GENERAL CONDITIONS

TABLE OF CONTENTS

Article Number	Title	Page
1	DEFINITIONS	GC 2
2	PRELIMINARY MATTERS	GC 5
3	CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE	GC 7
4	AVAILABILITY OF LANDS: PHYSICAL CONDITIONS: REFERENCE POINTS	GC 9
5	BONDS AND INSURANCE	GC 12
6	CONTRACTOR'S RESPONSIBILITIES	GC 15
7	OTHER WORK	GC 23
8	OWNER'S RESPONSIBILITIES	GC 24
9	ENGINEER'S STATUS DURING CONSTRUCTION	GC 25
10	CHANGES IN THE WORK	GC 28
11	CHANGE OF CONTRACT PRICE	GC 29
12	CHANGE OF CONTRACT TIME	GC 34
13	WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK	GC 35
14	PAYMENTS TO CONTRACTOR AND COMPLETION	GC 39
15	SUSPENSION OF WORK AND TERMINATION	GC 45
16	MISCELLANEOUS	GC 47

ARTICLE 1-DEFINITIONS

1. Wherever used in these GENERAL CONDITIONS or in the other CONTRACT DOCUMENTS, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1 ADDENDA - Written or graphic instruments issued prior to the opening of BIDS which clarify, correct, or change the bidding documents or the CONTRACT DOCUMENTS.

1.2 AGREEMENT - The written AGREEMENT between **CITY OF DELAWARE** and CONTRACTOR covering the WORK to be performed: other CONTRACT DOCUMENTS are attached to the AGREEMENT and made a part thereof as provided herein.

1.3 APPLICATION FOR PAYMENT - The form accepted by the PUBLIC WORKS DEPARTMENT which is to be used by the CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the CONTRACT DOCUMENTS.

1.4 BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.5 BIDDER - Any person, firm or corporation submitting a BID for the WORK.

1.6 BONDS - BID BOND, CONTRACT BOND, Performance and Payment BONDS, and other instruments of security.

1.7 CHANGE ORDER - A document recommended by the PUBLIC WORKS DEPARTMENT which is signed by CONTRACTOR and **CITY OF DELAWARE** and authorizes an addition, deletion, or revision in the work, or an adjustment in the CONTRACT PRICE or the CONTRACT TIME, issued on or after the EFFECTIVE DATE of the AGREEMENT.

1.8 CONTRACT DOCUMENTS - The AGREEMENT, ADDENDA (which pertain to the CONTRACT DOCUMENTS), CONTRACTOR'S BID (including documentation accompanying the BID and any post-BID documentation submitted prior to the NOTICE OF AWARD) when attached as an exhibit to the AGREEMENT, the Bidding Forms, Bidding Requirements, the Contract Forms, the SUPPLEMENTAL SPECIFICATIONS, the BONDS, these GENERAL CONDITIONS, the SUPPLEMENTARY CONDITIONS, the SPECIFICATIONS, and the DRAWINGS as the same are more specifically identified in the AGREEMENT, together with all amendments, modifications, and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the EFFECTIVE DATE of the AGREEMENT.

1.9 CONTRACT PRICE - The monies payable by **CITY OF DELAWARE** to CONTRACTOR under the CONTRACT DOCUMENTS as stated in the AGREEMENT (subject to the provisions of paragraph 11.9.1 in the case of Unit Price WORK).

1.10 CONTRACT TIME - The number of calendar days computed as provided in paragraph 12.2 or the dates stated in the AGREEMENT for the completion of the WORK.

1.11 CONTRACTOR - The person, firm, partnership, association, limited liability entity, or corporation with whom **CITY OF DELAWARE** has entered in the AGREEMENT.

1.12 DEFECTIVE - An adjective which when modifying the word WORK refers to WORK that is unsatisfactory, faulty, or deficient, or does not conform to the CONTRACT DOCUMENTS, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the CONTRACT DOCUMENTS, or has been damaged prior to the PUBLIC WORKS DEPARTMENT'S recommendation of final payment (unless responsibility for the protection thereof has been assumed

by **CITY OF DELAWARE** at SUBSTANTIAL COMPLETION in accordance with paragraph 14.8 or 14.10).

1.13 DRAWINGS - The DRAWINGS, also referred to as PLANS, which show the character and scope of the WORK to be performed and which have been prepared or approved by the PUBLIC WORKS DEPARTMENT and are referred to in the CONTRACT DOCUMENTS.

1.14 EFFECTIVE DATE OF THE AGREEMENT - The date indicated in the AGREEMENT on which it becomes effective, but if no such date is indicated it means the date on which the AGREEMENT is signed and delivered by the last of the two parties to sign and deliver.

1.15 ENGINEER - The person, firm or corporation named as such in the AGREEMENT.

1.16 FIELD ORDER - A written order issued by the PUBLIC WORKS DEPARTMENT which orders minor changes in the WORK in accordance with paragraph 9.5 but which does not involve a change in the CONTRACT PRICE or the CONTRACT TIME.

1.17 GENERAL REQUIREMENTS - Division 1 of the SPECIFICATIONS.

1.18 LAWS AND REGULATIONS; LAWS OR REGULATIONS - Laws, rules, regulations, ordinances, codes, and/or orders.

1.19 NOTICE OF AWARD - The written notice by OWNER to the apparent successful BIDDER stating that upon compliance by the apparent successful BIDDER with the conditions precedent enumerated therein within the time specified, OWNER will sign and deliver the AGREEMENT.

1.20 NOTICE TO PROCEED - A written notice given by OWNER to CONTRACTOR (with a the copy to the PUBLIC WORKS DEPARTMENT) fixing the date on which the CONTRACT TIME will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the CONTRACT DOCUMENTS.

1.21 OWNER - The public body or authority, corporation, association, firm, or person with whom CONTRACTOR has entered into the AGREEMENT and for whom the WORK is to be provided.

1.22 PARTIAL UTILIZATION - Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching SUBSTANTIAL COMPLETION for all the WORK.

1.23 PLANS - The PLANS, also referred to as DRAWINGS, which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the PUBLIC WORKS DEPARTMENT, and are referred to in the CONTRACT DOCUMENTS.

1.24 PROJECT - The total construction of which the WORK to be provided under the CONTRACT DOCUMENTS may be the whole or a part as indicated elsewhere in the CONTRACT DOCUMENTS.

1.25 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the PUBLIC WORKS DEPARTMENT who is assigned to the site or any part thereof.

1.26 SHOP DRAWINGS - All drawings, diagrams, illustrations, schedules, and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the WORK and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams, and other information prepared by a SUPPLIER and submitted by CONTRACTOR to illustrate material or equipment for some portion of the WORK.

1.27 SPECIFICATIONS - Those portions of the CONTRACT DOCUMENTS consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the WORK and certain administrative details applicable thereto.

1.28 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.29 SUBSTANTIAL COMPLETION - That time when the WORK (or a specified part thereof) has progressed to the point where, in the opinion of the PUBLIC WORKS DEPARTMENT as evidenced by ENGINEER'S definitive certificate of SUBSTANTIAL COMPLETION, it is sufficiently complete and occupied, or in use, or otherwise accepted, in accordance with the CONTRACT DOCUMENTS, so that the WORK (or specified part) can be utilized for the purposes for which it was intended; that training requirements have been met, and that it has been demonstrated to be in compliance with operational requirements; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any WORK refer to in SUBSTANTIAL COMPLETION thereof.

1.30 SUPPLEMENTARY CONDITIONS - The part of the CONTRACT DOCUMENTS which amends or supplements the SPECIFICATIONS.

1.31 SUPPLEMENTAL SPECIFICATIONS - The part of the CONTRACT DOCUMENTS which amends or supplements these GENERAL CONDITIONS.

1.32 SUPPLIER - A manufacturer, fabricator, supplier, distributor, material man, or vendor.

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

1.34 UNIT PRICE WORK - WORK to be paid for on the basis of unit prices.

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

1.36 WORK DIRECTIVE CHANGE - A written directive to CONTRACTOR, issued on or after the EFFECTIVE DATE of the AGREEMENT and signed by **CITY OF DELAWARE** and recommended by the PUBLIC WORKS DEPARTMENT, ordering and addition, deletion, or revision in the WORK, or responding to differing or unforeseen physical conditions under which the WORK is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A WORK DIRECTIVE CHANGE may not change the CONTRACT PRICE or the CONTRACT TIME, but is evidence that the parties except that the change directed or documented by a WORK DIRECTIVE CHANGE will be incorporated in a subsequently issued CHANGE ORDER following negotiations by the parties as to its effect, if any, on the CONTRACT PRICE or CONTRACT TIME as provided in paragraph 10.2.

1.37 WRITTEN AMENDMENT - A written amendment of the CONTRACT DOCUMENTS, signed by **CITY OF DELAWARE** and CONTRACTOR on or after the EFFECTIVE DATE of the AGREEMENT and normally dealing with the nonengineering or nontechnical rather that strictly WORK related aspects of the CONTRACT DOCUMENTS.

1.38 WRITTEN NOTICE - Any notice to any party of the AGREEMENT RELATIVE TO ANY PART OF THIS agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

ARTICLE 2-PRELIMINARY MATTERS

DELIVERY OF BONDS

2.1 When CONTRACTOR delivers the executed AGREEMENTS to **CITY OF DELAWARE**, CONTRACTOR shall also deliver to **CITY OF DELAWARE** such BONDS as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

COPIES OF DOCUMENTS

2.2 **CITY OF DELAWARE** shall furnish to CONTRACTOR up to one copy (unless otherwise specified in the SUPPLEMENTARY CONDITIONS) of the CONTRACT DOCUMENTS as are reasonably necessary for the execution of the WORK. Additional copies will be furnished, upon request, at the cost of reproduction.

COMMENCEMENT OF CONTRACT TIME: NOTICE TO PROCEED

2.3 The CONTRACT TIME will commence to run on the 30th day after the EFFECTIVE DATE of the AGREEMENT, or, if a NOTICE TO PROCEED is given, on the day indicated in the NOTICE TO PROCEED. A NOTICE TO PROCEED may be given at any time within 30 days after the EFFECTIVE DATE of the AGREEMENT.

STARTING THE PROJECT

2.4 CONTRACTOR shall start to perform the WORK on the date when the CONTRACT TIME commences to run, but no WORK shall be done at the site prior to the Date on which the CONTRACT TIME commences to run.

BEFORE STARTING CONSTRUCTION

2.5 Before undertaking each part of the WORK, CONTRACTOR shall carefully study and compare the CONTRACT DOCUMENTS and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to the PUBLIC WORKS DEPARTMENT any conflict, error, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from the PUBLIC WORKS DEPARTMENT before proceeding with any WORK affected thereby; however, CONTRACTOR shall not be liable to **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT for failure to report any conflict, error, or discrepancy in the CONTRACT DOCUMENTS, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Within 10 days after the EFFECTIVE DATE of the AGREEMENT (unless otherwise specified in the GENERAL REQUIREMENTS), CONTRACTOR shall submit to the PUBLIC WORKS DEPARTMENT for review:

2.6.1 An estimated progress schedule indicating the starting and completion dates of the various stages of the WORK;

2.6.2 A preliminary schedule of SHOP DRAWING submissions;

2.6.3 A preliminary schedule of values for all the WORK which will include quantities and prices of items aggregating the CONTRACT PRICE and will subdivide the WORK into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of WORK which will be confirmed in writing by CONTRACTOR at the time of submission; and

2.6.4 A preliminary schedule for manufacturing, testing, and installation of materials, supplies, and equipment.

2.7 Before any WORK at the site is started, CONTRACTOR shall deliver to **CITY OF DELAWARE**, with a copy to the PUBLIC WORKS DEPARTMENT, certificates (and other evidence of insurance requested by **CITY OF DELAWARE**) which CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4.

PRECONSTRUCTION CONFERENCE

2.8 Within 20 days after the EFFECTIVE DATE of the AGREEMENT, but before CONTRACTOR starts the WORK at the site, a conference attended by CONTRACTOR, the PUBLIC WORKS DEPARTMENT, and others as appropriate will be held to discuss the schedules referred to in paragraphs 2.6-2.6.4, to discuss procedures for handling SHOP DRAWINGS and other submittal and for processing APPLICATIONS FOR PAYMENT, and to establish a working understanding among the parties as to the WORK.

FINALIZING SCHEDULES

2.9 At least 10 days before submission of the first APPLICATION FOR PAYMENT a conference attended by CONTRACTOR, the PUBLIC WORKS DEPARTMENT, and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to the PUBLIC WORKS DEPARTMENT as providing an orderly progression of the WORK to completion within the CONTRACT TIME, but such acceptance will neither impose on the PUBLIC WORKS DEPARTMENT responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of SHOP DRAWINGS submissions will be acceptable to the PUBLIC WORKS DEPARTMENT as providing a workable arrangement for processing submissions. The finalized schedule of values will be acceptable to the PUBLIC WORKS DEPARTMENT as to form and substance. The finalized schedule for manufacturing, testing, and installation, of materials, supplies, and equipment will be acceptable to the PUBLIC WORKS DEPARTMENT as providing an orderly progression of the WORK to completion within the CONTRACT TIME, but such acceptance will neither impose on the PUBLIC WORKS DEPARTMENT responsibility for the progress or scheduling of the WORK nor relieve CONTRACTOR from full responsibility therefor.

ARTICLE 3-CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE INTENT

3.1 The CONTRACT DOCUMENTS comprise the entire AGREEMENT between **CITY OF DELAWARE** and CONTRACTOR concerning the WORK. The CONTRACT DOCUMENTS are complementary; what is called for by one is as binding as if called for by all. The CONTRACT DOCUMENTS will be construed in accordance with the law of the place of the PROJECT.

3.2 It is the intent of the CONTRACT DOCUMENTS to describe a functionally complete PROJECT (or part thereof) to be constructed on accordance with the CONTRACT DOCUMENTS. Any WORK, materials, or equipment that may be reasonably inferred from the CONTRACT DOCUMENTS as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe WORK, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard SPECIFICATIONS, manuals, or codes of any technical society, organization, or association, or to the LAWS or REGULATIONS of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard SPECIFICATION, manual, code, or LAWS or REGULATIONS in effect at the time of opening of BIDS (or on the EFFECTIVE DATE of the AGREEMENT if there were no BIDS), except as may be otherwise specifically stated. However, no provision of any referenced standard SPECIFICATION, manual or code (whether or not specifically incorporated by references in the CONTRACT DOCUMENTS) shall be effective to change the duties and responsibilities of **CITY OF DELAWARE**, CONTRACTOR, or the PUBLIC WORKS DEPARTMENT, or any of their consultants, agents, or employees from those set forth in the CONTRACT DOCUMENTS, nor shall it be effective to assign to the PUBLIC WORKS DEPARTMENT, or any of the PUBLIC WORKS DEPARTMENT'S consultants, agents, or employees, and duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the CONTRACT DOCUMENTS shall be issued by the PUBLIC WORKS DEPARTMENT as provided in paragraph 9.4.

3.3 If, during the performance of the WORK, CONTRACTOR finds a conflict, error, or discrepancy in the CONTRACT DOCUMENTS, CONTRACTOR shall so report to the PUBLIC WORKS DEPARTMENT in writing at once and before proceeding with the WORK affected thereby shall obtain a written interpretation or clarification from the PUBLIC WORKS DEPARTMENT; however, CONTRACTOR shall not be liable to **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT for failure to report any conflict, error, or the discrepancy in the CONTRACT DOCUMENTS unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

3.4 The CONTRACT DOCUMENTS may be amended to provide for additions, deletions, and revisions in the WORK or to modify the terms and conditions thereof in one or more of the following ways:

3.4.1 A formal WRITTEN AMENDMENT;

3.4.2 A CHANGE ORDER (pursuant to paragraph 10.4); or

3.4.3 A WORK DIRECTIVE CHANGE (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, CONTRACT PRICE and CONTRACT TIME may only be changed by a CHANGE ORDER or a WRITTEN AMENDMENT.

3.5 In addition, the requirements of the CONTRACT DOCUMENTS may be supplemented, and minor variations and deviations in the WORK may be authorized, in one or more of the following ways:

3.5.1 A FIELD ORDER (pursuant to paragraph 9.5);

3.5.2 PUBLIC WORKS DEPARTMENT'S approval of a SHOP DRAWING or sample (pursuant to paragraphs 6.26 and 6.27); or

3.5.3. PUBLIC WORKS DEPARTMENT'S written interpretation or clarification pursuant to paragraph 9.4).

REUSE OF DOCUMENTS

3.6 Neither CONTRACTOR nor any SUBCONTRACTOR or Supplier, or other person or organization performing or furnishing any of the WORK under a direct or indirect contract with **CITY OF DELAWARE** shall have or acquire any title to or ownership rights in any of the DRAWINGS, SPECIFICATIONS, or other documents (or copies of any thereof) prepared by or bearing the seal of the ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT and specific written specification or adaption by the PUBLIC WORKS DEPARTMENT.

ARTICLE 4-AVAILABILITY OF LANDS: PHYSICAL REFERENCE POINTS

AVAILABILITY OF LANDS:

4.1 **CITY OF DELAWARE** shall furnish, as indicated in the CONTRACT DOCUMENTS, prior to issuance of NOTICE TO PROCEED, the lands upon which the WORK is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by **CITY OF DELAWARE**, unless otherwise provided in the CONTRACT DOCUMENTS. If CONTRACTOR believes that any delay in **CITY OF DELAWARE**'s furnishing these lands, rights-of-way, or easements entitles CONTRACTOR to an extension of the CONTRACT TIME, CONTRACTOR may make a claim therefor as provided in Article 12. CONTRACTOR, without liability to **CITY OF DELAWARE**, shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

PHYSICAL CONDITIONS

4.2.1 EXPLORATIONS AND REPORTS: Reference is made to the SUPPLEMENTARY CONDITIONS for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the PUBLIC WORKS DEPARTMENT in preparation of the CONTRACT DOCUMENTS. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations, or opinions contained therein of for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 EXISTING STRUCTURES: Reference is made to the SUPPLEMENTARY CONDITIONS for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except UNDERGROUND FACILITIES referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by the PUBLIC WORKS DEPARTMENT in preparation of the CONTRACT DOCUMENTS. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

The location of surface utilities and structures is shown on the PLANS from data available at the time of survey and is not necessarily complete or correct. The exact location and protection of surface utilities and structures are the responsibilities of the CONTRACTOR. The CONTRACTOR will remedy all damage, injury, or loss to and property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, and SUBCONTRACTOR, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable. During construction, the CONTRACTOR, shall use due diligence in protecting from damage all existing surface utilities and structures whether shown on the PLANS or not. If damage is caused, the CONTRACTOR shall be responsible for the repair or restoration of same and for any resulting contingent damage. He will notify owners of adjacent surface utilities when prosecution of the WORK may affect them.

4.2.3 **REPORT OF DIFFERING CONDITIONS:** If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate; or

4.2.3.2 any physical condition uncovered or revealed at the site differs materially form that indicated, reflected, referred to in the CONTRACT DOCUMENTS or from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK in connection therewith (except in an

emergency as permitted by paragraph 6.2.2), notify **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT in writing about the inaccuracy or difference, which shall be a condition precedent.

4.2.4 **ENGINEER'S REVIEW:** The PUBLIC WORKS DEPARTMENT will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto, and advise **CITY OF DELAWARE** in writing (with a copy to CONTRACTOR) of the PUBLIC WORKS DEPARTMENT'S findings and conclusions.

4.2.5 **POSSIBLE DOCUMENT CHANGE:** If the PUBLIC WORKS DEPARTMENT concludes that there is a material error in the CONTRACT DOCUMENTS or that because of newly discovered conditions a change in the CONTRACT DOCUMENTS is required, a WORK DIRECTIVE CHANGE or a CHANGE ORDER will be issued as provided in CHANGES IN THE WORK to reflect and document the consequences of the inaccuracy or difference.

4.2.6 **POSSIBLE PRICE AND TIME ADJUSTMENTS:** In each such case, an increase or decrease in the CONTRACT PRICE or an extension or shortening of the CONTRACT TIME, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference, provided the CONTRACTOR has given the required WRITTEN NOTICE, which shall be a condition precedent. If **CITY OF DELAWARE** and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Articles 11 and 12.

PHYSICAL CONDITIONS - UNDERGROUND FACILITIES

4.3.1 **SHOWN OR INDICATED:** The information and data shown or indicated in the CONTRACT DOCUMENTS with respect to existing UNDERGROUND FACILITIES at or contiguous to the site is based on information and data furnished to **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT by the owners of such UNDERGROUND FACILITIES or by others. Unless it is otherwise expressly provided in the SUPPLEMENTARY CONDITIONS:

4.3.1.1 **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all UNDERGROUND FACILITIES shown or indicated in the CONTRACT DOCUMENTS, for coordination of the WORK with the owners of such UNDERGROUND FACILITIES during construction, for the safety and protection thereof as provided in paragraph 6.20, and repairing any damage thereto resulting from the WORK, the cost of all which will be considered as having been included in the CONTRACT PRICE.

4.3.2 **NOT SHOWN OR INDICATED:** If an UNDERGROUND FACILITY is uncovered or revealed at or contiguous to the site which was not shown or indicated in the CONTRACT DOCUMENTS and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any WORK affected thereby (except in an emergency as permitted by paragraph 6.22), identify the owner of such UNDERGROUND FACILITY and give written notice thereof to that owner and to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT. The PUBLIC WORKS DEPARTMENT will promptly review the UNDERGROUND FACILITY to determine the extent to which the CONTRACT DOCUMENTS should be modified to reflect and document the consequences of the existence of the UNDERGROUND FACILITY, and the CONTRACT DOCUMENTS will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such UNDERGROUND FACILITY as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, to the extent that they are attributable to the existence of any UNDERGROUND FACILITY that was not shown or indicated in the CONTRACT DOCUMENTS and which CONTRACTOR could not reasonably have been expected to be aware of.

If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

REFERENCE POINTS

4.4 **CITY OF DELAWARE** shall provide engineering surveys to establish reference points for construction, which in the PUBLIC WORKS DEPARTMENT'S judgement are necessary to enable CONTRACTOR to proceed with the WORK. CONTRACTOR shall be responsible for laying out the WORK (unless otherwise specified in the GENERAL REQUIREMENTS), shall protect and preserve the established reference points, and shall make no changes or relocations without the prior written approval of **CITY OF DELAWARE**. CONTRACTOR shall report to the PUBLIC WORKS DEPARTMENT whenever any reference point is lost or destroyed or required relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel, and shall furnish a certification by a registered surveyor that they have been restored. CONTRACTOR shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

ARTICLE 5 - BONDS AND INSURANCE

PERFORMANCE AND OTHER BONDS

5.1 CONTRACTOR shall within 10 days after the receipt of the NOTICE OF AWARD, furnish Performance and Payment or CONTRACT BONDS, each in an amount of at least equal to the CONTRACT PRICE as security for the faithful performance and payment of all CONTRACTOR'S obligations under the CONTRACT DOCUMENTS. These BONDS shall remain in effect at least until 1 year after the date when final payment becomes due, except as otherwise provided by LAW OR REGULATION or by the CONTRACT DOCUMENTS. CONTRACTOR shall also furnish such other BONDS as are required by the SUPPLEMENTARY CONDITIONS. All BONDS shall be in forms prescribed by LAW OR REGULATION or by the CONTRACT DOCUMENTS and be executed by such sureties licensed to transact such business in the state in which the WORK is to be performed and as are named in the current list of "companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended by the Audit Staff Bureau of Accounts, U.S. Treasury Department). All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.

5.2 If the surety on any BOND furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where and part of the Project is located on it ceases to meet the requirements of the paragraph 5.1, CONTRACTOR shall within 10 days thereafter substitute another BOND and SURETY, both of which must be acceptable to **CITY OF DELAWARE**. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until such BOND has been furnished.

CONTRACTOR'S LIABILITY INSURANCE

5.3 The CONTRACTOR shall purchase and maintain such liability and other insurance as will protect the CONTRACTOR from claims described below which may arise out of or result from the CONTRACTOR'S performance or obligations under the CONTRACT DOCUMENTS, whether due to action or inaction by the CONTRACOTR or any person for whom the CONTRACTOR is responsible.

5.3.1 Claims under workers' compensation, occupational sickness or disease, disability benefit and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury, disease, illness, death or personal injury, and other claims usually covered by bodily injury liability insurance;

5.3.3 Claims for damages because of injury to or destruction of property and other claims usually covered by property damage liability insurance.

5.4 A Commercial General Liability policy and Business Automobile Liability policy, separately or combined, shall be maintained to provide insurance as described below. Such Commercial General Liability and Business Automobile Liability insurance may be either Combined Single Limits or Split Limits as provided below. An Umbrella or Excess Liability policy may be used in combination with the Commercial General Liability and Business Automobile insurance to meet such limits.

5.4.1 Contracts in the amount of $100,000 or less shall require coverage in the amount of not less than $1 million general aggregate and per occurrence.

5.4.2 Contracts in excess of $100,000 but not more than $5 million shall require coverage in the amount of not less than $3 million general aggregate and per occurrence.

5.4.3 Contracts exceeding the amount of $5 million shall require coverage in an amount to be determined by the Commission but in no case less than $5 million general aggregate and per occurrence.

5.4.4 Such policies shall be endorsed to provide that the General Aggregate Limit applies separately to each of the insured CONTRACTOR'S projects

5.5 If Commercial General Liability and Business Automobile Liability insurance is written with Split Limits, the following minimum limits shall be provided.

5.5.1 Contracts in the amount of $100,000 or less shall require coverage in the amount of not less than $500,000 for injuries, including death, to one person, and $1 million per occurrence and $500,000 property damage.

5.5.2 Contracts in excess of $100,000 but not more than $5 million shall require coverage in the amount of not less than $1 million for injuries, including death, to one person, and $1 million per occurrence and $1 million property damage, together with an Umbrella or Excess Liability policy of not less than $2 million per occurrence.

5.5.3 Contracts exceeding the amount of $5 million shall require coverage in an amount to be determined by the Commission but on no event shall an Umbrella or Excess Liability limit of less than $4 million be acceptable, along with Commercial General Liability and Business Automobile Liability with limits of not less than $1 million for injuries, including death, to one person, and $1 million per occurrence and $1 million property damage.

5.6 For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the CONTRACTOR shall provide and maintain Property Damage Liability insurance with a limit of liability equal to such limit as specified in the applicable sections of paragraphs 5.4 and 5.5.

RECEIPT AND APPLICATION OF PROCEEDS

5.7 Any insured loss under the policies of insurance required by paragraph 5.5 will be adjusted with **CITY OF DELAWARE** and made payable to **CITY OF DELAWARE** as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. **CITY OF DELAWARE** shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreements as the parties in interest may reach. If no other special agreement is reached, the damaged WORK shall be repaired or replaced, the monies so received applied on account thereof, and the WORK and the cost thereof covered by an appropriate CHANGE ORDER or WRITTEN AMENDMENT.

ACCEPTANCE OF INSURANCE

5.8 If **CITY OF DELAWARE** has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the CONTRACT DOCUMENT, **CITY OF DELAWARE** shall notify CONTRACTOR in writing thereof within 10 days of the date of delivery of such certificates to **CITY OF DELAWARE** in accordance with paragraph 2.7. CONTRACTOR shall provide such additional information as **CITY OF DELAWARE** reasonably requests. Failure by **CITY OF DELAWARE** to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased as complying with the CONTRACT DOCUMENTS.

PARTIAL UTILIZATION - PROPERTY INSURANCE

5.9 If **CITY OF DELAWARE** finds it necessary to occupy or use a portion or portions of the WORK prior to SUBSTANTIAL COMPLETION of all the WORK, such use or occupancy may be

accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers provided the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

5.10 Each policy of insurance required to be purchased and maintained by the CONTRACTOR shall name the City of Delaware as additional insured. The successful contractor, vendor, etc… must submit their insurance certificate naming the City of Delaware as an additional insured on ISO Form CG 2010 (11/85 edition). All other forms will be rejected. Each policy and respective Certificate of Insurance shall expressly provide that no less than 30 days prior written notice shall be given to the City of Delaware in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance.

5.11 The CONTRACTOR shall furnished the City of Delaware, when requested, a certified copy of any insurance policy, insurance or additional insured endorsement required to be purchased or maintained by the CONTRACT DOCUMENTS. In no event shall any failure to demand a certified copy of any required insurance policy, insurance or insured endorsement be construed as a waiver of the obligation of the CONTRACTOR to obtain insurance required to be purchased or maintained by the CONTRACT DOCUMENTS.

5.12 The CONTRACTOR shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the AGREEMENT until the date of approval of the certificate of Contract Completion by the commission. Failure to maintain the required insurance during the time specified shall be cause for termination of the AGREEMENT.

5.13 Insurance policies required to be purchased and maintained by the CONTRACTOR may include a reasonable loss deductible, which shall be the responsibility of the CONTRACTOR to pay in the event of loss.

5.14 The prompt repair or reconstruction of the Work as a result of an insured loss or damage shall be the CONTRACOTOR'S responsibility and shall be accomplished at no additional cost to the CITY OF DELAWARE.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE

6.1 CONTRACTOR shall supervise, schedule, coordinate, and direct the WORK competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the WORK in accordance with the CONTRACT DOCUMENTS. CONTRACTOR shall be solely responsible for the means, methods, techniques, safety, sequences, and procedures of construction. **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT expressly disclaim any responsibility for the means, methods, techniques, safety, sequences, and procedures of construction. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the CONTRACT DOCUMENTS.

6.2 CONTRACTOR shall keep on the WORK at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

LABOR, MATERIALS, AND EQUIPMENT

6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the WORK and perform construction as required by the CONTRACT DOCUMENTS. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the WORK or property at the site or adjacent thereto, and except as otherwise indicated in the CONTRACT DOCUMENTS, all WORK at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of WORK on Saturday or Sunday, or any legal holiday without **CITY OF DELAWARE**'S written consent given after prior written notice to the PUBLIC WORKS DEPARTMENT.

6.4 Unless otherwise specified in the GENERAL REQUIREMENTS, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the WORK.

6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the CONTRACT DOCUMENTS. If required by the PUBLIC WORKS DEPARTMENT, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned, in accordance with the instructions of the applicable SUPPLIER except as otherwise provided in the CONTRACT DOCUMENTS; but no provision of any such instructions will be effective to assign to the PUBLIC WORKS DEPARTMENT, or any of the PUBLIC WORKS DEPARTMENT'S consultants, agents, or employees, any duty or authority to supervise or direct the furnishing of performances of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

ADJUSTING PROGRESS SCHEDULE

6.6 CONTRACTOR shall submit to the PUBLIC WORKS DEPARTMENT (to the extent indicated in paragraph 2.9) adjustments made to the progress schedule to reflect the impact thereon of new

developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the GENERAL REQUIREMENTS applicable thereto.

SUBSTITUTES OR "OR EQUAL" ITEMS

6.7.1 Whenever materials or equipment are specified or described in the CONTRACT DOCUMENTS by using the name of a proprietary item or the name of a particular SUPPLIER, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by the PUBLIC WORKS DEPARTMENT if sufficient information is submitted by CONTRACTOR to allow the PUBLIC WORKS DEPARTMENT to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by the PUBLIC WORKS DEPARTMENT will include the following as supplemented in the GENERAL REQUIREMENTS. Requests for review or substitute items of material and equipment will not be accepted by the PUBLIC WORKS DEPARTMENT from anyone other that CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to the PUBLIC WORKS DEPARTMENT for acceptance thereof certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of SUBSTANTIAL COMPLETION on time, whether or not acceptance of the substitute for use in the WORK will require a change in any of the CONTRACT DOCUMENTS (or in the provisions of any other direct contract with **CITY OF DELAWARE** for work on the PROJECT) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute and whether or not incorporation or use of the substitute in connection with the WORK is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, economy of maintaining and operation, duration life, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of the contractors affected by the resulting change, all of which shall be considered by the PUBLIC WORKS DEPARTMENT in evaluating the proposed substitute. The PUBLIC WORKS DEPARTMENT may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute. Any cost savings resulting from any approved substitution shall inure to the benefit **CITY OF DELAWARE**.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the CONTRACT DOCUMENTS, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique, or procedure of construction acceptable to the PUBLIC WORKS DEPARTMENT, if CONTRACTOR submits sufficient information to allow the PUBLIC WORKS DEPARTMENT to determine that the substitute proposed is equivalent to that indicated or required by the CONTRACT DOCUMENTS. The procedure for review by the PUBLIC WORKS DEPARTMENT will be similar to that provided in paragraph 6.7.1 as applied by the PUBLIC WORKS DEPARTMENT and may be supplemented in the GENERAL REQUIREMENTS.

6.7.3 The PUBLIC WORKS DEPARTMENT will be allowed a reasonable time within which to evaluate each proposed substitute. the PUBLIC WORKS DEPARTMENT will be the sole judge of acceptability, and no substitute will be ordered, installed, or utilized without the PUBLIC WORKS DEPARTMENT'S prior written acceptance which will be evidenced by either a CHANGE ORDER or and approved SHOP DRAWING. **CITY OF DELAWARE** may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute. The PUBLIC WORKS DEPARTMENT will record time required by the PUBLIC WORKS DEPARTMENT and the PUBLIC WORKS DEPARTMENT'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the CONTRACT DOCUMENTS occasioned thereby. Whether or not the PUBLIC WORKS DEPARTMENT accepts a proposed substitute, CONTRACTOR shall reimburse **CITY OF DELAWARE** for the charges of

the PUBLIC WORKS DEPARTMENT AND the PUBLIC WORKS DEPARTMENT'S consultants for evaluating each proposed substitute.

CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS:

6.8.1 CONTRACTOR shall not employ any SUBCONTRACTOR, SUPPLIER, or other person or organization (including those acceptable to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT may have reasonable objection. CONTRACTOR shall not be required to employ any SUBCONTRACTOR, SUPPLIER, or other person or organization to furnish or perform and of the WORK against whom CONTRACTOR has reasonable objection.

The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which are usually performed by specialty SUBCONTRACTORS.

The CONTRACTOR shall not award WORK to SUBCONTRACTOR(S), in excess of 50 percent of the CONTRACT PRICE, without prior written approval of **CITY OF DELAWARE**.

6.8.2 If the SUPPLEMENTARY CONDITIONS require the identity of certain SUBCONTRACTORS, SUPPLIERS, or other persons or organizations (including those who are to furnish the principal items of materials and equipment to be submitted to **CITY OF DELAWARE** in advance of the specified date prior to the EFFECTIVE DATE of the AGREEMENT for acceptance by **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT and if CONTRACTOR has submitted a list thereof in accordance with the SUPPLEMENTARY CONDITIONS, **CITY OF DELAWARE'S** or the PUBLIC WORKS DEPARTMENT acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents of the CONTRACT DOCUMENTS) of any such SUBCONTRACTOR, SUPPLIER or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit as acceptable substitute, the CONTRACT PRICE will be increased by the difference in the cost occasioned by such substitution and an appropriate CHANGE ORDER will be issued or WRITTEN AMENDMENT signed. No acceptance by **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT of any such SUBCONTRACTOR, SUPPLIER or other person or organization shall constitute a waiver of any right of **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT to reject effective WORK.

6.9 CONTRACTOR shall be fully responsible to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT for all acts and omissions of the SUBCONTRACTORS, SUPPLIERS, and other persons and organizations performing or furnishing any of the WORK under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the CONTRACT DOCUMENTS shall create any contractual relationship between **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT and any such SUBCONTRACTOR, SUPPLIER, or other person or organization, nor shall it create any obligation on the part of **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT to pay or to see to the payment of any monies due any such SUBCONTRACTOR, SUPPLIER, or other person or organization except as may otherwise be required by LAWS AND REGULATIONS.

6.10 The divisions and sections of the SPECIFICATIONS and the identifications of any DRAWINGS shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or SUPPLIERS or delineating the WORK to be performed by and specific trade.

6.11 All WORK performed for CONTRACTOR by a SUBCONTRACTOR will be pursuant to an appropriate agreement between CONTRACTOR and the SUBCONTRACTOR which specifically binds the SUBCONTRACTOR to the applicable terms and conditions of the CONTRACT DOCUMENTS for the benefit of **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT. CONTRACTOR shall pay each SUBCONTRACTOR a just share of any insurance

monies received by CONTRACTOR on account of losses under policies issued pursuant to paragraph 5.5.

PATENT FEES AND ROYALTIES:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the WORK or the incorporation in the WORK of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the CONTRACT DOCUMENTS for use in the performance of the WORK and if to the actual knowledge of **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence if such rights shall be disclosed by **CITY OF DELAWARE** in the CONTRACT DOCUMENTS. CONTRACTOR shall indemnify and hold harmless **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product, or device not specified in the CONTRACT DOCUMENTS, and shall defend all such claims in connection with any alleged infringement of such rights.

PERMITS:

6.13 Unless otherwise provided in the SUPPLEMENTARY CONDITIONS, CONTRACTOR shall obtain and pay for all construction permits and licenses. **CITY OF DELAWARE** shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the WORK, which are applicable at the time of opening BIDS, or if there are no BIDS on the EFFECTIVE DATE of THE AGREEMENT, CONTRACTOR shall pay all charges of utility owners for connections to the WORK, and **CITY OF DELAWARE** shall pay all charges of such utility owners for connections related thereto such as plant investment fees. Permits, licenses, and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by **CITY OF DELAWARE**, unless otherwise specified.

LAWS AND REGULATIONS:

6.14.1 CONTRACTOR shall give all notices and comply with all LAWS AND REGULATIONS applicable to furnishing and performance of the WORK. Except where otherwise expressly required by applicable LAWS AND REGULATIONS, neither **CITY OF DELAWARE** nor the PUBLIC WORKS DEPARTMENT shall be responsible for monitoring CONTRACTOR'S compliances with any LAWS or REGULATIONS.

6.14.2 If CONTRACTOR observes that the SPECIFICATIONS or DRAWINGS are at variance with any LAWS AND REGULATIONS, CONTRACTOR shall give the PUBLIC WORKS DEPARTMENT prompt written notice thereof, and any necessary changes will be authorized by on the methods indicated in paragraph 3.4. If CONTRACTOR performs any WORK knowing or having reason to know that it is contrary to such LAWS OR REGULATIONS, and without such notice to the PUBLIC WORKS DEPARTMENT, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the SPECIFICATIONS and DRAWINGS are in accordance with such LAWS AND REGULATIONS.

TAXES:

6.15 CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the LAWS AND REGULATIONS of the place of the PROJECT which are applicable during the performance of the WORK. Notwithstanding the foregoing, CONTRACTOR acknowledges and agrees that the CITY OF DELAWARE may be entitled to a sales tax exemption pursuant to Section 5739.02(B) of the Ohio Revised Code for certain construction materials included as part of the Work, and CONTRACTOR shall not pay any sales tax to the extent the CITY OF DELAWARE'S exemption is applicable and shall not take any action which would cause the CITY OF DELAWARE to lose or not take full advantage and use such exemption. The CITY OF DELAWARE shall provide CONTRACTOR with a sales tax exemption certificate. The CITY OF DELAWARE shall promptly process all documentation in connection with the sales tax exemption as requested by the CONTRACTOR. CONTRACTOR shall keep copies of all records required under O.R.C 5739.03 in connection with the sales tax exemption and will furnish such records to the CITY OF DELAWARE upon request. This covenant shall survive the termination of this Agreement and the completion of this Work.

USE OF PREMISES:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the PROJECT site and land and areas identified on an permitted by the CONTRACT DOCUMENTS and other land and areas permitted by LAWS AND REGULATIONS, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to **CITY OF DELAWARE** or occupant thereof of or of any land or areas contiguous thereto, resulting form the performance of the WORK. Should any claim be made against **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT by any such owner or occupant because of the performance of the WORK, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extend permitted by LAWS AND REGULATIONS, indemnify and hold **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals, and court and arbitration costs) arising directly, or indirectly, or consequentially out of any action, legal or equitable, brought by any such other party against **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK.

6.17 During the progress of the WORK, CONTRACTOR shall keep the premises free from accumulations of waste material, rubbish, and other debris resulting form the WORK. At the completion of the WORK, CONTRACTOR shall remove all waste materials, rubbish, and debris from and about the premises, all tools, appliances, construction equipment and machinery, surplus materials, sheds and temporary structures, and shall leave the site clean and ready for occupancy by owner. CONTRACTOR shall clean all its, pipes, chambers, conduit, and structures. CONTRACTOR shall restore to original condition all property not designated for alteration by the CONTRACT DOCUMENTS.

6.18 CONTRACTOR shall not load or permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the WORK or adjacent property to stresses or pressures that will endanger it. If CONTRACTOR loads or permits and part of any structure to be loaded in any manner that endangers the structure of subject any part of the WORK or adjacent property to stresses or pressures that endanger it, CONTRACTOR shall be liable for all damages arising form such loading.

RECORD DOCUMENTS:

6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all DRAWINGS, SPECIFICATIONS, ADDENDA, WRITTEN AMENDMENTS, CHANGE ORDERS, WORK DIRECTIVE CHANGES, FILED ORDERS, and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved SHOP DRAWINGS will be available to the PUBLIC WORKS DEPARTMENT for reference. Upon completion of the WORK, the CONTRACTOR shall organize the record documents, samples, and SHOP DRAWINGS into manageable sets, bind the sets with durable coversheets, certify to the accuracy of the record documents by signature thereon and deliver them to **CITY OF DELAWARE**, PUBLIC WORKS DEPARTMENT. The CONTRACTOR shall also provide one set off record documents in a computer medium approved by the CITY OF DELAWARE.

SAFETY AND PROTECTION:

6.20 CONTRACTOR shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the WORK. The PUBLIC WORKS DEPARTMENT and **CITY OF DELAWARE** expressly disclaim any responsibility for initiating, maintaining, or supervising the CONTRACTOR'S safety program. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

6.20.1 all employees on the WORK and other persons and organizations who may be affected thereby;

6.20.2 all the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and UNDERGROUND FACILITIES not designated for removal, relocation, or replacement in the course of construction, and any part of the WORK or adjacent property damaged by excessive loading as stated in section 6.18 above.

CONTRACTOR shall comply with all applicable LAWS AND REGULATIONS of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of UNDERGROUND FACILITIES and utility owners when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly, or indirectly, in whole or in part, by CONTRACTOR, any SUBCONTRACTOR, SUPPLIER, or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of DRAWINGS OR SPECIFICATIONS or to the acts or omissions of **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly, or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the WORK shall continue until such time as all the WORK is completed and the PUBLIC WORKS DEPARTMENT has issued a notice to the
CITY OF DELAWARE and CONTRACTOR in accordance with paragraph 14.13 that the work is acceptable (except as otherwise expressly provided in connection with SUBSTANTIAL COMPLETION).

6.21 CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designate in writing by CONTRACTOR to **CITY OF DELAWARE**.

EMERGENCIES:

6.22 In emergencies affecting the safety or protection of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from the PUBLIC WORKS DEPARTMENT or **CITY OF DELAWARE**, is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give the PUBLIC WORKS DEPARTMENT prompt written notices if CONTRACTOR believes that any significant changes in the WORK or variations from the CONTRACT DOCUMENTS have been caused thereby. If the PUBLIC WORKS DEPARTMENT determines that a change in the CONTRACT DOCUMENTS is required because of the action taken in response to an emergency, a WORK DIRECTIVE CHANGE or CHANGE ORDER will be issued to document the consequences of the changes in variations.

SHOP DRAWINGS AND SAMPLES:

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to the PUBLIC WORKS DEPARTMENT for review and approval in accordance with the accepted schedule of SHOP DRAWING submissions (see paragraph 2.9), or for other appropriate action if so indicated in the SUPPLEMENTARY CONDITIONS, five copies (unless otherwise specified in the GENERAL REQUIREMENTS) of all SHOP DRAWINGS, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the CONTRACT DOCUMENTS with respect to the review of the submission. All submissions will be identified as the PUBLIC WORKS DEPARTMENT may require. The data shown on the SHOP DRAWINGS will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to enable the PUBLIC WORKS DEPARTMENT to review the information as required.

6.24 CONTRACTOR shall also submit to the PUBLIC WORKS DEPARTMENT for review and approval with such promptness as to cause no delay in WORK, all samples required by the CONTRACT DOCUMENTS. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the CONTRACT DOCUMENTS with respect to the review of the submission and will be identified clearly as to material, SUPPLIER, pertinent data such as catalog numbers and the use for which intended.

6.25.1 Before submission of each SHOP DRAWING or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and review or coordinated each SHOP DRAWING or sample with other SHOP DRAWINGS and sample and with the requirements of the WORK and the CONTRACT DOCUMENTS.

6.25.2 At the time of each submission, CONTRACTOR shall give the PUBLIC WORKS DEPARTMENT specific written notice of each variation that the SHOP DRAWINGS or samples may have from the requirements of the CONTRACT DOCUMENTS, and, in addition, shall cause a specific notation to be made on each SHOP DRAWING submitted to the PUBLIC WORKS DEPARTMENT for review and approval of each such variation.

6.26 The PUBLIC WORKS DEPARTMENT will review and approve with reasonable promptness SHOP DRAWINGS and samples, but the PUBLIC WORKS DEPARTMENT'S review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the CONTRACT DOCUMENTS and shall not extend to means, methods, techniques,

sequences or procedures of construction (except where a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the CONTRACT DOCUMENTS) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by the PUBLIC WORKS DEPARTMENT and shall return the required number of corrected copies of SHOP DRAWINGS and submit as required new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the PUBLIC WORKS DEPARTMENT on previous submittal.

6.27 The PUBLIC WORKS DEPARTMENT'S review and approval of SHOP DRAWINGS or sample shall no relieve CONTRACTOR from responsibility for any variation from the requirements of the CONTRACT DOCUMENTS unless CONTRACTOR has in writing called the PUBLIC WORKS DEPARTMENT'S attention to each such variation at the time of submission as required by paragraph 6.25.2 and the PUBLIC WORKS DEPARTMENT has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the SHOP DRAWING or sample approval; nor will any approval by the PUBLIC WORKS DEPARTMENT relieve CONTRACTOR form responsibility for errors or omission in the SHOP DRAWINGS or from responsibility for having complied with the provisions of paragraph 6.25.1.

6.28 Where a SHOP DRAWING or sample is required by the SPECIFICATIONS, any related WORK performed prior to the PUBLIC WORKS DEPARTMENT'S review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

CONTINUING THE WORK:

6.29 CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with **CITY OF DELAWARE**. No WORK shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CONTRACTOR and **CITY OF DELAWARE** may otherwise agree in writing. Nothing in this section shall be construed as a waiver of the requirement for WRITTEN NOTICE to **CITY OF DELAWARE** of any changed conditions that are encountered in the WORK.

INDEMNIFICATION:

6.30 To the fullest extent permitted by LAWS AND REGULATIONS, CONTRACTOR shall indemnify and hold harmless **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT and their consultants, agents, and employees from and against all claims, damages, losses and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising out of or resulting form the performance of the WORK, provided that any such claim, damage, loss of expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the WORK itself) including the loss of use resulting therefrom and (b) is caused in whole or part by any negligent act or omission of CONTRACTOR, any SUBCONTRACTOR, any person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by LAW AND REGULATIONS regardless of the negligence of any such party.

6.31 In any and all claims against **CITY OF DELAWARE** or the PUBLIC WORKS DEPARTMENT or any of their consultants, agents, or employees by any employee of CONTRACTOR, any SUBCONTRACTOR, any person or organization directly or indirectly employed by any of them to perform or furnish any of the WORK or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any

such SUBCONTRACTOR or other person or organization under Workers' or Workmen's Compensation Acts, disability benefit acts, or other employees benefit acts.

6.32 The obligations of CONTRACTOR under paragraphs 6.30 and 6.31 shall not extend to the liability of the PUBLIC WORKS DEPARTMENT, PUBLIC WORKS DEPARTMENT'S consultants, agents, or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

ARTICLE 7 - OTHER WORK

RELATED WORK AT SITE:

7.1 **CITY OF DELAWARE** may perform other work related to the PROJECT at the site by **CITY OF DELAWARE**'s own forces, have other work performed by utility owners, or let other direct contracts therefor which shall contain GENERAL CONDITIONS similar to these. If the fact that such other work is to be performed was not noted in the CONTRACT DOCUMENTS, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

7.2 CONTRACTOR shall afford each utility owner and other contractor who is party to such a direct contract (or **CITY OF DELAWARE**, if **CITY OF DELAWARE** is performing the additional work with owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the WORK with theirs. CONTRACTOR shall do all cutting, fitting, and patching of the WORK that may be required to make it several parts come together properly and integrate such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the PUBLIC WORKS DEPARTMENT and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said contracts between **CITY OF DELAWARE** and such utility owners and other contractors.

7.3 If any part of the CONTRACTOR'S WORK depends for proper execution or results upon the WORK of any such other contractor or utility owner (or **CITY OF DELAWARE**), CONTRACTOR shall inspect and promptly report to the PUBLIC WORKS DEPARTMENT in writing any delays, defects, or deficiencies in such WORK that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S WORK except for latent or nonapparent defects and deficiencies in the other work.

COORDINATION

7.4 If **CITY OF DELAWARE** contracts with others for the performance of other work on the PROJECT at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the SUPPLEMENTARY CONDITIONS, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the SUPPLEMENTARY CONDITIONS. Unless otherwise provided in the SUPPLEMENTARY CONDITIONS, the CONTRACTOR shall coordinate its WORK with other contractors and shall cooperate in the scheduling of WORK for the entire PROJECT. Unless otherwise provided in the SUPPLEMENTARY CONDITIONS, neither **CITY OF DELAWARE** nor the PUBLIC WORKS DEPARTMENT shall have any authority or responsibility or liability in respect of such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 **CITY OF DELAWARE** shall issue all communications to CONTRACTOR through the PUBLIC WORKS DEPARTMENT.

8.2 In case of terminations of the employment of the PUBLIC WORKS DEPARTMENT, **CITY OF DELAWARE** shall appoint an engineer whose status under the CONTRACT DOCUMENTS shall be that of the former PUBLIC WORKS DEPARTMENT. Any dispute in connection with such appointment shall be subject to arbitration.

8.3 **CITY OF DELAWARE** shall furnish the date required of **CITY OF DELAWARE** under the CONTRACT DOCUMENTS promptly and shall make payments to CONTRACTOR promptly after they are due as provided in paragraphs 14.4 and 14.13.

8.4 **CITY OF DELAWARE**'s duties in respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1. and 4.4. Paragraph 4.2 refers to **CITY OF DELAWARE**'S identifying and making available to CONTRACTOR copies of reports of explorations and test of subsurface conditions at the site and in existing structures which have been utilized by PUBLIC WORKS DEPARTMENT in preparing the DRAWINGS AND SPECIFICATIONS.

8.5 **CITY OF DELAWARE** is obligated to execute CHANGE ORDERS as indicated in paragraph 10.4.

8.6 **CITY OF DELAWARE**'S responsibility in respect of certain inspections, tests, and approvals is set forth in paragraph 13.4

8.7 In connection with **CITY OF DELAWARE**'S right to stop WORK or suspend WORK, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with **CITY OF DELAWARE**'s right to terminate services of CONTRACTOR under certain circumstances.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

CITY OF DELAWARE'S REPRESENTATIVE:

9.1 The PUBLIC WORKS DEPARTMENT will be **CITY OF DELAWARE**'s representative during the construction period. The duties and responsibilities and the limitations of authority of the PUBLIC WORKS DEPARTMENT as **CITY OF DELAWARE**'s representative during construction are set forth in the CONTRACT DOCUMENTS and shall not be extended without written consent of **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT.

VISITS TO SITE:

9.2 The PUBLIC WORKS DEPARTMENT will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed WORK and to determine, in general, if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS. The PUBLIC WORKS DEPARTMENT will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the WORK. The PUBLIC WORKS DEPARTMENT's efforts will be directed toward providing for **CITY OF DELAWARE** a greater degree of confidence that the completed WORK will conform to the CONTRACT DOCUMENTS. On the basis of such visits and on-site observations as an experienced and qualified design professional, the PUBLIC WORKS DEPARTMENT will keep **CITY OF DELAWARE** informed of the progress of the WORK and will endeavor to guard **CITY OF DELAWARE** against defects and deficiencies in the WORK.

PROJECT REPRESENTATION:

9.3 **CITY OF DELAWARE** reserves the right to furnish a RESIDENT PROJECT REPRESENTATIVE to assist the PUBLIC WORKS DEPARTMENT in observing the performance of the WORK.

CLARIFICATIONS AND INTERPRETATIONS

9.4 The PUBLIC WORKS DEPARTMENT will issue with reasonable promptness such written clarifications or interpretations of the requirements of the CONTRACT DOCUMENTS (in the form of DRAWINGS or otherwise) as the PUBLIC WORKS DEPARTMENT may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the CONTRACT DOCUMENTS. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or 12.

AUTHORIZED VARIATIONS IN WORK:

9.5 The PUBLIC WORKS DEPARTMENT may authorize minor variations in the WORK from the requirements of the CONTRACT DOCUMENTS which do not involve and adjustment of the CONTRACT DOCUMENTS which do not involve and adjustment in the CONTRACT PRICE or the CONTRACT TIME and are consistent with the overall intent of the CONTRACT DOCUMENTS. These may be accomplished by a FIELD ORDER and will be binding on **CITY OF DELAWARE**, and also on CONTRACTOR who shall perform the WORK involved promptly. If CONTRACTOR believes that a FIELD ORDER justifies an increase in the CONTRACT PRICE or and extension of the CONTRACT TIME and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR shall not execute the FIELD ORDER and may make a claim therefor as provided in Article 11 or 12.

REJECTING DEFECTIVE WORK:

9.6 The PUBLIC WORKS DEPARTMENT will have authority to disapprove or reject WORK which the PUBLIC WORKS DEPARTMENT believes to be defective and will also have authority to require special inspection or testing of the WORK as provided in paragraph 13.9, whether or not the WORK is fabricated, installed, or completed.

SHOP DRAWINGS, CHANGE ORDERS, AND PAYMENTS:

9.7 In connection with the PUBLIC WORKS DEPARTMENT'S responsibility for SHOP DRAWINGS and samples see paragraphs 6.23 through 6.28 inclusive.

9.8 In connection with the PUBLIC WORKS DEPARTMENT'S responsibilities as to CHANGE ORDERS, see Articles 10, 11, and 12.

9.9 In connection with the PUBLIC WORKS DEPARTMENT'S responsibilities in respect of APPLICATIONS FOR PAYMENT, etc., see Article 14.

DETERMINATIONS FOR UNIT PRICES:

9.10 The PUBLIC WORKS DEPARTMENT will have authority to determine the actual quantities and classifications of items of Unit Price Work performed by CONTRACTOR, and the written decisions of the PUBLIC WORKS DEPARTMENT on such matters will be final, binding on **CITY OF DELAWARE** and the CONTRACTOR, and not subject to appeal (except as modified by the PUBLIC WORKS DEPARTMENT to reflect changed factual conditions).

DECISIONS ON DISPUTES

9.11 The PUBLIC WORKS DEPARTMENT will be the initial interpreter of the requirements of the CONTRACT DOCUMENTS and judge of the acceptability of the WORK thereunder. Claims, disputes and other matters relating to the acceptability of the WORK or the interpretation of the requirements of the CONTRACT DOCUMENTS pertaining to the performance and furnishing of the WORK and claims under Articles 11 and 12 in respect of changes in the CONTRACT PRICE or CONTRACT TIME will be refereed initially to the PUBLIC WORKS DEPARTMENT in writing with a request for a formal decision in accordance with this paragraph, which the PUBLIC WORKS DEPARTMENT will render in writing within a reasonable time. Written notice of each such claim, dispute, and other matter will be delivered by the claimant to the PUBLIC WORKS DEPARTMENT and the other party to the Agreement promptly (but in no event later than 30 days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to the PUBLIC WORKS DEPARTMENT and the other party within 60 days after such occurrence unless the PUBLIC WORKS DEPARTMENT allows and additional period of time to ascertain more accurate data in support of the claim. WRITTEN NOTICE shall be a condition precedent to any exercise of rights or remedies of the CONTRACTOR under these CONTRACT DOCUMENTS or as may exist by law.

9.12 When functioning as interpreter and judge under paragraphs, 9.10 and 9.11 the PUBLIC WORKS DEPARTMENT will not show partiality to **CITY OF DELAWARE** or the CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the PUBLIC WORKS DEPARTMENT pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by **CITY OF DELAWARE** or the CONTRACTOR of such rights or

remedies as either may otherwise have under the CONTRACT DOCUMENTS or by LAWS OR REGULATIONS in respect of any such claim, dispute, or other matter.

LIMITATIONS OF ENGINEER'S RESPONSIBILITIES

9.13 Neither the PUBLIC WORKS DEPARTMENT's authority to act under Article 9 or elsewhere in the CONTRACT DOCUMENTS nor any decision made by the PUBLIC WORKS DEPARTMENT in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility or liability of the PUBLIC WORKS DEPARTMENT to the CONTRACTOR, any SUB-CONTRACTOR, any SUPPLIER, or any other person or organization performing any of the WORK, or to any surety for any of them.

9.14 Whenever in the CONTRACT DOCUMENTS the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of the like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory", or adjectives of the like effect or import are used to describe a requirement, direction, review, or judgement of the PUBLIC WORKS DEPARTMENT, as to the WORK, it is intended that such requirement, direction, review, or judgement will be solely to evaluate the WORK for compliance with the CONTRACT DOCUMENTS (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the PUBLIC WORKS DEPARTMENT any duty or authority to supervise or direct the furnishing or performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

9.15 The PUBLIC WORKS DEPARTMENT will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the PUBLIC WORKS DEPARTMENT will not be responsible for CONTRACTOR's failure to perform or furnish the WORK in accordance with the CONTRACT DOCUMENTS.

9.16 The PUBLIC WORKS DEPARTMENT will not be responsible for the acts or omissions of CONTRACTOR or of any SUBCONTRACTOR, any SUPPLIER, or of any other person or organization performing or furnishing any of the WORK.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Without invalidating the Agreement and without notice to any surety, **CITY OF DELAWARE** may, at any time or from time to time, order additions, deletions, or revisions in the WORK; these will be authorized by a WRITTEN AMENDMENT, a CHANGE ORDER, or a WORK DIRECTIVE CHANGE. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the WORK involved which will be performed under the applicable conditions of the CONTRACT DOCUMENTS (except as otherwise specifically provided). **CITY OF DELAWARE** is the only party who shall have authority to direct changes in the WORK. Such authority shall not be waived, transferred, or expanded.

10.2 If **CITY OF DELAWARE** and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the CONTRACT PRICE or and extension or shortening of the CONTRACT TIME that should be allowed as a result of a WORK DIRECTIVE CHANGE, a claim may be made therefor as provided in Article 11 or 12.

10.3 CONTRACTOR shall not be entitled to an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME with respect to any WORK performed that is not required by the CONTRACT DOCUMENTS as amended, modified, and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 except in the case of uncovering WORK as provided in paragraph 13.9.

10.4 **CITY OF DELAWARE** and CONTRACTOR shall execute appropriate CHANGE ORDERS (or WRITTEN AMENDMENTS) covering:

10.4.1 changes in the WORK which are ordered by **CITY OF DELAWARE** pursuant to paragraph 10.1 which are required due to acceptance of defective WORK under paragraph 13.13 or correction of defective WORK under paragraph 13.14 or as agreed to by the parties;

10.4.2 changes in the CONTRACT PRICE or CONTRACT TIME which are agreed to by the parties; and

10.4.3 changes in the CONTRACT PRICE or CONTRACT TIME which embody the substance of any written decision rendered by the PUBLIC WORKS DEPARTMENT pursuant to paragraph 9.11; provided that, in lieu of executing any such CHANGE ORDER, an appeal may be taken from any such decision in accordance with the provisions of the CONTRACT DOCUMENTS and applicable LAWS AND REGULATIONS, but during any such appeal, CONTRACTOR shall carry on the WORK and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the WORK or the provisions of the CONTRACT DOCUMENTS (including, but not limited to, CONTRACT PRICE or CONTRACT TIME) is required by the provisions of any BOND to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable BOND will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1 The CONTRACT PRICE constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the WORK. All duties, responsibilities, and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the CONTRACT PRICE.

11.2 The CONTRACT PRICE may only be changed by a CHANGE ORDER or by a WRITTEN AMENDMENT. Any claim for an increase or decrease in the CONTRACT PRICE shall be based on written notice delivered by the party making the claim to the other party and to the PUBLIC WORKS DEPARTMENT promptly (but in no event later than 30 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. WRITTEN NOTICE shall be a condition precedent to any exercise of rights or remedies available under the CONTRACT DOCUMENTS or as may exist by law. Notice of the amount of the claim with supporting data shall be delivered within 60 days after such occurrence (unless the PUBLIC WORKS DEPARTMENT allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect, consequential, or associated with delay) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the CONTRACT PRICE shall be determined by the PUBLIC WORKS DEPARTMENT in accordance with paragraph 9.11 if **CITY OF DELAWARE** and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the CONTRACT PRICE will be valid if not submitted in accordance with paragraph 11.2.

11.3 The value of any WORK covered by a CHANGE ORDER or of any claim for an increase or decrease in the CONTRACT PRICE shall be determined in one of the following ways:

11.3.1 Where WORK involved is covered by unit prices contained in the CONTRACT DOCUMENTS, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive).

11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.1.2).

11.3.3 On the basis of the COST of the WORK (determined as provided in paragraphs 11.4 and 11.5)plus a CONTRACTOR's Fee for overhead and profit (determined in paragraphs 11.6 and 11.7).

COST OF THE WORK:

11.4 The term COST of the WORK means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the WORK. Except as otherwise may be agreed to in writing by **CITY OF DELAWARE**, such costs shall be in amounts no higher than those prevailing in the locality of the PROJECT, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5.

11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performances of the WORK under schedules of job classifications agreed upon by **CITY OF DELAWARE** and CONTRACTOR. Payroll costs for employees not employed full time in the WORK shall be apportioned on the basis of their time spent of the WORK. Payroll costs shall include, but not be limited to, salaries and wages, plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, Worker's or Workmen's Compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing WORK after regular working hours, on Saturday,

Sunday, or legal holidays, shall be included in the above to the extent authorized by **CITY OF DELAWARE**.

11.4.2 Cost of all materials and equipment furnished and incorporated in the WORK, including costs of transportation and storage thereof, and SUPPLIERS' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless **CITY OF DELAWARE** deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to **CITY OF DELAWARE**. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to **CITY OF DELAWARE**, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3 Payments made by CONTRACTOR to the Subcontractors for WORK performed by SUBCONTRACTORS. If required by **CITY OF DELAWARE**, CONTRACTOR shall obtain competitive bids form SUBCONTRACTORS acceptable to CONTRACTOR and shall deliver such bids to **CITY OF DELAWARE** who will then determine, with the advice of the PUBLIC WORKS DEPARTMENT , which bids will be accepted. If a subcontract provides that the SUBCONTRACTOR is to be paid on the basis if COST of the WORK PLUS a Fee, the SUBCONTRACTOR'S COST of the WORK shall be determined in the same manner as a CONTRACTOR'S COST of the WORK. All SUBCONTRACTORS shall be subject to the other provisions of the CONTRACT DOCUMENTS insofar as applicable.

11.4.4 COSTS of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the WORK.

11.4.5 Supplemental costs including the following:

11.4.5.1 The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the WORK.

11.4.5.2 Costs, including transportation and maintenance, of all materials, suppliers, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workers, which are consumed in the performance of the WORK, and cost less market value of such item used but not consumed which remain the property of CONTRACTOR.

11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by **CITY OF DELAWARE** with the advice of the PUBLIC WORKS DEPARTMENT, and the costs of transportation, loading, unloading, installation, dismantling, and removal thereof all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the WORK.

11.4.5.4 Sales, consumer, use, or similar taxes related to the WORK, and for which CONTRACTOR is liable, imposed by LAWS AND REGULATIONS.

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

11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the WORK or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the WORK, provided they have resulted from causes other than the negligence of CONTRACTOR, and SUBCONTRACTOR, or anyone directly or indirectly employed by any of the or for whose acts any of the may be liable. Such losses shall include settlements made with the written consent and approval of **CITY OF DELAWARE**. No such losses, damages, and expenses shall be included in the COST of the WORK for the purpose of determine CONTRACTOR'S fee. If however, any such loss or damage requires reconstruction and CONTRACTOR is placed is charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.

11.4.5.7 The cost of utilities, fuel, and sanitary facilities at the site.

11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the WORK.

11.4.5.9 Cost of premiums for additional BONDS and insurance required because of changes in the WORK and premiums for property insurance coverage.

11.5 The term COST of the WORK shall not include any of the following:

11.5.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for the general administration of the WORK and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR'S office at the site.

11.5.3 Any part of CONTRACTOR's capital expenses, including interest of CONTRACTOR's capital employed for the WORK and charges against CONTRACTOR for delinquent payments.

11.5.4 Cost of premiums for all BONDS and for all insurance whether or not CONTRACTOR is required by the CONTRACT DOCUMENTS to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9).

11.5.5 Costs due to the negligence of CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction to <u>defective</u> WORK, disposal of materials or equipment wrongly supplied, and making good any damage to property.

11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR'S FEE:

11.6 The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1 a mutually acceptable fixed fee. If none can be agreed upon, then a fee based on the following percentages of the various portions of he cost of WORK:

11.6.1.1. for costs incurred under paragraph 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be 15 percent;

11.6.1.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be 5 percent; and if a subcontract is basis of the cost of the WORK plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all SUBCONTRACTORS shall be 15 percent;

11.6.1.3 for cost minimized under paragraphs 11.4.4, 11.4.5, and 11.5, no fee shall be payable to the CONTRACTOR;

11.6.1.4 for any change which results in a net decrease in cost, the amount of credit to be allowed by CONTRACTOR to **CITY OF DELAWARE** shall be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an amount equal to 10 percent of the net decrease; and

11.6.1.5 for any change which involves both additions and credits, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraph 11.6.1.1 through 11.6.1.4, inclusive.

11.7 Whenever the cost of any WORK is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in written form acceptable to the PUBLIC WORKS DEPARTMENT an itemized cost breakdown together with supporting data. Submission of the written form shall be a condition precedent to any recovery.

CASH ALLOWANCES:

11.8 It is understood that CONTRACTOR has included in the CONTRACT PRICE all allowances so named in the CONTRACT DOCUMENTS and shall cause the WORK so covered to be done by such SUBCONTRACTOR'S or SUPPLIERS and for such sums within the limit of the allowances as may be acceptable to the PUBLIC WORKS DEPARTMENT.

11.8.1 CONTRACTOR agrees that:

11.8.1.1 the allowances include the costs to CONTRACTOR (less any applicable trade discounts) of material and equipment required by the allowances to be delivered at the site, and all applicable taxes;and

11.8.1.2 CONTRACTOR'S cost for unloading and handling on the site, labor, installation costs, overhead, profit, and other expenses contemplate for the allowances have been included in the CONTRACT PRICE and not in the allowances. No demand for additional payment on account of any thereof will be valid.

11.8.2 Prior to final payment, an appropriate CHANGE ORDER will be issued as recommended by the PUBLIC WORKS DEPARTMENT to reflect actual amount due CONTRACTOR on account of WORK covered by allowances, and the CONTRACT PRICE shall be correspondingly adjusted.

UNIT PRICE WORK:

11.9 Where the CONTRACT DOCUMENTS provide that all or part of the WORK is to be UNIT PRICE WORK, initially the CONTRACT PRICE will be deemed to include for all UNIT PRICE WORK an amount equal to the sum of the established unit prices for each separately identified item of UNIT PRICE WORK times the estimated quantity of each item as indicated in the AGREEMENT. The estimated quantities of items of UNIT PRICE WORK are not guaranteed and are solely for the purpose of comparison of BIDS and determining an initial CONTRACT PRICE. Determinations of the actual quantities and classifications of UNIT PRICE WORK performed by CONTRACTOR will be made by the PUBLIC WORKS DEPARTMENT in accordance with paragraph 9.10.

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

11.9.2 Where the quantity of any item of UNIT PRICE WORK performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustments with respect to any other item of WORK and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 if the parties are unable to agree as to the amount of any such increase, or

11.9.3 If **CITY OF DELAWARE** believes that the quantity variations entitle it to an adjustment in the unit price, either **CITY OF DELAWARE** or CONTRACTOR may make a claim for an adjustment in the CONTRACT PRICE in accordance with Article 11 if the parties are unable to agree as to the effect of any such variations in the quantity of UNIT PRICE WORK performed.

ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1 The CONTRACT TIME may only be changed by a CHANGE ORDER or a WRITTEN AMENDMENT. Any claim for an extension or shortening of the CONTRACT TIME shall be based on a written notice delivered by the party making the claim to the other party and to the PUBLIC WORKS DEPARTMENT promptly (but in no event later than 30 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 60 days after such occurrence (unless the PUBLIC WORKS DEPARTMENT allows an additional period of time to ascertain more accurate data is support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. WRITTEN NOTICE shall be a condition precedent to any recovery pursuant to this section. All claims for adjustment in the CONTRACT TIME shall be determined by the PUBLIC WORKS DEPARTMENT in accordance with paragraph 9.11 if **CITY OF DELAWARE** and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the CONTRACT TIME will be valid if not submitted in accordance with the requirements of paragraph 12.1.

12.2 The CONTRACT TIME will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefor as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by **CITY OF DELAWARE** or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

12.3 All time limits stated in the CONTRACT DOCUMENTS are of the essence of the AGREEMENT. The provisions of Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and court and arbitration costs) for delay by either party.

ARTICLE 13 - WARRANTY AND GUARANTEE: TESTS AND INSPECTIONS: CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

WARRANTY AND GUARANTEE:

13.1 CONTRACTOR warrants and guarantees to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT that all WORK will be in accordance with the CONTRACT DOCUMENTS and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective WORK, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.

13.1.1 The CONTRACTOR shall provide a Guarantee to the City of Delaware that all Work is in conformity with the CONTRACT DOCUMENTS and free from defects in workmanship, materials and equipment for a period of one (1) year or such longer period as specified in the CONTRACT DOCUMENTS. The BOND shall remain in effect until the expiration of that period unless the CONTRACOTR shall provide a maintenance bond satisfactory to the CITY OF DELAWRE in form and substance.

13.1.1.1 The Guarantee time period shall commence on the date of final payment by the CITY OF DELAWARE, unless otherwise provided in writing.

13.1.1.2 The Guarantee provided in this Article shall be in addition to, and not in limitation of, any other Guarantee, Warranty or remedy provided by law or by the Contract Documents.

13.1.2 The CONTRACTOR shall, prior to installing material or equipment which is subject to a Warranty, provide a copy of the Warranty to the PUBLIC WORKS DEPARTMENT, for review and approval.

13.1.3 If Defective Work becomes apparent within the Warranty or Guarantee period, the CITY OF DELAWARE shall promptly notify the CONTRACTOR in writing.

13.1.3.1 Within ten (10) days of receipt of said notice, the CONTRACTOR shall visit the Project in the company of one or more representatives of the CITY OF DELAWARE to determine the extent of the Defective Work. The CONTRACTOR shall promptly repair or replace the Defective Work, including all adjacent Work damaged as a result of such Defective Work or as a result of remedying the Defective Work , whether or not such adjacent Work was originally provided by the CONTRACTOR.

13.1.3.2 If the Defective Work is considered by the CITY OF DELAWARE to be an emergency, the CITY OF DELAWARE may require the CONTRACTOR to visit the Project within one (1) day of receipt of said notice.

13.1.3.3 The CONTRACTOR shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the Defective Work.

13.1.4 If the CONTRACTOR does not promptly repair or replace Defective Work, the CITY OF DELAWARE may repair or replace such Defective Work and charge the cost thereof to the CONTRACTOR or the CONTRACTOR'S surety.

13.1.5 Work which is repaired or replaced by the CONTRACTOR shall be inspected and accepted by the CITY OF DELAWARE and shall be guaranteed by the CONTRACTOR for one (1) year from the date of acceptance of the corrective Work by the CITY OF DELAWARE.

ACCESS TO WORK:

13.2 The PUBLIC WORKS DEPARTMENT and the PUBLIC WORKS DEPARTMENT's representatives, other representatives of **CITY OF DELAWARE**, testing agencies, and governmental agencies with jurisdictional interest will have access to the WORK and supplier facilities at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide proper and safe conditions for such access. In addition, authorized representatives and agents of any participating federal or state agency shall be permitted to inspect all WORK, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

TESTS AND INSPECTIONS:

13.3 CONTRACTOR shall give the PUBLIC WORKS DEPARTMENT timely notice of readiness of the WORK for all required inspections, tests, or approvals.

13.4 If LAWS OR REGULATIONS of any public body having jurisdiction require any WORK (or part thereof) to specifically be inspected, tested, or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith, and furnish the PUBLIC WORKS DEPARTMENT the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with **CITY OF DELAWARE**'s or the PUBLIC WORKS DEPARTMENT's ACCEPTANCE OF A SUPPLIER OF MATERIALS or equipment proposed to be incorporated in the WORK, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the WORK. The cost of all inspections, tests, and approvals in addition to the above which are required by the CONTRACT DOCUMENTS shall be paid by **CITY OF DELAWARE** (unless otherwise specified).

13.5 All inspections, test, or approvals other than those required by LAWS OR REGULATIONS of any public body having jurisdiction shall be performed by organizations acceptable to **CITY OF DELAWARE** and CONTRACTOR (or by the PUBLIC WORKS DEPARTMENT if so specified).

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

13.7 Neither observations by the PUBLIC WORKS DEPARTMENT nor inspections, tests, or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS.

UNCOVERING WORK:

13.8 If any WORK is covered contrary to the written request of the PUBLIC WORKS DEPARTMENT, it must, if requested by the PUBLIC WORKS DEPARTMENT, be uncovered for the PUBLIC WORKS DEPARTMENT's observation and replaced at CONTRACTOR's expense.

13.9 If the PUBLIC WORKS DEPARTMENT considers it necessary or advisable that covered WORK be observed by the PUBLIC WORKS DEPARTMENT or inspected or tested by others, CONTRACTOR, at the PUBLIC WORKS DEPARTMENT's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the PUBLIC WORKS DEPARTMENT may require, that portion of the WORK in question, furnishing all necessary labor, material, and equipment. If it is found that such WORK is defective, CONTRACTOR shall bear all

direct, indirect, and consequential costs of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals), and **CITY OF DELAWARE** shall be entitled to an appropriate decrease in the CONTRACT PRICE, and if, the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such WORK is not found to be defective, CONTRACTOR shall be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

OWNER MAY STOP THE WORK:

13.10 If the WORK is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the WORK in such a way that the completed WORK will conform to the CONTRACT DOCUMENTS, **CITY OF DELAWARE** may order CONTRACTOR to stop the WORK, or any portion thereof, until the cause for such order has been eliminated; however, the right of **CITY OF DELAWARE** to stop the WORK shall not give rise to any duty on the part of **CITY OF DELAWARE** to exercise this right for the benefit of CONTRACTOR or any other party.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

13.11 If required by the PUBLIC WORKS DEPARTMENT, CONTRACTOR shall promptly, as directed, either correct all defective WORK, whether or not fabricated, installed or complete, or, if the WORK has been rejected by the PUBLIC WORKS DEPARTMENT, remove it from the site and replace it with nondefective WORK. CONTRACTOR shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby.

ACCEPTANCE OF DEFECTIVE WORK:

3.12 If, instead of requiring correction or removal and replacement of defective WORK, **CITY OF DELAWARE** (and prior to the PUBLIC WORKS DEPARTMENT's recommendation of final payment, also the PUBLIC WORKS DEPARTMENT) prefers to accept it, **CITY OF DELAWARE** may do so. CONTRACTOR shall bear all direct, indirect, and consequential costs attributable to **CITY OF DELAWARE**'s evaluation of and determination to accept such defective WORK (such costs to be approved by the PUBLIC WORKS DEPARTMENT as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys, and other professionals). If any such acceptance occurs prior to the PUBLIC WORKS DEPARTMENT's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the CONTRACT DOCUMENTS with respect to the WORK; and **CITY OF DELAWARE** shall be entitled to an appropriate decrease in the CONTRACT PRICE, and if the parties are unable to agree as to the amount thereof, **CITY OF DELAWARE** may make a claim therefor as provided in Article 11, if the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to **CITY OF DELAWARE**.

OWNER MAY CORRECT DEFECTIVE WORK:

13.13 If CONTRACTOR fails within a reasonable time after written notice of the PUBLIC WORKS DEPARTMENT to proceed to correct and to correct defective WORK or to remove and replace rejected WORK as required by the PUBLIC WORKS DEPARTMENT in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the WORK or comply with any other provisions in accordance with the CONTRACT DOCUMENTS, **CITY OF DELAWARE** may, after 15 days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph **CITY OF DELAWARE** shall proceed expeditiously. To the

extent necessary to complete corrective and remedial action, **CITY OF DELAWARE** may exclude CONTRACTOR from all or part of the site, take possession of all or part of the WORK and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment, and machinery at the site and incorporate in the WORK all materials and equipment stored at the site or for which **CITY OF DELAWARE** has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow **CITY OF DELAWARE**, **CITY OF DELAWARE**'s Representatives, agents, and employees such access to the site as may be necessary to enable **CITY OF DELAWARE** to exercise the rights and remedies under this paragraph. All direct, indirect, and consequential costs of **CITY OF DELAWARE** in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by the PUBLIC WORKS DEPARTMENT, and a CHANGE ORDER will be issued incorporating the necessary revisions in the CONTRACT DOCUMENTS with respect to the WORK; and **CITY OF DELAWARE** shall be entitled to an appropriate decrease in the CONTRACT PRICE, and, if the parties are unable to agree as to the amount thereof, **CITY OF DELAWARE** may make a claim therefor as provided in Article 11. Such direct, indirect, and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs, and all costs of repair and replacement of WORK of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective WORK. CONTRACTOR shall not be allowed an extension of the CONTRACT TIME because of any delay in performance of the WORK attributable to the exercise by **CITY OF DELAWARE** or **CITY OF DELAWARE**'s rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

SCHEDULE OF VALUES:

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated in a form of APPLICATION FOR PAYMENT acceptable to the PUBLIC WORKS DEPARTMENT. Progress payments on account of UNIT PRICE WORK will be based on the number of units completed.

APPLICATION FOR PROGRESS PAYMENT:

14.2 At least 10 days before each progress payment is schedule (but not more often than once a month), CONTRACTOR shall submit to the PUBLIC WORKS DEPARTMENT for review an Application for Payment filled out and sign by CONTRACTOR covering the WORK completed as of the date of the APPLICATION and accompanied by such supporting documentation as is required by the CONTRACT DOCUMENTS. Equipment shall not be considered to have been incorporated in the WORK until all applicable conditions of the CONTRACT DOCUMENTS has been met including testing, start-up, training, and that it is demonstrated to be in compliance with operational requirements. If payment is requested on the basis of materials and equipment not incorporate in the WORK but delivered and suitably stored at the site or at another location agreed to in writing, the APPLICATION for PAYMENT shall also be accompanied by a bill of sale, invoice, or their documentation warranting that **CITY OF DELAWARE** has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which hereinafter in the GENERAL CONDITIONS referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect **CITY OF DELAWARE**'s interest therein, all of which will be satisfactory to **CITY OF DELAWARE**. The amount of retainage with respect to progress payments will be as stipulated in the AGREEMENT.

CONTRACTOR'S WARRANTY OF TITLE:

14.3 CONTRACTOR warrants and guarantees that title to all WORK, materials, and equipment covered by an APPLICATION for PAYMENT, whether incorporated in the PROJECT or not, will pass to **CITY OF DELAWARE** no later than the time of payment free and clear of all Liens.

REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

14.4 The PUBLIC WORKS DEPARTMENT will, within 10 days after receipt of each APPLICATION for PAYMENT, either indicate in writing a recommendation of payment and present the APPLICATION to **CITY OF DELAWARE**, or return the APPLICATION to CONTRACTOR indicating in writing the PUBLIC WORKS DEPARTMENT's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the APPLICATION. Thirty days after presentation of the APPLICATION for PAYMENT with the PUBLIC WORKS DEPARTMENT's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by **CITY OF DELAWARE** to CONTRACTOR.

14.5 The PUBLIC WORKS DEPARTMENT's recommendation of any payment requested in an APPLICATION for PAYMENT will constitute a representation by the PUBLIC WORKS DEPARTMENT to **CITY OF DELAWARE**, based on the PUBLIC WORKS DEPARTMENT's on-site observations of the WORK in progress as an experienced and qualified design professional and on the PUBLIC WORKS DEPARTMENT's review of the APPLICATION for PAYMENT and the accompanying data and schedules that the WORK has progressed to the point indicated; that, to the best of the PUBLIC WORKS DEPARTMENT's knowledge, information, and belief, the quality of the

WORK is in accordance with the CONTRACT DOCUMENTS (subject to an evaluation of the WORK as a functioning whole prior to or upon SUBSTANTIAL COMPLETION, to the results of any subsequent test called for in the CONTRACT DOCUMENTS a final determination of quantities and classifications for UNIT PRICE WORK under paragraph 9.10 and to any other qualifications stated in the recommendation); and the CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, the PUBLIC WORKS DEPARTMENT will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the WORK beyond the responsibilities specifically assigned to the PUBLIC WORKS DEPARTMENT in the CONTRACT DOCUMENTS or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additional by **CITY OF DELAWARE** or **CITY OF DELAWARE** to withhold payment to CONTRACTOR.

14.6 The PUBLIC WORKS DEPARTMENT's recommendation of final payment will constitute an additional representation by the PUBLIC WORKS DEPARTMENT to **CITY OF DELAWARE** that the conditions precedent of CONTRACTOR's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 The PUBLIC WORKS DEPARTMENT may refuse to recommend the whole or any part of any payment if, in the PUBLIC WORKS DEPARTMENT's opinion, it would be incorrect to make such representations to **CITY OF DELAWARE**. The PUBLIC WORKS DEPARTMENT may also refuse to recommend any such payment,
or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the PUBLIC WORKS DEPARTMENT's opinion of protect **CITY OF DELAWARE** from loss because:

14.7.1 the WORK is defective, or completed WORK has been damaged requiring correction or replacement;

14.7.2 the CONTRACT PRICE has been reduced by WRITTEN AMENDMENT or CHANGE ORDER;

14.7.3 **CITY OF DELAWARE** has been required to correct defective WORK or complete WORK in accordance with paragraph 13.14; or

14.7.4 The PUBLIC WORKS DEPARTMENT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

CITY OF DELAWARE may refuse to make payment of the full amount recommended by the PUBLIC WORKS DEPARTMENT because claims have been made against **CITY OF DELAWARE** on account of CONTRACTOR's performance or furnishing of the WORK or Liens have been filed in connection with the WORK or there are other items entitling **CITY OF DELAWARE** to a set-off against the amount recommended, but **CITY OF DELAWARE** must give CONTRACTOR immediate written notice (with a copy to the PUBLIC WORKS DEPARTMENT) stating the reasons for such action.

SUBSTANTIAL COMPLETION:

14.8 When CONTRACTOR considers the entire WORK ready for its intended use, CONTRACTOR shall notify **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT in writing that the entire WORK is substantially complete (except for items specifically listed by CONTRACTOR as in-complete) and request that the PUBLIC WORKS DEPARTMENT issue a certificate of SUBSTANTIAL COMPLETION. Within a reasonable time thereafter, **CITY OF DELAWARE**, CONTRACTOR, and the PUBLIC WORKS DEPARTMENT shall make an inspection of the WORK to determine the status of completion. If the PUBLIC WORKS DEPARTMENT does not consider the WORK substantially complete, the PUBLIC WORKS DEPARTMENT will notify CONTRACTOR

in writing giving reasons therefor. If the PUBLIC WORKS DEPARTMENT considers the WORK substantially complete, the PUBLIC WORKS DEPARTMENT will prepare and deliver to **CITY OF DELAWARE**, a tentative certificate of SUBSTANTIAL COMPLETION which shall fix the date of SUBSTANTIAL COMPLETION. There shall be attached to the certificate a tentative list of item s to be completed or corrected before final payment. **CITY OF DELAWARE** shall have 7 days after receipt of the tentative certificate during which to make written objection to the PUBLIC WORKS DEPARTMENT as to any provisions of the certificate attached list. If, after considering such objections, the PUBLIC WORKS DEPARTMENT concludes that the WORK is not substantially complete, the PUBLIC WORKS DEPARTMENT will, within 14 days after submission of the tentative certificate to **CITY OF DELAWARE**, notify CONTRACTOR in writing, stating the reasons therefor. If after consideration of **CITY OF DELAWARE**'S objections, the PUBLIC WORKS DEPARTMENT considers the WORK substantially complete, the PUBLIC WORKS DEPARTMENT will within 14 days execute and deliver to the CITY of **CITY OF DELAWARE** and CONTRACTOR a definitive certificate of SUBSTANTIAL COMPLETION (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the PUBLIC WORKS DEPARTMENT believes justified after consideration of any objections from **CITY OF DELAWARE**. At the time of delivery of the tentative certificate of SUBSTANTIAL COMPLETION, the PUBLIC WORKS DEPARTMENT will deliver to **CITY OF DELAWARE** and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between **CITY OF DELAWARE** and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance, and warranties. Unless **CITY OF DELAWARE** and CONTRACTOR agree otherwise in writing and so inform the PUBLIC WORKS DEPARTMENT prior to the PUBLIC WORKS DEPARTMENT's issuing the definitive certificate of SUBSTANTIAL COMPLETION, the PUBLIC WORKS DEPARTMENT's aforesaid recommendation will be binding on **CITY OF DELAWARE** and CONTRACTOR until final payment.

14.9 **CITY OF DELAWARE** shall have the right to exclude CONTRACTOR from the WORK after the date of SUBSTANTIAL COMPLETION, but **CITY OF DELAWARE** shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

PARTIAL UTILIZATION:

14.10 Use by **CITY OF DELAWARE** of any finished part of the WORK, which has specifically been identified in the CONTRACT DOCUMENTS, or which **CITY OF DELAWARE**, the PUBLIC WORKS DEPARTMENT, and CONTRACTOR agree constitutes a separately functioning and useable part of the WORK that can be used by **CITY OF DELAWARE** without significant interference with CONTRACTOR's performance of the remainder of the WORK, may be accomplished prior to SUBSTANTIAL COMPLETION of all the WORK subject to the following:

14.10.1 **CITY OF DELAWARE** at any time may request CONTRACTOR in writing to permit **CITY OF DELAWARE** to use any such part of the WORK which **CITY OF DELAWARE** believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT that said part of the WORK is substantially complete and request the PUBLIC WORKS DEPARTMENT to issue a certificate of SUBSTANTIAL COMPLETION for that part of the WORK. CONTRACTOR at any time may notify **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT in writing that contractor considers any such part of the WORK ready for its intended use and substantially complete and request the PUBLIC WORKS DEPARTMENT to issue a certificate of SUBSTANTIAL COMPLETION for that part of the WORK. Within a reasonable time after either such request, **CITY OF DELAWARE**, CONTRACTOR, and the PUBLIC WORKS DEPARTMENT shall make an inspection of that part of the WORK to determine its status of completion. If the PUBLIC WORKS DEPARTMENT does not consider that part of the WORK to be substantially complete, the PUBLIC WORKS DEPARTMENT will notify **CITY OF DELAWARE** and CONTRACTOR in writing giving the reasons therefor. If the PUBLIC WORKS DEPARTMENT considers that part of the WORK to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification

of SUBSTANTIAL COMPLETION of that part of the WORK and the division of responsibility in respect thereof and access thereto.

14.10.2 **CITY OF DELAWARE** may at any time request CONTRACTOR in writing to permit **CITY OF DELAWARE** to take over operation of any such part of the WORK although it is not substantially complete. A copy of such request will be sent to the PUBLIC WORKS DEPARTMENT and within a reasonable time thereafter, **CITY OF DELAWARE**, CONTRACTOR, and the PUBLIC WORKS DEPARTMENT shall make an inspection of that part of the WORK to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT that such part of the WORK is not ready for separate operation by **CITY OF DELAWARE**, the PUBLIC WORKS DEPARTMENT will finalize the list of items to be completed or corrected and will deliver such list to **CITY OF DELAWARE** and CONTRACTOR together with a written recommendation as to the division of responsibilities pending final payment between **CITY OF DELAWARE** and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties, and guarantees for that part of the WORK which will become binding upon **CITY OF DELAWARE** and CONTRACTOR at the time when **CITY OF DELAWARE** takes over such operation (unless they shall have otherwise agreed in writing and so informed the PUBLIC WORKS DEPARTMENT). During such operation and prior to SUBSTANTIAL COMPLETION of such part of the WORK, **CITY OF DELAWARE** shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related WORK.

14.10.3 No occupancy or separate operation of part of the WORK will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

14.10.4 Partial occupancy of any part of the WORK by **CITY OF DELAWARE, OHIO** does not affect the CONTRACTOR'S liability for liquidated damages for failure to complete the entire PROJECT on time.

FINAL INSPECTION:

14.11 Upon written notice from the CONTRACTOR that the entire WORK or an agreed portion thereof is complete, the PUBLIC WORKS DEPARTMENT will make a final inspection with **CITY OF DELAWARE** and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which the inspection reveals that the WORK is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

FINAL APPLICATION FOR PAYMENT:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of the PUBLIC WORKS DEPARTMENT and delivered all maintenance and operating instructions, schedules, guarantees, BONDS, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents all as required by the CONTRACT DOCUMENTS, and after the PUBLIC WORKS DEPARTMENT has indicated that the WORK is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final APPLICATION FOR PAYMENT shall be accompanied by all documentation called for in the CONTRACT DOCUMENTS, together with complete and legally effective releases or waivers (satisfactory to **CITY OF DELAWARE**) of all Liens arising out of or filed in connection with the WORK. In lieu thereof and as approved by **CITY OF DELAWARE**, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, materials, and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the WORK for which **CITY OF DELAWARE** or **CITY OF DELAWARE**'s property might in any way be responsible,

have been paid or otherwise satisfied; and consent surety, if any, to final payment. If any SUB-CONTRACTOR or SUPPLIER fails to furnish a release or receipt in full, CONTRACTOR may furnish a BOND or other collateral satisfactory to **CITY OF DELAWARE** to indemnify **CITY OF DELAWARE** against any Lien.

FINAL PAYMENT AND ACCEPTANCE:

14.13 If, on the basis of the PUBLIC WORKS DEPARTMENT's observation of the WORK during construction and final inspection, and the PUBLIC WORKS DEPARTMENT'S review of the final APPLICATION FOR PAYMENT and accompanying documentation, all as required by the CONTRACT DOCUMENTS, the PUBLIC WORKS DEPARTMENT is satisfied that the WORK has been completed and CONTRACTOR's other obligations under the CONTRACT DOCUMENTS have been fulfilled, the PUBLIC WORKS DEPARTMENT will, within 10 days after receipt of the final APPLICATION FOR PAYMENT, indicate in writing the PUBLIC WORKS DEPARTMENT's recommendation of payment and present the Application to **CITY OF DELAWARE** for payment. Thereupon the PUBLIC WORKS DEPARTMENT will give written notice to **CITY OF DELAWARE** and CONTRACTOR that the WORK is acceptable subject to the provisions of paragraph 14.16.

Otherwise, the PUBLIC WORKS DEPARTMENT will return the APPLICATION to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the APPLICATION. Thirty days after presentation to **CITY OF DELAWARE** of the APPLICATION and accompanying documentation, in appropriate form and substance, and with the PUBLIC WORKS DEPARTMENT's recommendation and notice of acceptability, the amount recommended by the PUBLIC WORKS DEPARTMENT will become due and will be paid by **CITY OF DELAWARE** to CONTRACTOR.

If **CITY OF DELAWARE** fails to make payment 30 days after approval by the PUBLIC WORKS DEPARTMENT, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the RATE provided by law commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

14.14 If, through no fault of CONTRACTOR, final completion of the WORK is significantly delayed and if the PUBLIC WORKS DEPARTMENT so confirms, **CITY OF DELAWARE** shall, upon receipt of CONTRACTOR's final APPLICATION FOR PAYMENT and recommendation of the PUBLIC WORKS DEPARTMENT, and without terminating the AGREEMENT, make payment of the balance due for that portion of the WORK full completed and accepted. If the remaining balance to be held by **CITY OF DELAWARE** for WORK not fully completed or corrected is less than the retainage stipulated in the AGREEMENT, and if BONDS have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the WORK fully complete and accepted shall be submitted by CONTRACTOR to the PUBLIC WORKS DEPARTMENT with the APPLICATION for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

CONTRACTOR'S CONTINUING OBLIGATION:

14.15 The CONTRACTOR's obligation to perform and complete the WORK in accordance with the CONTRACT DOCUMENTS shall be absolute. Neither recommendation of any progress or final payment by the PUBLIC WORKS DEPARTMENT, nor the issuance of a certificate of SUBSTANTIAL COMPLETION, nor any payment by **CITY OF DELAWARE** to CONTRACTOR under the CONTRACT DOCUMENTS, nor any use or occupancy of the WORK or any part thereof by **CITY OF DELAWARE**, nor any act of acceptance by the CITY of DELAWARE nor any failure to do so, nor any review and approval of a SHOP DRAWING or sample submission, nor the issuance of a notice of acceptability by the PUBLIC WORKS DEPARTMENT pursuant to paragraph 14.13, nor any correction of defective WORK by **CITY OF DELAWARE** will constitute an acceptance of

WORK not in accordance with the CONTRACT DOCUMENTS or a release of CONTRACTOR'S obligation to perform the WORK in accordance with the CONTRACT DOCUMENTS (except as provided in paragraph 14.16).

WAIVER OF CLAIMS:

14.16 The making and acceptance of final payment will constitute:

14.16.1 a waiver of all claims by **CITY OF DELAWARE** against CONTRACTOR, except claims arising from unsettled Liens, from defective WORK appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the CONTRACT DOCUMENTS or the terms of any special guarantees specified therein; however, it will not constitute a waiver by **CITY OF DELAWARE** of any rights in respect of CONTRACTOR's continuing obligations under the CONTRACT DOCUMENTS; and

14.16.2 a waiver of all claims by CONTRACTOR against **CITY OF DELAWARE** other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

OWNER MAY SUSPEND WORK:

15.1 **CITY OF DELAWARE** may, at any time and without cause, suspend the WORK or any portion thereof for a period of not more that 90 days by notice in writing to CONTRACTOR and the PUBLIC WORKS DEPARTMENT which will fix the date on which WORK will be resumed. CONTRACTOR shall resume the WORK on the date so fixed. CONTRACTOR shall be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER MAY TERMINATE:

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

15.2.1 if CONTRACTOR commences a voluntary case under chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.4 if a trustee, receiver, custodian, or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

15.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6 if CONTRACTOR persistently fails to perform the WORK in accordance with the CONTRACT DOCUMENTS (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7 if CONTRACTOR disregards LAWS OR REGULATIONS of any public body having jurisdiction;

15.2.8 if CONTRACTOR disregards the authority of the PUBLIC WORKS DEPARTMENT; or

15.2.9 if CONTRACTOR otherwise violates in any substantial way any provision of the CONTRACT DOCUMENTS;

CITY OF DELAWARE may, after giving CONTRACTOR (and the surety, if there be one) 7 days written notice and to the extent permitted by LAWS AND REGULATIONS, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site, and take possession of the WORK and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the site and use same to the full extent they could be used by CONTRACTOR (without liability of the CONTRACTOR for trespass or conversion), incorporate in the WORK all materials and equipment stored at the site or for which **CITY**

OF DELAWARE has paid CONTRACTOR but which are stored elsewhere, and finish the WORK as **CITY OF DELAWARE** may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct, indirect, and consequential costs of completing the WORK (including but not limited to fees and charges of engineers, architects, attorneys, and any other professional and court and arbitration costs) such excess will paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to **CITY OF DELAWARE**. Such costs incurred by **CITY OF DELAWARE** will be approved as to reasonableness by the PUBLIC WORKS DEPARTMENT and incorporated in a CHANGE ORDER, but when exercising any rights or remedies under this paragraph **CITY OF DELAWARE** shall not be required to obtain the lowest price for the WORK performed.

15.3 Where CONTRACTOR's services have been so terminated by **CITY OF DELAWARE**, the termination will not affect any rights or remedies of **CITY OF DELAWARE** against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies due CONTRACTOR by **CITY OF DELAWARE** will not release CONTRACTOR from any liability.

15.4 Upon 10 days' written notice to CONTRACTOR and the PUBLIC WORKS DEPARTMENT, **CITY OF DELAWARE** without cause and without prejudice to any other right or remedy, elect to abandon the WORK and terminate the AGREEMENT. In such case, CONTRACTOR shall be paid for ALL WORK executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect, and consequential costs.

CONTRACTOR MAY STOP WORK OR TERMINATE:

15.5 If, through no act or fault of CONTRACTOR the WORK is suspended for a period of more than 90 days by **CITY OF DELAWARE** or under an order of court or other public authority, or the PUBLIC WORKS DEPARTMENT fails to act on any APPLICATION FOR PAYMENT within 30 days after it is submitted, or **CITY OF DELAWARE** fails for 30 days to pay CONTRACTOR any sum finally determined to be due ar awarded by arbitrators, the CONTRACTOR may, upon 10 days written notice to **CITY OF DELAWARE** and the PUBLIC WORKS DEPARTMENT, terminate the AGREEMENT and recover from the CITY of DELAWARE payment for all WORK executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the AGREEMENT, if the PUBLIC WORKS DEPARTMENT has failed to act on an APPLICATION for PAYMENT or **CITY OF DELAWARE** has failed to make any payment as aforesaid, CONTRACTOR may upon 10 days written notice to **CITY OF DELAWARE and the PUBLIC WORKS DEPARTMENT stop the WORK until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 6.29 to carry on the WORK in accordance with the progress schedule and without delay during disputes and disagreements with CITY OF DELAWARE.**

ARTICLE 16 - MISCELLANEOUS

GIVING NOTICE:

16.1 Whenever any provision of the CONTRACT DOCUMENTS requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

COMPUTATION OF TIME:

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

16.2.2. A calendar day of 24 hours measured from midnight to the next midnight shall constitute a day.

GENERAL:

16.3 Should **CITY OF DELAWARE** or CONTRACTOR suffer injury or damage to person or property because of any error, omission, or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 16.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

16.4 The duties and obligations imposed by these GENERAL CONDITIONS and the rights and remedied available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3, 15.2 and all of the rights and remedies available to **CITY OF DELAWARE** and PUBLIC WORKS DEPARTMENT thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by LAWS OR REGULATIONS, but special warranty or guarantee or by other provisions of the CONTRACT DOCUMENTS, and the provisions of this paragraph will be as effective as if repeated specifically in the CONTRACT DOCUMENTS in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the CONTRACT DOCUMENTS will survive final payment and termination or completion of the AGREEMENT.

PUBLIC RECORDS:

16.5 Vendor will comply with the public records laws of the State of Ohio and will inform the City of any public records requests that he/she/it receives.

CONTRACT BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned

_____

as Principal and _____

as Sureties, are hereby held and firmly bound unto

CITY OF DELAWARE, OHIO

_____

in the penal sum of _____dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, and our heirs, executors, administrators, successors, and assigns.

Signed this _____ day of _____, 20___.

enter into an AGREEMENT with CITY OF DELAWARE, OHIO
which said AGREEMENT is made a part of this BOND the same as though set forth herein;

Now, if the said _____

shall well and faithfully do and perform the things agreed by CITY OF DELAWARE, OHIO

to be done and performed according to the terms of said AGREEMENT; and shall pay all lawful claims of SUBCONTRACTORS, materialmen, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said Agreement; we agreeing and assenting that this undertaking shall be for the benefit of any materialman or laborer having just claim, as well as for the OWNER as obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said AGREEMENT or in or to the DRAWINGS or SPECIFICATIONS therefor shall in any wise affect the obligations of said Surety on its BOND.

PROVIDED, FURTHER, that no final settlement between CITY OF DELAWARE and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____(number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20 ___.

ATTEST:

_____
(Principal) Secretary

(SEAL)

_____
Witness as to Principal

_____
(Address)

_____

_____
Principal

By

_____(s)

Name

_____

Title

_____

_____
(Address)

_____

ATTEST:

(SEAL)

_____
Witness as to Surety

_____
(Address)

_____

_____
Surety

By

_____
Attorney-in-Fact

Address

_____

_____

Note: Date of BOND must not be prior to date of CONTRACT.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must not exceed the underwriting limitation.

Surety companies must be authorized to transact business in the state where the PROJECT is located and shall furnish proof of such authorization with the BID.

SUPPLEMENTARY CONDITIONS

TABLE OF CONTENTS

ARTICLE NUMBER	TITLE	PAGE
1.	Definitions	SC 2
4.3	Physical Conditions	SC 2
5.	Bonds and Insurance	SC 2
5.3	Contractor's Liability Insurance	SC 3
5.4	Contractual Endorsement	SC 3
7.5	Separate Contractor Claims	SC 3
14.2	Application for Progress Payment	SC 4

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

1. DEFINITIONS

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract have the meanings assigned to them in the General Conditions

4.3.1.2

Delete paragraph 4.3.1.2 of the GENERAL CONDITIONS in its entirety and insert the following in its place.

The location of subsurface utilities is shown on the plans form information finished by the utility owners pursuant to Section 153.64 of the Ohio Revised Code. The CONTRACTOR shall, at least 2 working days, excluding Saturdays, Sundays, and legal holidays, prior to construction in the area of the subsurface utility, notify the subsurface utility owner in writing, by telephone, or in person. The subsurface utility owner shall, within 48 hours, excluding Saturdays, Sundays, and legal holidays, after receipt of the notice, stake, mark, or otherwise delineate the alignment and approximate grade of the utility. The marking or locating shall be coordinated to stay approximately 2 days ahead of the planned construction. The CONTRACTOR shall alert immediately the occupants of nearby premises as to any emergency that he may create of discover at or near such premises. The CONTRACTOR shall have full responsibility for coordination of the WORK with owners of such UNDERGROUND FACILITIES during construction, for the safety and protection thereof as provided in paragraph 6.20 and repairing any damage thereto resulting from the WORK, the cost of all of which will be considered as having been included in the CONTRACT PRICE, unless otherwise provided for in the Ohio Revised Code.

5. BONDS AND INSURANCE

Add the following paragraph:

As an endorsement to all CONTRACTORS' insurance policies required herein, the City of Delaware shall be listed as an Additional Insured.

5.3

The limits of liability for the insurance required by paragraph 5.3 of the GENERAL CONDITIONS shall provide coverage for not less than the following amounts or grater where required by Laws and Regulations:

5.3.1 and 5.3.2 Workers' Compensation, etc., under paragraphs 5.3.1 and 5.3.2 of the GENERAL CONDITIONS:

1. State:	Statutory
2. Applicable Federal: (e.g. Longshoreman's)	Statutory
3. Employer's Liability:	$500,000

5.3.3, 5.3.4, 5.3.5, and 5.3.6 Commercial General Liability of the GENERAL CONDITIONS (including completed operations, products liability, and contractual liability):

1. Bodily Injury:

$1,000,000	Each Occurrence
$2,000,000	Annual Aggregate

2. Property Damage:

$1,000,000	Each Occurrence
$2,000,000	Annual Aggregate
Or a combined single limit of $2,000,000	

3. Personal Injury, with employment exclusion deleted:

$2,000,000	Annual Aggregate

5.3.7 Comprehensive Automobile Liability:

Bodily Injury:

$1,000,000	Each Person
$1,000,000	Each Occurrence

Property Damage:

$500,000	Each Occurrence
Or a combined single limit of $1,000,000	

5.4 The coverages in 5.3 may be primary of a combination of primary and umbrella excess liability.

7.5

Add a new paragraph immediately after paragraph 7.4 of the GENERAL CONDITIONS which is to read as follows:

Separate Contractor Claims. Should CONTRACTOR, its SUBCONTRACTORS, or its suppliers cause damage to the work or property of any separate contractor at the site, of should any claim arising out of CONTRACTOR'S, its SUBCONTRACTOR'S, or its suppliers' performance of the WORK at the site be made by any separate contactor against CONTRACTOR, OWNER, ENGINEER, or any other person, CONTRACTOR shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulation, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses, and expense (including, but not limited to, fees of engineers, architects, attorneys, and other professionals, and court and arbitration costs) arising directly. Indirectly, of consequentially out of an action, legal or equitable, brought by any separate contractor against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR'S performance of the WORK. Should a separate contractor cause damage to the Work or property of CONTRACTOR or should the performance of WORK by any separate contractor at the site giver rise to any other claim, CONTRACTOR shall not institute any action legal or equitable, against OWNER or ENGINEER or permit any action against any of them to be maintained and continued in its name or for its benefit in any court of before any arbiter which seek to impose liability on or to recover damages from OWNER or

ENGINEER on account of any such damage or claim. If CONTRACTOR is delayed at any time in performing or furnishing WORK by an act or neglect of a separate contractor and OWNER and CONTRACTOR are unable to agree as to the extent of any adjustment in the Contract Time attributed thereto, CONTRACTOR may make a claim for an extension of time in accordance with Article 12. An extension of the Contract Time shall be CONTRACTOR'S exclusive remedy with respect to OWNER and ENGINEER for any delay, disruption, interference, or hindrance caused by any separate contractor. The CONTRACTOR'S exclusive remedy for recovery of damages under this section is against such other contractor causing the damage

14.2 APPLICATION FOR PROGRESS PAYMENT

Add the following paragraph to 14.2 of the GENERAL CONDITIONS:

The owner will, within 30 days of presentation to him of an approved partial payment estimate, pay the CONTACTOR a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10 percent of the said estimate. The amount retained shall be deposited in an escrow account. The funds in the escrow account with accumulated interest are to paid to the CONTRACTOR at the same time and in the same manner as specified for payment of the retained amount in paragraph 14.13. Payment for material and equipment delivered and not incorporated shall be at the the rate of 90 percent of the invoice value of such material and equipment. Partial payment to the CONTRACTOR for WORK performed under a lump sum price shall be based on the schedule of quantities and costs submitted as required by paragraph 2.9.