYRIGHTS

8.16.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Engineer, and Engineer's consultants for the Project harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in the Contract Documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner.

8.16.2 The Owner retains all Work product ownership and intellectual property rights in all Project Records used by Contractor.

8.17 UNCOVERING WORK

8.17.1 Contractor shall provide Owner with three (3) Business Days notice of Contractor's intent to cover a portion of the Work requiring observation, testing or inspection by the Contract Documents. If a portion of the Work is covered contrary to the Owner's, or any authority having jurisdiction over the Project's request, or to requirements specifically expressed in the Contract Documents, the Work must be uncovered, if required in writing by the Owner or any authority having jurisdiction over the Project, at Contractor's expense for the Owner's or any authority having jurisdiction over the Project's observation, testing or inspection and be replaced at Contractor's expense without change in the Contract Sum or extension of time.

8.17.2 If a portion of the Work has been covered which the Owner, or any authority having jurisdiction over the Project has not specifically requested to observe, test or inspect prior to its being covered, the Owner, or any authority having jurisdiction over the Project may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs without adjustment in the Contract Sum.

8.18 PREVAILING WAGE RATES

8.18.1 The prevailing wage scale in the Cuyahoga County, Ohio area shall be paid by the Contractor to all laborers, workers and mechanics in the performance of the Work, in accordance with the schedule of wages determined by the State of Ohio's Director of Commerce. Contractors performing Work on federally-assisted Projects must comply with the Federal Labor Standards Act.

8.18.2 It shall be the responsibility of the Contractor to comply with all of the provisions of Ohio Revised Code Section 4115.05, as amended effective September 26, 1974, or if applicable, the Federal Labor Standards, including but not limited to, the payment of the prevailing rate of wages to all laborers, workers or mechanics included in the Contract Documents.

8.18.3 The Owner will appoint a Prevailing Wage Coordinator during the performance or term of this Agreement in accordance with Ohio Revised Code Section 4115.07, or if applicable, the Federal Labor Standards. The Contractor and its Subcontractors shall be responsible for complying with all prevailing wage requirements in the Contract Documents, including, but not limited to, supplying the Prevailing Wage Coordinator the following reports and information at the address provided above and Contractor shall continuously update itself and its Subcontractors on all modifications and changes to the following information:

- .1** Employee's full name, address and social security number.
- .2** Employee's Work classification.
- .3** Specify whether the employee is a laborer or operator.
- .4** Specify level/year for all apprentices and provide a copy of the apprenticeship agreement for each apprentice.
- .5** Specify total hours worked each week on the Project.
- .6** Specify hourly rate of pay.
- .7** Specify actual hourly rate paid each employee for the time worked. Overtime hourly rate of not less than time and one-half the basic or regular rate paid is required for all hours worked in excess of forty (40) hours per week. In addition to paying not less than the predetermined rate for the classification in which the employee works, the amount predetermined as fringe benefits in the wage determination issued for the Project, shall also be paid. Fringe payments must be entered in appropriate blocks on payroll forms when such fringes are paid to approved plans, funds, etc.
- .8** For each employee, list all fringe benefits (if any) and amount per hour for each employee. Hourly amount is to be based on 2080 hours per year.
- .9** For each employee, list the total deductions and the net pay for the pay period.

8.18.4 Contractor shall send a final affidavit to the Prevailing Wage Coordinator when Contractor submits its final Application for Payment certifying compliance with all prevailing wage requirements in the Contract Documents. A final affidavit certifying compliance with all prevailing wage requirements is also included as part of the project close-out paperwork further described in Division 1 of the Contract Documents.

8.18.5 Except in cases of extraordinary emergencies, eight hours shall constitute a day's work and forty (40) hours a week's work, for any employee and for any worker engaged in any public work carried on whether done by contract or otherwise.

8.18.6 Failure of Contractor or any Subcontractor to strictly comply with the requirements of Paragraph 8.18 shall entitle Owner to withhold payment to Contractor pursuant to Paragraph 5.2 or terminate this Agreement for cause pursuant to Article 15.

ARTICLE 9

DISPUTE RESOLUTION

9.1 TIER 1 DISPUTE RESOLUTION

9.1.1 Contractor and Owner covenant and agree in the event of any claim, dispute or other matter in question arising out of or relating to the Contract Documents or breach thereof, Contractor shall continue with all Work, including the Work which is in dispute, and Owner will continue to pay for Work and that either party may seek such relief as may be permitted in accordance with the following dispute resolution procedures:

9.1.2 Owner shall meet with Contractor within three (3) Business Days of receipt of written notice from the party requesting relief of a dispute. Owner will issue a written Tier 1 Decision within fourteen (14) Calendar Days of the meeting. Owner and Contractor shall use best efforts to resolve the dispute; however, if the parties are unable to resolve the dispute within fourteen (14) Calendar Days of the Tier 1 Decision then Contractor must either abandon the dispute or timely proceed with the next dispute resolution procedure.

9.1.3 Unless otherwise stated in SC-1 of this Agreement, within seven (7) Calendar Days of receipt of the Tier 1 Decision, the party requesting relief shall submit a written request for review of the Tier 1 Decision by the Dispute Resolution Board (DRB). In the event that the DRB provisions as set forth in Paragraph 9.2 have been removed from the scope of this Agreement pursuant to Section SC-1, and after compliance with Paragraphs 9.1.1 and 9.1.2 above, any claim, dispute or other matter in question arising out of or relating to the Contract Documents or breach thereof will be resolved by litigation in any state court located in Cleveland, Ohio having jurisdiction over the Parties, utilizing Ohio law.

9.2 DISPUTE RESOLUTION BOARD (DRB) PROCESS

9.2.1 The decisions and recommendations of the DRB are advisory and not binding, unless as a result of the DRB process, Owner and Contractor enter into a written settlement agreement identifying the claims and disputes resolved. The DRB process shall be conducted pursuant to the DRB Three-Party Agreement attached as Exhibit "A" and the following terms and conditions.

9.2.2 Owner and Contractor will establish one DRB for the Project consisting of three (3) members. All DRB members shall meet the following criteria:

- .1** Members of the DRB shall not have a financial interest in the Project, except for payment of services on the DRB;
- .2** Members of the DRB shall not be nor have been employed directly or indirectly by either the Owner, Engineer or Contractor for at least three (3) years prior to notice of the Contract award;
- .3** The Members of the DRB shall have substantial experience of not less than ten (10) years in the type of excavation, demolition, design or construction required for the Project;
- .4** At least one member of the DRB may be an attorney, licensed to practice law in the State of Ohio, who shall have at least ten (10) years of experience in construction law; and
- .5** The DRB Members shall discharge their responsibilities impartially and independently considering the facts and conditions related to the matters under consideration and the provisions of the Contract Documents.

9.2.3 The DRB shall consist of the Owner selecting a member for approval by Contractor and the Contractor selecting a member for approval by Owner, with the two (2) approved members selecting the third DRB member. The three (3) DRB members shall commence their services by selecting one (1) member as the chair with the approval of Owner and Contractor. The Owner and Contractor shall select their members and obtain approval from the other party within ninety (90) Calendar Days of the award of the contract by the District's Board of Trustees. The two (2) DRB members shall select the third DRB member and appoint the DRB chair within fifteen (15) Calendar Days of their approval and appointment by Owner and Contractor. Service of a DRB member may be terminated at any time with not less than thirty (30) Calendar Days notice as follows:

- .1** The Owner may terminate the service of the Owner appointed member;
- .2** The Contractor may terminate the service of the Contractor appointed member;
- .3** The third DRB member's service may be terminated by agreement of the other two (2) DRB members or by agreement of the Owner and Contractor;
- .4** A DRB member's resignation.

9.2.4 After selection and approval of the DRB members and chair, all Project related communication between the DRB members and Owner and Contractor shall be with the DRB chair, except during meetings with the parties and distribution of progress documents. All written correspondence between one party and the DRB chair shall be copied to the other party and sent directly to the other two (2) DRB members. The DRB shall meet with the Owner and Contractor on a quarterly basis at the Project Site or other mutually agreeable location based on the circumstances to discuss the Work and related issues identified in the meeting agenda developed by the DRB chair with input from the Owner, Contractor and DRB members. DRB meeting minutes shall be prepared by the Owner, for information only, to document future action items and discussions held, but shall not be used by either Owner or Contractor in DRB hearings or other dispute resolution proceedings. Between each quarterly DRB meeting, Owner shall provide the DRB members with copies of Project Records that provide periodic progress reporting updates or report on the status of any Work or related unresolved issues discussed at any previous DRB meeting.

9.2.5 Either the Owner or Contractor may refer a Tier 1 Decision to the DRB for a DRB hearing. In addition, either party may refer a dispute for a DRB hearing if the other party fails to comply with the deadlines set forth in Subparagraphs 9.1.1 and 9.1.2. Within ten (10) Calendar Days following referral, the party requesting relief shall submit Claim Documents to the DRB chair with service on the DRB members and opposing party that clearly and in detail gives the following information for each item of additional compensation and time extension requested:

- .1** A narrative of the disputed Work or Project circumstances at issue with enough description and information to enable understanding by a third person who is not familiar with the Project;
- .2** References to the applicable provisions of the Drawings, specifications and other Contract Documents related to the dispute with copies of the applicable Contract Documents included with the Claim Documents;
- .3** The dollar amount of additional compensation for any request for an increase to the Base Contract Price, Specific Allowance(s), General Allowance or Contract Sum with the cost and supporting documents that serve as the basis for the requested compensation;
- .4** The number of Calendar Days of a requested time extension, including a schedule analysis in compliance with Paragraph 13.2 of this Agreement; and
- .5** Copies of all relevant correspondence, schedules, photographs and other Project Records.

9.2.6 The opposing party shall submit, within ten (10) Calendar Days of receipt, a rebuttal to the Claim Documents to the DRB chair with a copy to the opposing party and the DRB members. The DRB members may expand any time-frame if either side requests more time to prepare and submit their Claim Documents or rebuttal.

9.2.7 Within ten (10) Calendar Days of receipt of the Claim Documents and rebuttal, the DRB members shall schedule a DRB hearing with the Owner and Contractor to hear oral presentations from both sides. Once a DRB hearing date has been established, both Owner and Contractor shall submit to the DRB chair, with copies to the other party and DRB members, a list of names and their affiliation who may present at the DRB hearing. The Owner's and Contractor's respective positions shall be presented by individuals thoroughly knowledgeable of the dispute. Each party may have other representatives and technical advisors assist in the presentation. Unless mutually agreed by both parties, outside legal counsel shall not be permitted to attend the oral presentation to the DRB members. The DRB shall arrange and conduct all meetings, hearings and Project visits the DRB members determine necessary to decide all disputes presented to the DRB.

9.2.8 The DRB members shall consider the submitted documents and testimony and render a DRB written recommendations within thirty (30) Calendar Days of the close of the DRB hearing. The decision of the DRB Members shall be by majority vote. The DRB members shall rule on each issue of the claim and determine both entitlement and damages or the lack thereof. The dissenting findings and recommendations will be included in the DRB written majority recommendations. Within thirty (30) Calendar Days of the date of the DRB written recommendations, Owner and Contractor shall accept or reject the DRB written recommendations in whole or in part. All matters agreed to in the DRB written recommendations shall be documented in a written settlement agreement between Owner and Contractor.

9.2.9 Evidence presented to the DRB may be used as evidence in subsequent litigation or arbitration proceedings; additionally, the DRB written recommendations shall be admissible as evidence by either Owner or Contractor in such subsequent proceedings. Any DRB written recommendations introduced into evidence in any subsequent proceeding shall be prefaced with the following paragraph:

These DRB written recommendations may be taken under consideration with the understanding that:

- 1) The DRB written recommendations were based upon presentations by the parties.
- 2) No fact or expert witnesses presented sworn testimony or were subject to cross-examination.
- 3) The parties to the DRB proceedings were not provided with the right to any discovery, such as the production of documents or depositions.
- 4) There is no record of the DRB hearing other than the DRB written recommendations.

9.2.10 The fees and expenses of the DRB members will be paid in total by the Contractor based on mutually agreeable hourly rate(s) and items of reimbursable expense through a specific allowance contained on the Bid Form. The Contractor shall not include any mark-up to the DRB expenses and shall supply the DRB invoice(s) in Contractor's pay applications.

9.3 Should Contractor and Owner be unable to resolve the dispute through the DRB process, any and all disputes shall, at the sole discretion of Owner, be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining. The organization, selected by the Owner, to provide arbitration services and any arbitrator(s) appointed thereby shall have no jurisdiction, power or authority to decide or award punitive damages. The award(s) rendered by the arbitrators in accordance with this provision shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. All arbitration proceedings or hearings shall be conducted in a location identified by Owner, utilizing Ohio law.

- 9.4** Owner and/or Contractor may join any other party in the arbitration proceeding that Owner and/or Contractor determines is necessary to reach a complete adjudication of any disputes arising under the terms of this Agreement, and/or disputes arising under the terms of any other agreement or contract entered into between Owner and any other party performing Work on the Project.
- 9.5** After the Parties' compliance with Paragraphs 9.1 and 9.2, should the Owner elect not to resolve a dispute by binding arbitration pursuant to the terms of Article 9, such dispute will be resolved by litigation in any state court located in Cleveland, Ohio having jurisdiction over the Parties, utilizing Ohio law.
- 9.6** The failure of either Contractor or Owner to comply with the provisions of the foregoing shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution, shall constitute a breach of these provisions, and Contractor and Owner expressly stipulate that any court having jurisdiction over the parties shall be empowered to immediately enjoin any proceeding commenced in contravention of this Article and the party failing to comply with these provisions shall reimburse the other parties for all costs and expenses (including attorneys' fees) incurred in enforcing these provisions.
- 9.7** Unless otherwise agreed in writing, the Contractor shall continue to provide services and shall maintain progress during the good faith negotiations required by this Agreement, any DRB hearing, arbitration or litigation proceedings, and the Owner shall continue to make payments to the Contractor in accordance with this Agreement, however the Owner shall be under no obligation to make payments on or against any claim or amounts in dispute during the good faith negotiations required by this Agreement or the pendency of any DRB hearing, arbitration or litigation proceeding to resolve those claims or amount in dispute.

ARTICLE 10

SUBCONTRACTS

- 10.1** The Contractor and Subcontractor hereby expressly agree that the Owner is not a third-party beneficiary to the Contractor-Subcontractor Agreement. The Owner, Contractor and Subcontractor hereby expressly agree that the Subcontractor is not a third-party beneficiary to this Owner-Contractor Agreement.

10.2 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

10.2.1 The Contractor understands and agrees that no contractual agreement exists for any part of the Work under this Agreement between the Owner and any of the Subcontractors nor Sub-Subcontractors. Further, the Contractor understands and agrees that it alone is responsible to the Owner for all of the Work under this Agreement and that any review of Subcontractors or Sub-Subcontractors by the Owner will not in any way make the Owner responsible to nor for the actions or failures of any Subcontractor or Sub-Subcontractor.

10.2.2 Contractor-proposed Subcontractors or Sub-subcontractors shall have a record of successful and satisfactory past performance with the type of work and/or items proposed to be provided or furnished by them.

10.2.3 Except whereby the submission of the bid by the Contractor under the conditions of the Contract Documents indicates or implies it has accepted the use of a particular specified Subcontractor, the Contractor will not be required to contract with any Subcontractor or person or organization against whom it has a reasonable objection.

10.2.4 Contractor must provide an official list of subcontractors and sub-subcontractors on forms provided in the Contract Documents and must obtain the written approval of the Owner prior to substituting any subcontractors or sub-subcontractors.

10.2.5 The written Contract between the Contractor and Subcontractors shall: (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents and all Applicable Laws and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents and

this Agreement, assumes toward the Owner; (2) require each Subcontractor to maintain the required insurance policies and procure the required surety bonds and (3) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by the Contract Documents and this Agreement.

10.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

10.3.1 Each subcontract agreement for a portion of the Work is contingently assigned by the Contractor to the Owner provided that:

- .1** Assignment is effective only after termination of the Contract by the Owner for cause or convenience pursuant to Article 15 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2** Assignment is subject to the prior rights of the surety obligated under bond relating to the Contract.

10.3.2 Upon such assignment, if the Work has been suspended for more than 90 days, the Subcontractor's compensation shall be equitably adjusted for increases in Actual Costs proximately resulting from the suspension.

ARTICLE 11 **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

- 11.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claims as provided in Articles 12 and 13 and elsewhere in the Contract Documents.
- 11.2** The Contractor shall afford the Owner and separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 11.3** Costs caused by delays, improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 12 **WORK ORDERS, CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVE**

12.1 GENERAL

12.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract and without notice to any surety, by Work Orders, Change Orders, Field Orders and Construction Change Directives, and the Contract Sum and the Final Completion Date shall be adjusted as provided herein in connection therewith. If a time extension is granted, the CPM Construction Schedule and any milestones set forth in the Contract Documents shall be adjusted accordingly.

12.1.2 Work Orders are issued in writing to Contractor and shall authorize Contractor to perform Work for payment from the General Allowance and Specific Allowance(s), if any, set forth in Article 2 of the Agreement between Owner and Contractor for the Project. Except for emergencies authorized by Ohio Revised Code § 6119.10, a Work Order authorizing payment from the General Allowance or the Specific Allowance requires prior written authorization from the Owner.

12.1.3 A Change Order is a document recommended by Engineer and signed by Contractor and Owner that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or

extension of the Final Completion Date on or after the date of the Agreement between Owner and Contractor. Except for emergencies authorized by Ohio Revised Code § 6119.10, a Change Order requires prior written authorization by the Owner's Executive Director and approval, by resolution, by the Owner's Board of Trustees.

12.1.4 A Work Order or Change Order signed by Contractor with no extension of time shall exclusively establish Contractor's agreement that there shall be no time extension in connection with that Work Order or Change Order. Contractor acknowledges that any attempt to preserve a future request for a time extension due to the performance of any Work associated with a Work Order or Change Order or the cumulative effects of multiple Work Orders or Change Orders is ineffective and has no force or effect pursuant to this Agreement. Except for emergencies authorized by Ohio Revised Code § 6119.10, changes in the Contract Sum and extensions of the Final Completion Date may be made only by a written Change Order signed by the Owner's Executive Director and approved, by resolution, by the Owner's Board of Trustees. Contractor shall provide or perform additional Work, make other changes in the Work and comply with the provisions of a Work Order or Change Order, the same as though the Work had been a part of the original Contract Documents, according to the terms of the Work Order or Change Order.

12.1.5 Work Order or Change Order Process

- .1** Work Orders and Change Orders shall use the Request for Proposal (RFP) form specified by Owner and may be initiated by either party as follows:
- .2** Contractor may initiate the process by submitting a written proposal to the Owner which shall fully describe the changes sought, the reasons for the changes, and the impact, if any, on the contract Final Completion Date or Contract Sum. If the Final Completion Date will be impacted by the proposed change, Contractor shall submit a schedule highlighting the anticipated impact resulting from the proposed change. If Contractor is seeking payment from the General Allowance or a Specific Allowance, a Bid Item Number that comprises Contractor's Base Contract Price or the Contract Sum, it shall submit a price proposal which identifies the basis therefor and the net change to the General Allowance, a Specific Allowance, a Bid Item Number that comprises Contractor's Base Contract Price or the Contract Sum. Contractor shall also advise the Owner in writing the results of Contractor's technical evaluation of the proposed change stating any undesirable consequences then known or reasonably foreseeable to Contractor. Contractor shall indicate the potential severity of impact and effect to the Contractor's CPM Schedule, the General Allowance, a Specific Allowance, a Bid Item Number that comprises Contractor's Base Contract Price, or the Contract Sum at the time the request is initially made.
- .3** The Owner may initiate the process by a written request to Contractor describing the change in sufficient detail to permit evaluation and Contractor shall promptly respond (within, no longer than, ten (10) Calendar Days) by submitting a price and time proposal to Owner. At the same time, Contractor shall also advise the Owner of Contractor's technical evaluation of the requested change stating any undesirable consequences then known or reasonably foreseeable to Contractor. Contractor shall indicate the potential severity of impact and effect to the Contractor's CPM Schedule, the General Allowance, a Specific Allowance, a Bid Item Number that comprises Contractor's Base Contract Price or Contract Sum at the time the request is initially made.
- .4** Following receipt of any request for a Work Order or Change Order initiated by Contractor or Owner's receipt of Contractor's price and time proposal and comments to a request for a Work Order or Change Order initiated by the Owner, the Owner shall review the submitted material and timely process the Work Order or Change Order or request additional information, clarifications or corrections as may be appropriate, until the Work Order or Change Order has been agreed upon by both Owner and Contractor.

- .5 Any time during the Work Order or Change Order process, the Owner may reasonably elect to issue a Construction Change Directive requiring Contractor to immediately carry out the Work or may cancel the proposed Work Order or Change Order. The Owner shall not be liable for any costs incurred by Contractor for proceeding with the contemplated Work Order or Change Order in anticipation of: (i) a Work Order approved in writing by the Owner's Director of Engineering and Construction authorizing payment from a Specific Allowance; (ii) a Work Order approved in writing by both the Owner's Director of Engineering and Construction and the Owner's Executive Director authorizing payment from the General Allowance; or (iii) a Change Order authorized in writing by Owner's Executive Director and approved, by resolution, by Owner's Board of Trustees.
- .6 After the Owner's approval has been obtained, the Work Order or Change Order will be prepared by the Owner for execution by the parties. The documents shall be transmitted to Contractor for signature signifying acceptance of the terms contained therein. The documents will be similarly signed by the Owner, and one fully executed original returned to Contractor. The acceptance of a Work Order or Change Order constitutes a mutual agreement with respect to all extensions of time and all direct or indirect costs related to the Work Order or Change Order.

12.1.6 The adjustment to the General Allowance, a Specific Allowance, a Bid Item Number that comprises Contractor's Base Contract Price or Contract Sum in connection with any Work Order or Change Order shall be determined in one of the following ways and, unless otherwise approved or directed by the Owner in the precedence of the order listed:

- .1 by mutual acceptance of a lump sum cost proposal with all elements of price separately itemized and supported by sufficient data to permit evaluation by the Owner;
- .2 by mutually agreeable unit prices included in the Base Contract Price, the General Allowance, or Specific Allowance(s) unless Owner determines, at its sole discretion, that the unit prices are either excessive or insufficient;
- .3 on the actual cost of the Work for the change incurred and as reflected by paid receipts.

12.1.7 Except for Unit Prices included in the Contract Documents, and unless otherwise approved by the Owner, for a proposed Work Order or Change Order, Contractor shall submit an itemized list of quantities with the applicable unit cost and extended price for each, in such form and detail as required by the Owner.

12.1.8 At a minimum, the cost of the Work Order or Change Order breakdown prepared by Contractor shall include and indicate the items enumerated below. Rates for labor, equipment and material shall be the same for extra and credit computations.

.1 Labor:

- (a) For all labor, the Contractor shall be paid the actual rate of wages and fringe benefits in effect at the time the Work Order or Change Order is performed for each and every hour that said labor is actually engaged performing the Work Order or Change Order. Fringe benefits shall include costs paid to, or on behalf of, workers by reason of health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contracts generally applicable to the class of labor employed to perform the Work Order or Change Order. Fringe benefits on non-union employees shall not include discretionary pensions and/or bonuses and any other fringe benefit that is discretionary or based on profit sharing, including employee stock option plans. In addition to the above the Contractor shall receive the actual cost of social security tax, workers' compensation and state and federal unemployment insurance.

No other markups or allocations as a percentage of labor shall be allowed. The Contractor is required to furnish evidence of the actual percentages applicable at the time the Work Order or Change Order is performed. Overtime will only be paid if authorized in writing by Owner. Any portion of the time of the designated field superintendent for the Project attributable to the Work Order or Change Order shall not be billed as a direct cost, unless specifically authorized in writing by the Owner.

- (b) Payment will be made for only one foreman classification per work crew, unless specifically authorized in writing by Owner.
- (c) Certified payroll reports shall be provided for each worker before payment can be made for that person.

.2 Material and Supplies:

- (a) The Contractor will be paid the actual cost of material and supplies approved by the Owner and incorporated into the Work Order or Change Order as evidenced by invoices and paid receipts.

.3 Equipment:

- (a) The Contractor shall not include in the cost of a Work Order or Change Order any cost or rental of small tools (defined as tools with a replacement cost of \$1,500 or less), buildings, and field trailers. These costs shall be considered part of the Contractor' Markup Fee (as hereinafter defined).
- (b) For equipment listed in the NEORS D Equipment Rental Table of the Contract Documents, the hourly charge shall be as listed therein.
- (c) For any construction equipment not listed in the Equipment Rental Table in the Contract Documents, the Contractor shall charge the applicable rental rate based on the AED Green Book, but under such conditions as contained herein. The use of any other publication for the determination of rental rates will be at the Owner's sole discretion.
- (d) Rental of equipment or equipment owned by the Contractor will be paid for by the hour. For the first eight (8) hours of use in each Calendar Day, the hourly charge for equipment will be 1/176 of the monthly rate shown in the AED Green Book. For use beyond eight (8) hours in any Calendar Day or beyond forty (40) hours in any calendar week, the hourly charge for equipment will be 1/352 of the monthly rate.
- (e) The hourly charge for equipment on standby will be 1/352 of the monthly rate. Equipment on standby shall not be billed for more than eight (8) hours in any Calendar Day or for more than forty (40) hours in any calendar week.
- (f) The hourly charge for equipment not listed in the AED Green Book or the Equipment Rental Table of the Contract Documents will be the local rental rate of such equipment from area suppliers as established by the Owner or as calculated through the use of any publication for the determination of rental rates, whichever is lower.
- (g) Equipment rented from a third party will be paid at invoice cost or in accordance with the AED Green Book, whichever is lower. In addition, at the request of the

Owner, the Contractor shall present competitive quotes for the Owner's evaluation prior to renting equipment from a third party.

- (h) Equipment rates are for bare rental, without an operator.
- (i) The Contractor may add the actual cost of fuel, oil and lubricants used for the operation of the equipment used for a Work Order or Change Order. The Contractor will be required to provide documentation as required by Owner to support the above charges. In lieu of that method, the Contractor may add 15% to the cost of equipment rental rate, for equipment utilizing fuel, oil and lubricants, as total compensation for the same. The 15% charge shall not be applied to equipment on standby.
- (j) For Contractor owned equipment, the aggregate equipment rental charge for any single piece of equipment used in any Work Order or Change Order shall be limited to fifty percent (50%) of the fair market value of the piece of equipment at the time the Work Order or Change Order was performed.
- (k) For specialized construction equipment such as tunnel boring machine plants and spoils conveyance systems, it will be considered that the Contractor has been compensated in the Contract Sum for ownership and any lost opportunity costs on this or other projects. Therefore, should any Work Order or Change Order be performed for, or delays be incurred to, the tunnel excavation, the Contractor will be entitled to additional compensation only for the actual operating and maintenance costs of this equipment as determined by the Corp of Engineer's standard rate for idled specialty equipment in effect when the Work Order or Change Order is performed.
- (l) Equipment which is not in good condition as decided by the Owner shall be replaced at no additional cost to Owner.
- (m) If the Work Order or Change Order requires the use of construction equipment not already on the Site of the Work, Owner will only pay for one (1) round-trip transportation charge per Work Order or Change Order for each piece of equipment brought to the Site, unless authorized in writing by the Owner. The round-trip transportation charge shall be based on a round trip of no more than 50 miles.
- (n) A list of all equipment to be used must be approved by Owner in writing prior to commencement of a Work Order or Change Order.

.4 Bond Premium:

- (a) The increased Bond premium cost assessed upon a Work Order or Change Order shall be billed at Contractor's direct cost as evidenced by invoices and paid receipts.

.5 Markup Fee:

- (a) The percentages for overhead and profit as set forth herein for a Work Order or Change Order may be less depending on the nature, extent or complexity of the Work Order or Change Order, where the percentage is not commensurate with the responsibility and administration involved but in no event shall they exceed:
 - (i) In the case of a Work Order or Change Order performed by the Contractor's own forces or by its Subcontractors add a fifteen percent (15%) markup to the costs identified and substantiated in Subparagraphs 12.1.8.1 through 12.1.8.3

and without markup to the Bond premium identified and substantiated in Subparagraph 12.1.8.4; and

(ii) For Work performed by Contractor's subcontractors, at whatever tier, a single markup of five percent (5%).

(b) The Markup Fee includes, but is not limited to the following costs, fees and expenses: home office, branch office, field office, project management, superintendents, estimating, engineering, training and safety meetings, coordination, expediting, purchasing, detailing, legal, accounting, data processing or other administrative services, shop drawing, permits, taxes comprehensive general liability insurance, auto insurance, and umbrella insurance.

12.1.9 The Contractor and/or Subcontractor shall utilize the form required by Owner when submitting invoices for a Work Order or Change Order that is based on the actual cost of the Work. The Contractor and/or Subcontractor shall keep daily reports for all Work Orders or Change Orders. The daily reports shall include the names of employees, the employees' classifications, the nature of work performed and the hours worked, materials and equipment incorporated, and machinery or equipment used, if any, in the prosecution of each Work Order or Change Order. Invoices and paid receipts will be retained by the Contractor and submitted as part of the daily reports. Contractor's daily report shall constitute verification that the Work Order or Change Order was performed, shall be submitted to the Owner at the end of each shift, and must be signed both by the Contractor and Owner. A complete daily report for each day worked shall be submitted for each Work Order and Change Order.

12.1.10 For a Work Order or Change Order where the value or extent of the Work cannot be reasonably pre-determined or agreed upon, the Owner and Contractor may agree in a written Work Order or Change Order that Work shall proceed on an agreed upon cost of Work basis, not to exceed a pre-determined maximum amount, and subject to final determination pursuant to Subparagraph 12.2.9.

12.2 CONSTRUCTION CHANGE DIRECTIVES

12.2.1 A Construction Change Directive is a written order signed by the Owner, directing a change in Work pursuant to a Work Order or Change Order where there is a dispute as to the terms of the Work Order or Change Order. A Construction Change Directive for a Work Order authorizing payment from a Specific Allowance shall be signed, in writing, by Owner's Director of Engineering and Construction. A Construction Change Directive for a Work Order authorizing payment from the General Allowance shall be signed, in writing, by both the Owner's Director of Engineering and Construction and Owner's Executive Director. A Construction Change Directive for a Change Order shall be authorized in writing by Owner's Executive Director and approved, by resolution, by Owner's Board of Trustees. The Owner may by Construction Change Directive, without invalidating the Contract, authorize a Work Order or Change Order consisting of additions, deletions or other revisions with a change in the Base Contract Price, the General Allowance, Specific Allowance(s), Contract Sum and/or time of Completion being adjusted accordingly.

12.2.2 A Construction Change Directive shall be initiated by the Owner and used in the absence of total agreement on the terms of a Work Order or Change Order.

12.2.3 An adjustment to the cost of the Work resulting from a Construction Change Directive shall be documented in a signed written agreement. The cost of the Work shall be determined as set forth in Article 12 of this Agreement.

12.2.4 All Construction Change Directives shall be signed first by the Owner followed by the Contractor, respectively.

12.2.5 Upon receipt of a Construction Change Directive signed by Owner, Contractor shall promptly proceed with the Work Order or Change Order involved and advise the Owner of Contractor's agreement

or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment to the Work Order or Change Order.

12.2.6 A Construction Change Directive signed by Contractor indicates the agreement of Contractor to its terms. Such agreement shall be effective immediately and shall be followed-up by a written Work Order signed by Owner's Director of Engineering and Construction authorizing payment from a Specific Allowance(s), or a written Work Order signed by both Owner's Director of Engineering and Construction and Owner's Executive Director authorizing payment from the General Allowance or a written Change Order signed by Owner's Executive Director and authorized, by resolution, by Owner's Board of Trustees.

12.2.7 Except as otherwise agreed by the Owner and Contractor, the method and the adjustment shall be initially determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the Work Order or Change Order, including expenditures for design services and revisions to the Contract Documents. If the Contractor does not respond promptly or disagrees with the method for adjustment, Contractor shall keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data to substantiate the accounting to the reasonable satisfaction of Owner.

12.2.8 Pending final determination of cost to the Owner for a Work Order or Change Order, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a Work Order or Change Order, Contractor's Markup Fee shall be figured on the basis of net increase, if any, with respect to that change.

12.2.9 If the Owner and Contractor do not agree as to the terms of a Construction Change Directive or the method for determining it, the adjustment or the method shall be decided pursuant to Article 9.

12.2.10 When the Owner and Contractor, subsequent to the issuance of a Construction Change Directive, agree concerning the adjustments to the Work Order or Change Order, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate written Work Order signed by Owner's Director of Engineering and Construction and the Contractor authorizing payment from a Specific Allowance(s), or an appropriate written Work Order signed by both Owner's Executive Director of Engineering and Construction and Owner's Executive Director and the Contractor authorizing payment from the General Allowance or a Change Order signed by Owner's Executive Director and the Contractor and authorized, by resolution, by Owner's Board of Trustees.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 All claims by Contractor for an increase in the Contract Sum, shall be made in writing to the Owner within seven (7) Calendar Days after the occurrence of the event giving rise to such claim. The Contractor's notice of claim shall indicate the Contractor's good faith, objective determination of the potential impact and effect to the Contract Sum and the Contractor's technical evaluation and recommendation on how to minimize the potential impact and effect to the Contract Sum.

12.3.2 The provision of notice to Owner by Contractor is a condition precedent to the Owner's obligation to pay Contractor an increase in the Contract Sum. Contractor expressly acknowledges and agrees that the notice and time of notice provisions in this Agreement are conditions precedent and necessary for Owner to determine the best course of action to implement in order to mitigate adverse consequences arising out of or related to Contractor's claim and to coordinate the Work affected by Contractor's claim with Owner's separate Contractors and other Owner-supplied Work. If a claim is made more than seven (7) Calendar Days after such occurrence, the claim shall be waived and Contractor fully and completely releases Owner from all responsibility therefrom pursuant to this Agreement.

12.4 FIELD ORDERS

12.4.1 The Construction Supervisor with written approval from Owner's Director of Engineering and Construction shall have the authority to issue Field Orders. The Owner also reserves the right to issue a Field Order to make minor changes in dimensions, location, arrangements, or details to accommodate changes in other materials and equipment, improve the Work or prevent unforeseen interference with structural or other features. Contractor shall carry out such Field Orders promptly.

ARTICLE 13 **PROGRESS AND COMPLETION**

13.1 PROGRESS AND COMPLETION

13.1.1 All time limits stated in the Contract Documents are essential conditions of the Contract. In executing the Contract, Contractor agrees that the number of days within which the Work shall be completed is reasonable for Contractor's Work.

13.1.2 The Contractor shall begin the Work in accordance with the Notice to Proceed. Contractor shall carry the Work forward expeditiously and continuously with adequate forces to make progress in accordance with the latest Owner accepted Contractor's CPM Schedule and to complete Contractor's Work within the time for completion of the Work.

13.1.3 Except for constraints which may be specified for a certain part of the Work or otherwise imposed by Owner, the Work shall not be suspended or shut down, but shall progress continuously and expeditiously, unless otherwise approved by the Owner. Contractor shall assemble material and equipment in advance of the need and, as may be appropriate to the progress, shall prefabricate assemblies which will comply with the Contract Documents, as may be specified, to expedite the Work and ensure completion within the interim milestone dates and dates of Substantial Completion and Final Completion required by the Contract Documents.

13.2 DELAYS AND EXTENSIONS OF TIME

13.2.1 Should the progress, performance or completion of any portion or portions or the whole of Contractor's Work, which is on the identified critical path reflected in the latest Owner accepted Contractor's CPM Schedule, be delayed as the result of:

- .1** Any failure or neglect of Owner;
- .2** Any Change Order requested by the Owner if the Change Order included additional time;
- .3** Labor disputes (including strikes affecting transportation) that do, in fact, directly and critically affect the progress of the Work, but only if the persons or entities taking such actions are not the fault or responsibility of Contractor. An extension of time on account of an individual labor strike shall not exceed the number of Calendar Days of the strike
- .4** Tornado, fire, hurricane, blizzard, earthquake, flood, other acts of God, or any other natural event not within the control of the Contractor that prevents the progress of the Work on the critical path of the latest Owner accepted Contractor's CPM Schedule;
- .5** Delay authorized by the Owner pending resolution of a dispute;
- .6** Acts of the public enemy, acts of the state, federal or local government in its sovereign capacity;
- .7** Any other cause which the Owner determines may justify the delay;

- .8** Removal of Hazardous Materials/Regulated Substances from the Site that is not within the scope of the Work;
- .9** Delays incurred to investigate any claim by Contractor for Unforeseen Conditions pursuant to Subparagraph 8.1.6;
- .10** The occurrence of weather-related delays in excess of forty-six (46) Work Days per twelve (12)-month period as follows: three (3) Work Days per month between April and October and five (5) Work Days per month between November and March or
- .11** Order of any court of competent jurisdiction enjoining the performance of the Work that is not sought by Contractor in accordance with the Contract Documents;

The time of completion of the portion or portions of the Work directly affected by such delay, shall, upon request of Contractor as provided in Subparagraph 13.2.2, be extended by a reasonable period, in no event to exceed the time lost on the critical path of the latest Owner accepted Contractor's CPM Schedule.

13.2.2 Should Contractor reasonably believe, in accordance with Subparagraph 13.2.1, that it is entitled to an extension of time for completion of any portion or portions of the Work, the Contractor shall, within seven (7) Calendar Days after the occurrence of the cause of the delay, notify the Owner in writing, setting forth (a) the cause for the delay; (b) the identity of the party or parties responsible for the delay; (c) a description of the portion or portions of Work on the critical path affected thereby; (d) an estimate of the probable impact and effect of the delay on the progress of the critical path Work and completion of the Work; a technical evaluation and recommendation on how to minimize the probable impact and effect on the critical path work; and (e) all Project Records that document the delay. A subsequent written application for the specific number of days of extension of time requested shall be made by the Contractor to the Owner within fourteen (14) Calendar Days after the effects of the delay can be ascertained through use of the latest Owner accepted Contractor's CPM Schedule. Any time extension resulting from the claim shall be authorized by a Change Order. If the Owner and Contractor cannot agree on the number of days of the time extension, such matter shall be decided by dispute resolution pursuant to Article 9.

13.2.3 It is a condition precedent to the consideration or prosecution of any claim for an extension of time that the foregoing provisions regarding the timing of notice be strictly adhered to in each and every instance so that Owner may determine the best course of action to implement to mitigate the impact to the critical path of the Contractor's CPM Schedule or the Project CPM Construction Schedule. Contractor expressly agrees that if Contractor fails to strictly comply with the notice provisions set forth in this Paragraph 13.2, the claim shall be deemed to have been waived by Contractor.

13.2.4 The Contractor agrees that it shall have no claim against the Owner for an increase in the Contract Sum or for any other monetary damages resulting from delays, disruptions or interference on account of or resulting from conditions set forth in Subparagraph 13.2.1 except only for substantiated claims for delays proximately caused by the Owner, as set forth in Subparagraph 13.2.1.1 and solely as provided in this Subparagraph 13.2.4. The Contractor may only recover funds in excess of the Contract Sum or for any other monetary damages resulting from delays, disruptions and interferences for Actual Costs incurred by the Contractor due to the proximate cause of the actions or inactions of the Owner, provided that the Contractor satisfies in full the following requirements for each claim: (1) claims must strictly satisfy the notice requirements of Subparagraph 13.2.2; (2) Contractor identifies, in writing, and demonstrates that it has used all reasonable efforts to mitigate the effects of the alleged delay; and (3) Contractor provides Owner with a written analysis which demonstrates the proximate cause and effect relationship between the alleged cause of the delay and the effect on the critical path of the Contractor's CPM Schedule. Contractor agrees that after demonstrated satisfaction of the provisions of Subsection 13.2.4(1)-(3) as set forth above, any claim for an increase in the Contract Sum or for any other monetary damages resulting from delays, disruptions and interferences caused by the Owner shall be limited to Contractor's Actual Costs. Actual Costs shall not include other compensatory or consequential damages, including, but not limited to, loss of home office overhead, loss of profits, or loss of bonding capacity, which are expressly waived by Contractor.

13.2.5 Should changes in the Work pursuant to Article 12 significantly affect the critical path progress of the Work of the Project, then any time extension request or any claim against the Owner resulting from the delay caused by the Work Order or Change Order shall be submitted to Owner simultaneously with the request for monetary adjustments. Contractor acknowledges that any attempt to preserve or reserve Contractor's right to assert a subsequent claim for the effects of a prior Work Order or Change Order or the cumulative effects of multiple Work Order or Change Order is ineffective and has no force or effect pursuant to this Agreement. For a Work Order or Change Order which does not affect the critical path of the Contractor's CPM Schedule, the Contractor shall not be entitled to a time extension.

13.2.6 Delays resulting from a labor dispute not the fault or responsibility of Contractor will result in a time extension no longer than the dispute period, in addition to a reasonable mobilization period, and may be less depending on the actual effect on the critical path of the Contractor's CPM Schedule and the operations that were actually curtailed or suspended. Lockouts and improper labor practices pursuant to Article 18, over which the Contractor has control or right of control, are not valid grounds for a time extension.

13.2.7 Delays to Subcontractors will be valid reasons for time extension only under the same conditions as set forth in this Paragraph 13.2. Contractor shall provide the required notice and information for all delays to the progress of the Work alleged by its Subcontractor(s) as set forth in Subparagraph 13.2.2.

13.2.8 Contractor acknowledges and agrees that there may be changes to the latest Owner accepted Contractor's CPM Schedule which may require Contractor to reschedule and resequence the Work in order to meet its obligations, to schedule and coordinate its Work with the Work of Owner's other trade contractors, if any, and to accommodate the needs and requirements of Owner. In the event the rescheduling and resequencing of the Work results in an extension of the critical path of the Contractor's CPM Schedule, a time extension may be granted to Contractor, but only to the extent the Contractor's critical path time of performance was actually extended. If there is no extension of the critical path, Contractor agrees it is not entitled to a time extension. Contractor agrees it shall have no claim against Owner for any additional loss, cost or expense alleged to be the result of any rescheduling or resequencing of the Work associated with or related to any adjustment to the Contractor's CPM Schedule which does not extend the critical path.

13.2.9 Contractor agrees that it shall have no claim for an increase in the Base Contract Price, the General Allowance, any Specific Allowance or the Contract Sum for delay, disruption, interference, acceleration or hindrance caused, in whole or in part, by reason of any delay events not proximately caused by Owner for events expressly set forth in Subparagraphs 13.2.1.4, 13.2.1.5, 13.2.1.6, 13.2.1.7, 13.2.1.8, 13.2.1.9, 13.2.1.10 or 13.2.1.11. Contractor agrees to accept, as its sole and exclusive remedy, an extension of time unless the Owner elects to accelerate Contractor's performance in lieu of granting an extension of time. If Owner elects to accelerate Contractor's performance, Owner agrees to adjust the Base Contract Price, the General Allowance, any Specific Allowance or the Contract Sum pursuant to Subparagraph 12.1.8 of this Agreement.

13.2.10 The Owner may, if it deems necessary, direct the Contractor to work overtime (as permitted by law) or shift work, and, if so directed, Contractor shall work overtime or shift work, and the Owner shall pay the Contractor for the additional premium wages and benefits paid, plus taxes imposed by law on such additional wages pursuant to Subparagraph 12.1.8.1, plus Contractor's Mark-up Fee pursuant to Subparagraph 12.1.8.5 of this Agreement. If, however, Contractor is, in Owner's reasonable opinion, behind schedule with the Work, the Contractor shall, at its own expenses, work such reasonable overtime as may be necessary to complete the Work on time and in compliance with the latest Owner accepted Contractor's CPM Schedule.

13.3 RESPONSIBILITY FOR COMPLETION

13.3.1 Contractor shall furnish such manpower, materials, facilities and equipment and shall work such hours, including night shifts and premium time operations, as may be necessary to insure the prosecution and Substantial and Final Completion of the Work within the number of days specified in the Contract for

completion of the Work, as adjusted. If Work actually in place falls behind the latest Owner accepted Contractor's CPM Schedule for reasons that are the responsibility of Contractor, and Owner determines that the Work will not be completed by the Final Completion Date, as adjusted, Contractor agrees that it will, as necessary, accelerate its efforts at no increase in the Contract Sum to improve its progress. Such acceleration shall include as necessary some or all of the following actions:

- .1 Increase manpower and crafts;
- .2 Increase the number of working hours per shift, shifts per Work Day, Work Days per week, or the amount of equipment, or any combination of the foregoing; and/or
- .3 Reschedule activities.

13.3.2 Owner may also require Contractor to submit a revised Contractor's CPM Schedule and description of Corrective Action it intends to take to assure completion of Work by the Final Completion Date. If the Owner reasonably finds the Corrective Action not acceptable, Owner may require Contractor to submit revisions until acceptable to Owner.

13.3.3 Failure of Contractor to substantially comply with the requirements of this Paragraph 13.3 shall be considered grounds for a determination by the Owner that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified and grounds for termination of this Agreement for cause, pursuant to Article 15.

ARTICLE 14

PROTECTION OF PERSONS AND PROPERTY

14.1 SAFETY OF PERSONS AND PROPERTY

14.1.1 Contractor agrees that between the Owner and the Contractor, the prevention of accidents to workmen engaged upon or in the vicinity of its Work and to any employee or invitee to the Project Site is Contractor's responsibility. Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Work in accordance with all Applicable Laws, including, but not limited to, the OSHA requirements, OSHA's Permit-Required Confined Space Entry (CSE) and Control of Hazardous Energy (Lockout/Threat) requirements. The Contractor shall maintain at the Project Site a sufficient number of safety hats and other appropriate personal protection equipment for the use of employees and invitees to the Project Site. Contractor shall refer to Division 1 of the specifications for specific District safety and security procedures and guidelines.

14.1.2 Prior to Contractor's performance of any Work at the Project Site, Contractor shall provide Owner with the phone number(s) of the individuals who may be contacted at any time 24 hours per day/7 days per week in the event of an emergency related to the Work required by the Contract Documents. Should any emergency condition arise out of whatever nature as a result of the Work, the Contractor will be notified by telephone and Corrective Action shall be immediately implemented. In the event the Contractor cannot be reached at the designated number(s) or Contractor fails to take immediate Corrective Action, the Owner may take such Corrective Action as it deems necessary and reasonable to mitigate or alleviate the emergency and will deduct the cost of such Corrective Action from payments due the Contractor and/or demand payment from Contractor. Contractor shall be responsible for reimbursing Owner for all damages resulting from taking such Corrective Action to mitigate or alleviate the emergency, including but not limited to, damage to the Owner's property and the plant, equipment, or new Work of the Contractor or its Subcontractors. Failure of the Owner to notify the Contractor of any emergency conditions as a result of any Work related to the Project shall not relieve the Contractor from any liability for any damage or loss resulting from the emergency conditions.

14.1.3 To assist the general public, emergency agencies, law enforcement or other entities in notifying the responsible party best able to respond to site emergencies, the Contractor will erect at each active construction site or at a location as directed by the Owner a sign, minimum size three (3) feet long by two

(2) feet high, and containing the project name, project address, District project number, Contractor's name, Contractor's address and phone number, name and phone number of Contractor's site safety officer and name and phone number of Owner's construction supervisor.

14.1.4 Contractor shall maintain at the Site a current Materials Safety Data Sheet ("MSDS") Manual for all MSDS received from the manufacturer or supplier of all Hazardous Materials/Regulated Substances. If an MSDS is not received by Contractor, Contractor shall contact the manufacturer or supplier to request one or contact OSHA for assistance in obtaining the MSDS. Contractor shall maintain the MSDS Manual in the format required by Owner and shall ensure that the MSDS form for each Hazardous Material/Regulated Substance contains the information required by the current OSHA Hazard Communication Standard. Contractor's MSDS Manual shall be made readily available, upon request, to Owner, and to OSHA representatives.

14.1.5 Contractor shall take all necessary precautions for safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all persons engaged by the Contractor, its Subcontractors, suppliers and vendors in performance of the Work on the Site and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under the care and custody of Contractor and/or its Subcontractors, suppliers and vendors; and (3) other property within the Contractor's care, custody or control at or adjacent to the Site.

14.1.6 Prior to commencement of any Work at the Project Site, Contractor shall submit to the Owner two (2) copies of the Contractor's Project Specific Safety Program. The Contractor's Project Specific Safety Program shall include, but not be limited to, the following:

- .1** The identification of Contractor's Project Specific Safety Coordinator whose duty shall be overseeing the implementation of Contractor's Project Specific Safety Program and immediately notifying the Owner of any safety incident or accident followed by a detailed written report within twenty-four (24) hours. The Contractor's Project Specific Safety Coordinator shall have obtained a minimum OSHA thirty (30) hour construction hazard recognition certificate, be first aid and CPR certified and experienced in the Work being performed pursuant to the Contract Documents. The Contractor's Project Specific Safety Coordinator or their designee shall at all times be at the Project site during Contractor's and its Subcontractor's performance of the Work and shall be responsible for the enforcement of the Contractor's Project Specific Safety Program;
- .2** The procedures for the identification and enforcement of all OSHA, NFPA, federal, state and local laws, rules, standards and requirements;
- .3** The procedures for the preparation and submission, prior to the start of each Work activity, of a hazard analysis report for each Work activity which identifies the applicable safety requirements and precautions to be taken while performing each Work activity;
- .4** The rules and regulations applicable to the type, use and application of all safety equipment and the condition and demeanor of Contractor's employees while at the Project Site;
- .5** The testing procedures to be utilized by Contractor on each of Contractor's employees and its Subcontractor's and Supplier's employees to screen for drug and alcohol use prior to and while at the Project Site;
- .6** The procedures for reporting to the Owner and all applicable federal, state and local authorities, all accidents or "near" accidents involving the actual or potential for personal injury or property damage at or adjacent to the Project Site;
- .7** The Project specific safety and disciplinary rules and regulations; and

- .8 The procedures for training Contractor's employees and its Subcontractor's and supplier's employees of the Contractor's Project Specific Safety Program and disciplinary rules and regulations.

14.1.7 Contractor shall give notices required by and comply with Applicable Laws of all authorities with jurisdiction bearing on the safety of persons and property and their protection from damage, injury, or loss. The Contractor shall notify the Owner of any adjacent utilities when prosecution of the Work may affect them. Fire hydrants and stop valves adjacent to the Work shall be kept readily accessible to fire-fighting apparatus and shall not be obstructed.

14.1.8 When so ordered, Contractor shall stop any part of the Work which the Owner deems unsafe until Corrective Action satisfactory to Owner have been taken, and Contractor agrees that it shall not have nor make any claim for adjustment in either Contract Time or the Contract Sum arising out of such Work stoppage. The failure of the Contractor to implement its own Project Specific Safety Program and/or abide by, follow, properly implement or supervise any safety standards established during the progress of the Work by Applicable Law shall constitute a breach of this Agreement by Contractor and shall entitle Owner to seek indemnity from Contractor to the full extent permitted by law and as further identified and described in Article 16 of this Agreement.

14.1.9 Contractor shall promptly remedy damage or loss (other than damage or loss to property insured under property insurance provided by Owner pursuant to this Agreement) to property at the Site, adjacent to the Site, or stored in other locations caused in whole or in part by Contractor, its Subcontractors or anyone directly or indirectly employed by either of them, or by anyone whose acts they may be liable, except damage or loss caused solely by the acts or omissions of Owner.

14.1.10 All employees of the Contractor and its Subcontractors with any potential for a confined space entry during the performance of the Work shall be fully trained in a proper Confined Space Entry Program ("CSEP") that complies with all Applicable Laws. The Owner has prepared and will provide, if requested, the Owner's CSEP procedure. The Contractor may incorporate any or all of the Owner's CSEP into the Contractor's CSEP, but in no event shall the Contractor's CSEP provide less stringent safety means, methods and controls than the Owner's CSEP. Prior to commencement of any Work at the Project Site, the Contractor shall provide the Owner with a copy of the Contractor's CSEP. The Contractor's CSEP shall be accompanied by written documentation attesting that all of Contractor's and its Subcontractors' employees have received training in Contractor's CSEP procedures prior to commencement of any Work and that Contractor's CSEP will be strictly followed for all applicable Work. Contractor shall also identify the primary rescue team, other than the Owner's rescue team, upon which the Contractor and its Subcontractors will rely during any confined space entry during the performance of the Work. Contractor shall be solely responsible for the adequacy of the means, methods and controls in Contractor's CSEP and their proper and timely execution.

14.2 HAZARDOUS MATERIALS/REGULATED SUBSTANCES

14.2.1 In the event that Contractor encounters on the Site material reasonably believed to be Hazardous Materials/Regulated Substances which has not been rendered harmless, Contractor shall immediately stop Work in the area affected and immediately report the condition to the Owner in writing. Work in the affected area shall resume when such Hazardous Materials/Regulated Substances has been rendered harmless or removed as determined by Owner.

14.2.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. A time extension shall be granted as provided in Article 13 and the Contract Sum shall be increased in the amount of the Contractor's Actual Costs of shut-down, delay and start-up.

14.2.3 If Hazardous Materials/Regulated Substances of a type of which an employer is required by law to notify its employees are being used on the Site by Contractor, its Subcontractors or anyone directly or indirectly employed by them, Contractor shall, prior to harmful exposure of any employees on the Site to such substances, give written notice of the chemical composition to the Owner in sufficient detail and time to permit compliance with all Applicable Laws.

14.2.4 The Owner shall not be responsible under Section 14.2 for materials and substances brought to the Site by the Contractor and its Subcontractors unless such materials or substances were required by the Contract Documents.

14.3 EMERGENCIES

14.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 12 and Article 13.

ARTICLE 15 **TERMINATION OF THE CONTRACT**

15.1 TERMINATION BY OWNER

15.1.1 Should the Contractor at any time refuse or neglect to supply a sufficiency of skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any act or omission the stoppage or delay of or interference with or damage to the Work or of any other contractors, use of the premises or adjacent property by the Owner or the public, or fail in the performance of any of the terms and provisions of this Agreement or of the other Contract Documents, or should the Owner determine that the Work or any portion thereof is not being performed in accordance with the Contract Documents, or should there be filed by or against the Contractor a petition in bankruptcy or for any arrangement of reorganization, or should the Contractor become insolvent or be adjudicated bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency, then in any of such events, each of which shall constitute a default on the Contractor's part, Owner shall have the right, in addition to any other right and remedies provided by the Contract Documents or by law, after three (3) Work Days written notice to the Contractor mailed or delivered to the Contractor's last known address: (a) to perform and furnish through itself or through others any such labor, materials or equipment for the Work and to deduct the cost thereof from any monies due or to become due to the Contractor under this Agreement; and/or (b) to terminate the employment of the Contractor for all or any portion of the Work, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, special equipment, scaffolds, tools, appliances and other items, all of which the Contractor hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all the labor, services, materials, equipment and other items required by the Contract Documents. In case of such termination of the employment of the Contractor, the Contractor shall not be entitled to receive any further payment under this Agreement until the Work shall be wholly completed to the satisfaction of Owner and shall have been accepted by Owner, at which time, if the unpaid balance of the amount to be paid under this Agreement shall exceed the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to the Contractor; but if such cost and expense shall exceed the unpaid balance, then the Contractor shall pay the difference to the Owner. Such cost and expense shall include, not only the cost of completing the Work to the satisfaction of Owner and of performing and furnishing all labor, services, materials, equipment, and other items required by the Contract Documents, but also all losses, damages, costs and expenses including legal fees and disbursements sustained, incurred or suffered by reason or resulting from the Contractor's default. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default of its obligations under the Contract Documents or that any delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued pursuant to Paragraph 15.2.

15.1.2 Nothing shall be deemed to preclude the Owner from recovering from Contractor, or from setting off against monies payable to or for the benefit of Contractor, any cost expense or damage the Owner may incur as a result of the matters set forth in Subparagraph 15.1.1 including, but not limited to damages arising directly or indirectly as a result of the Contractor's actions or inactions proximately causing a delay to the Project or Contractor's negligence proximately causing a claim from the Contractor for additional compensation.

15.2 TERMINATION BY OWNER FOR CONVENIENCE

15.2.1 In addition to other rights the Owner may have at law or under the Contract Documents with respect to cancellation or termination, the Owner may terminate performance of Work under this Contract in whole or, from time to time, in part, if the Owner determines a termination is for its convenience. The Owner shall terminate by delivering to the Contractor a written Notice of Termination for Convenience.

15.2.2 After receipt of a Notice of Termination for Convenience, and except as directed by the Owner, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Subparagraph:

- .1** Stop work as specified in the Notice of Termination for Convenience;
- .2** Place no further subcontracts or orders (referred to as Subcontracts in this Paragraph) for materials, services, or facilities, except as necessary to complete the continued portion of the Work for the Project;
- .3** Terminate all subcontracts to the extent they relate to the Work terminated upon approval of Owner;
- .4** Assign to the Owner, as directed by the Owner, all right, title, and interest of the Contractor under any subcontract or purchase order, in which case the Owner shall have the right and obligation to settle or to pay any outstanding claims arising from said subcontracts or purchase orders;
- .5** With approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this Subparagraph;
- .6** As directed by the Owner, transfer title and deliver to the Owner (a) the fabricated or unfabricated parts, Work in progress, completed Work, supplies, and other material produced or required for the Work terminated, and (b) the completed or partially completed Project Records that if this Contract had been completed, would be required to be furnished to the Owner;
- .7** Complete performance of the Work not terminated;
- .8** Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Contract that is in possession of the Contractor and which the Owner has or may acquire an interest; and
- .9** Use its best efforts to sell, as directed or authorized by the Owner, any property of the type referred to in Subparagraph 15.2.2.6; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by, and at prices approved, by the Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Owner under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by the Owner.

15.2.3 After expiration of the agreed Site and plant clearance, the Contractor may submit to the Owner a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Owner. The Contractor may request the Owner to remove those items or enter into an agreement for their storage. Within thirty (30) Calendar Days, the Owner will accept title to those items and remove them or enter into a storage agreement. The Owner may verify the list upon removal of the items, or if stored, within forty-five (45) Calendar Days from submission of the list, and shall correct the list, as necessary, before final settlement.

15.2.4 After termination, the Contractor shall submit a final termination settlement proposal to the Owner in the form prescribed by the Owner. The Contractor shall submit the proposal promptly, but no later than thirty (30) Calendar Days from the effective date of termination set forth in the Notice of Termination for Convenience, unless extended in writing by the Owner upon written request of the Contractor made within the thirty (30) Calendar Day period. However, if the Owner determines that the facts justify it, a termination settlement proposal may be received and acted on after said period or any extension. If the Contractor fails to submit the proposal within the time allowed, the Owner shall determine, on the basis of information available to it the amount, if any, due the Contractor for acceptance. Said determination shall be deemed by the parties as accepted unless, within fifteen (15) Calendar Days of the transmission by the Owner of said determination, the Contractor rejects said determination. A rejection of the determination is ineffective and null if not made in writing and accompanied by supporting data which clearly demonstrates error in the determination made by the Owner. Owner shall pay the amount which Owner has determined to be due to Contractor, in whole or in part, pending resolution of any dispute regarding same.

15.2.5 Subject to the requirements of Paragraph 15.2, the Owner and Contractor may agree upon the whole or any part of the amount to be paid because of termination. The amount shall not exceed the original Contract Sum (as adjusted by Change Orders previously made) reduced by the amount of payments previously made and by the price of Work not terminated and not then completed (as measured by the then current Schedule of Values).

15.2.6 If the Owner and Contractor fail to agree on the whole amount under Subparagraph 15.2.4 or if the Contractor properly rejects the Owner's determination made under Subparagraph 15.2.4, the Owner shall pay and the Contractor shall accept as full satisfaction amounts determined as follows, but without duplication of any amounts agreed upon under Subparagraph 15.2.4.

- .1** For Contract Work performed and not paid for before the Notice of Termination for Convenience, the cost of said Work and the actual reasonable costs of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of this Contract; and
- .2** The actual reasonable costs of settlement of the Work terminated, including accounting, legal, clerical, other expenses necessary for the preparation of termination settlement proposals and supporting data, storage, transportation and other costs necessary for the preservation, protection or disposition of termination inventory, but not including anticipated profits on not-performed Work and unabsorbed overhead allocated to the not-performed Work.

15.2.7 Except for normal spoilage, and except to the extent that the Owner expressly assumed the risk of loss, the Owner shall exclude from the amounts payable to the Contractor under Subparagraph 15.2.6 the fair value, as determined by the Owner, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner.

15.2.8 In arriving at the amount due the Contractor under this Article 15, there shall be deducted:

- .1** All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
- .2** Any claim which the Owner has against the Contractor under this Contract; and

- .3 The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor, or sold under the provisions of Article 15 and not recovered by or credited to the Owner.

15.2.9 If the termination is partial, the Contractor may file a proposal with the Owner for an adjustment of the price(s) of the continued portion of the Contract. The Owner may make any adjustment agreed upon. Any proposal by the Contractor for an adjustment under this Subparagraph shall be requested within thirty (30) Calendar Days from the Notice of Termination for Convenience unless extended in writing by the Owner.

15.2.10 The Owner may, under the terms and conditions prescribed in Article 15, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Owner believes the total on these payments will not exceed the amount to which the Contractor will be entitled.

15.2.11 The Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all Project Records and other evidence bearing on the Contractor's cost and expenses under this Contract and required by Article 7 of this Agreement.

15.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

15.3.1 The Owner may, at the Owner's convenience and without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. If the Owner suspends, delays or interrupts the Work for the Owner's convenience, the Owner shall pay to Contractor the Contractor's Actual Cost of such suspension, delay, or interruption, as documented by Contractor to the satisfaction of Owner and a time extension may be granted the period of such suspension, delay, or interruption plus a reasonable period for re-mobilization. No adjustment shall be made to the extent:

- .1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible in whole or in part; or
- .2 That an equitable adjustment is made under another provision of the Contract Documents.

15.3.2 If the Project is suspended by the Owner for more than one hundred twenty (120) consecutive Calendar Days, the Contractor shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Contractor's compensation shall be equitably adjusted to provide reimbursement for Actual Costs incurred in the interruption and resumption of Contractor's Work.

ARTICLE 16 **INDEMNITY**

- 16.1** The Contractor agrees to indemnify and save harmless Owner, its respective trustees, board members, officers, members, employees, representatives, agents and consultants, including the Engineer and the Engineer's consultants for the Project (the "Indemnitees"), from and against all expenses, damages, claims, suits, actions, judgments and costs whatsoever (including reasonable attorneys' fees) to the extent arising out of, or in any way connected with, any claim or action based on: (a) Contractor's actual or alleged negligence or willful misconduct in connection with the Work furnished by Contractor to Owner; and (b) actual or alleged breach of any agreement of Contractor made by the Contract Documents. The provisions of this Paragraph shall survive the termination/expiration of this Agreement. However, in no case, shall the provisions of this Paragraph survive beyond the time limits established by the applicable statute of limitation. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs when this indemnification is applicable.

- 16.2** In any and all claims against the Owner or any of the Indemnitees, the indemnification obligation under this Article 16 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts. As between the Owner and the Contractor, the Contractor waives its immunities under Ohio Revised Code Chapter 4123, Article 3 of the Ohio Constitution or any similar worker's compensation statutory immunity for purposes of conforming the indemnity obligations of Article 16.
- 16.3** The Contractor further agrees to indemnify, hold harmless, reimburse and defend Owner from: (1) payments made by Owner under Workers' Compensation Acts for injuries, sickness, disease, death or disability claimed by Owner's employees; or (2) claims made by employees of the Indemnitees for injuries, sickness, disease, death or disability which arise out of the acts or omissions of Contractor or pursuant to this Agreement.
- 16.4** All of Contractor's obligations set forth in this Article 16 shall survive the termination of the Contract or completion of Contractor's Work under the Contract Documents. Contractor expressly understands and agrees that any insurance or bond required by the Contract Documents, or otherwise provided by Contractor, shall in no way limit, modify, waive or release Contractor's obligations under this Article 16.
- 16.5** Contractor shall bear any expense, whether incurred or paid, of any Indemnatee because of any claim or other matter indemnified against hereunder, including reasonable attorneys' fees and expenses in the defense of, or preparing for the defense against, any such claim, even if such claim or any lawsuit arising therefrom is groundless, false or fraudulent. If any such claim has not been settled or discharged when the Work is finished, final settlement between Owner and Contractor and final payment of the Contract Sum and the acceptance of the Work shall be deferred until any such claim is paid or settled or Contractor provides a bond acceptable to Owner to satisfy such claim. At the request of any Indemnatee, Contractor, at its own expense, shall assume the defense, on behalf of such Indemnatee, of any such claim; provided, however, that any attorney employed in such defense must be satisfactory to the Indemnatee.
- 16.6** Owner shall have the right to retain out of any payment due or thereafter to become due to Contractor one hundred fifty percent (150%) of the amount of any mechanic's lien or attested account claim against the public funds being held by Owner for payment to Contractor arising out of the Work, which claims have not been removed or bonded off, to indemnify Owner against the cost of such claims that may appear at any time in favor of any person claiming by, through or under Contractor, which amount shall include, but is not limited to, attorneys' fees to defend any action in connection therewith or deposits which need to be made to have the claims released against the Project.
- 16.7** In the event that any party is requested but refuses to honor the indemnity obligations under this Article 16, then the party refusing to honor such request shall, in addition to all other obligations, pay the cost of bringing any claim, demand or action, including, without limitation, attorneys' and paralegals' fees and expenses, to enforce the rights of the party requesting indemnity.

ARTICLE 17

STRIKES AND WORK STOPPAGES

- 17.1** To the fullest extent not prohibited by Applicable Law and without limitation of any other provision in the Contract Documents, Contractor agrees as follows:
- 17.1.1** If for any reason any labor group or entity that is not a party to this Agreement, with the intent of impeding or stopping the progress of the Work, individually or in connection with others, unlawfully strikes, slows down or otherwise engages or participates in any other withholding of or interference with the Work (including, without limitation, honoring pickets or picket lines, improperly performing Work required to be performed under the Contract Documents or making claims resulting in Work jurisdiction disputes), and all or any of such actions impede or stop the progress of the Work, the Owner shall have the right reasonably to require that the Contractor and/or any such third party take immediate action to bring

about a return to normal operations and in any event maintain the progress of the Contractor's CPM Schedule.

17.1.2 In the event of any labor practice prohibited by Subparagraph 17.1.1, Contractor agrees to discipline any of its Subcontractor's employees or, if practicable, the third party person engaged in the above-described conduct in a manner consistent with lawful labor practices and calculated to bring about an end to such conduct.

17.1.3 In addition, if the conduct prohibited by Subparagraph 17.1.1 is subject to grievance and/or arbitration procedure under an applicable labor agreement between the Contractor and/or its Subcontractor(s) or such other person or entity and a union, Contractor shall be required, at Contractor's own expense, to (and Contractor shall require all such other persons or entities to) take all action, including legal action, as may be required to have the dispute resolved by such grievance or arbitration procedure (including, but not limited to, obtaining prompt injunctive relief under state or federal law). Notwithstanding such procedures, Contractor shall not be relieved of Contractor's obligation to maintain the progress of the Contractor's CPM Schedule.

17.1.4 In the event that Contractor or any other such person or entity fails, in the reasonable opinion of the Owner, to take prompt remedial action as provided above, the Owner shall have the right to: (1) take such action in the name of Contractor and/or third party as may be reasonably necessary to obtain an end to the labor practice prohibited by Subparagraph 17.1.1, including legal action; and (b) charge all costs and expenses connected therewith to Contractor (including, but not limited to, legal, accounting, administrative and other direct, indirect, general, special and consequential damages and expenses).

ARTICLE 18

COMPLIANCE CERTIFICATION

18.1 The Owner and the Contractor shall perform their respective obligations pursuant to the Contract Documents in strict compliance with all Applicable Laws and Federal Labor Standards, to the extent such laws may be applicable to the obligations described in the Contract Documents.

18.2 Contractor certifies that:

18.2.1 Neither Contractor nor any officer, director, member or manager of Contractor has been debarred, excluded, suspended or otherwise determined to be ineligible to participate in the federal procurement or nonprocurement programs¹, or convicted of a criminal offense that could result in such party becoming Ineligible. Contractor shall not knowingly employ or contract with any individual or entity listed by a federal agency of the United States of America as Ineligible.

18.3 By signing the Agreement, Contractor and Owner agrees that:

18.3.1 The failure of Contractor to comply with Applicable Laws and Federal Labor Standards, if applicable, shall be grounds for immediate termination of this Agreement; provided, however, that except in cases of material noncompliance, Owner shall give Contractor reasonable notice and an opportunity to cure prior to terminating the Agreement.

18.3.2 Future changes in federal, state or local law, or future judicial decisions or regulatory interpretations of law may affect this Agreement and the relationships described by the Contract Documents. This Agreement is subject to adjustment at any time in the event, and to the extent, required by any state or federal government agency or authority, to maintain the tax exempt status of any Owner entity under the Internal Revenue code and/or the law of the State of Ohio and/or to comply with any other law or regulation. In the event of any proposed or actual change in law that, in the opinion of legal counsel for Owner or Contractor, would or does invalidate any provision of this Agreement or cause any party

¹ An individual or entity listed on the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs at www.epls.gov, as revised from time-to-time, is Ineligible.

hereto to be in violation of law in performing its duties and obligations required by the Contract Documents, either party may request renegotiation of the Agreement by giving written notice to the other party. The parties agree to negotiate in good faith revisions to the provision or provisions which are in violation of Applicable Laws or Federal Labor Standards, if applicable. In the event the parties are unable to agree to new or modified terms as required to bring the entire Agreement into compliance within thirty (30) Calendar Days, either party may terminate this Agreement on sixty (60) Calendar Days written notice to the other party.

18.3.3 If at any time during the term of this Agreement, Contractor: (i) becomes Ineligible; (ii) is charged with a criminal offense related to federal procurement and non-procurement Programs or is proposed for exclusion from participation in Federal procurement or non-procurement programs; or (iii) has notice that any of its directors, officers, key employees or agents has become Ineligible or has been charged with a criminal offense related to federal procurement and non-procurement programs or is proposed for exclusion, Contractor agrees to notify Owner immediately. In the event Contractor becomes Ineligible, Owner shall have the right to terminate this Agreement immediately upon notice to Contractor. Further, in the event that Owner becomes aware that any criminal charges or exclusions as described above are pending or proposed against Contractor, or that any director, officer, key employee, agent or Contractor has become Ineligible, Owner reserves the right in its sole discretion to terminate this Agreement or to exclude such party or parties from participation in this Agreement, or to take other appropriate steps to protect state and federal program funds

ARTICLE 19

SMALL BUSINESS ENTERPRISE (SBE) POLICY

- 19.1** It is the policy of the Owner that SBE's shall have the maximum feasible opportunity to participate in the performance of the Work of the Project subject to this Agreement. The Owner has a compelling interest in maintaining and advancing the public welfare by assuring that its public expenditures promote the financial growth and stability of small businesses in the region. Contractor shall comply with the terms and conditions of the Owner's SBE Policy included in the bid documents for the Project subject to this Agreement.

ARTICLE 20

MISCELLANEOUS PROVISIONS

- 20.1** The Contract shall be governed by the law of the State of Ohio.
- 20.2** The Agreement and General Conditions to the Agreement between Owner and Contractor represents the entire and integrated agreement between the Owner and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement and General Conditions to the Agreement between Owner and Contractor may be amended only by written instrument signed by both Owner and Contractor.
- 20.3** The Owner and Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Contractor shall not assign this Agreement without the written consent of the Owner.
- 20.4** Any provision or part of this Agreement or Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor.
- 20.5** The duties and obligations imposed under this Agreement and Contract Documents and the rights and remedies available hereunder to the parties are in addition to, and are not to be construed in any way as a limitation of any rights or remedies available under law or terms of the Agreement.
- 20.6** All express representations, guarantees, warranties and indemnification obligations under this Agreement will survive completion or termination for any reason.

- 20.7** The Owner and Contractor expressly agree there are no third party beneficiaries in this Agreement.
- 20.8** Owner shall not be precluded or estopped from at any time establishing the true and correct amount and character of the Work performed by Contractor and materials furnished by Contractor or any other person performing Work for the Project or that the Work or a part thereof does not comply with the Contract Documents.
- 20.9** All notices required to be provided by Owner and Contractor pursuant to this Agreement shall be deemed to have been validly given and received as follows: (i) if delivered in person to the individual intended to receive such notice on the date delivered; or (ii) four (4) Calendar Days after being sent by registered or certified mail, postage prepaid to the address indicated in this Paragraph 20.9; or (iii) if transmitted by electronic means, by the time stated in a machine generated confirmation that notice was received at the machine or server of the recipient; or (iv) next Calendar Day if sent by nationally recognized overnight courier. All such notices shall be sent to:

If to Owner: Marlene Sundheimer, Esq.
Director of Law
Northeast Ohio Regional Sewer District
3900 Euclid Avenue
Cleveland, OH 44115-2506

If to Contractor:

