GDPM

July 1, 2026

Dayton Metropolitan Housing Authority
doing business as
Greater Dayton Premier Management

CONSTRUCTION CONTRACT

General Terms & Conditions for Construction Services

in Excess of $250,000

Effective Date: July 1, 2026

In Compliance with Ohio Law and All HUD Requirements

Public Housing Capital Fund Program, Project Based Voucher Program, and All GDPM Related Construction Contracts

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1. ARTICLE I: CONTRACTOR RESPONSIBILITIES

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1.1. The Contractor shall perform the Work in a workmanlike manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required by Ohio and/or Federal Law) and regularly performing comparable work in the same or similar locality under the same or similar circumstances.

1.2. The Contractor shall perform the Work in accordance with the Contract Documents.

1.3. The Contractor shall furnish all labor, services, materials, tools, equipment, superintendence, and transportation necessary for performance of the Work. Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by GDPM.

1.4. The Contractor shall perform on the site and with its own organization, work equivalent to at least twelve percent (12%) of the total amount of work to be performed under the order. This percentage may reduce by a supplemental agreement to this Construction Contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be the advantage of GDPM.

1.5. At all times during performance of this Construction Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent whose qualifications and experience are satisfactory to GDPM and has authority to act on behalf of the Contractor. Further, Contractor must remain on- site or be immediately available if contacted.

1.6. The Contractor shall be responsible for all damages, including, but not limited to, damages to persons or property that occur as a result of the Contractor's breach of this Construction Contract, fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others.

1.7. The Contractor shall also be responsible for all storage, protection and cleaning of materials delivered and Work performed on the Project, until Substantial Completion and acceptance of the entire Project, except for any completed unit of Work which may have not been accepted under the Construction Contract.

1.8. The Contractor shall lay out the work from base lines and bench marks indicated in the drawings and be responsible for all lines, levels, and measurements of all work executed under the Contract Documents.

1.8.1. The Contractor shall verify the lines, bench marks, figures and dimensions indicated in the Contract Documents before laying out the work and will be held responsible for any error(s) resulting from its failure to do so.

1.9. The Contractor shall confine all operations (including storage of materials) on GDPM's premises to areas authorized or approved by GDPM.

1.10. The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. At no time shall Contractor use GDPM trash receptacles.

1.10.1. After completing the Work and before final inspection, the Contractor shall:

- Remove from the premises all scaffolding, equipment, tools, materials (including

rejected materials) that are not the property of GDPM and rubbish caused by its work;

- Leave the work area in a clean, neat, and orderly condition satisfactory to GDPM;
- Perform all specified tests; and
- Deliver the installation in complete and operating condition.

1.11. The Contractor must perform the Work so as to not interfere with, disturb, hinder, or delay the services of separate consultants or the work of separate contractors.

1.11.1. The intent of this Section, 1.11, is to benefit any separate consultants and separate contractors and to demonstrate that the separate consultants or separate contractors are intended third-party beneficiaries of Contractor's obligations under the Contract.

1.11.2. The Contractor must cooperate and coordinate fully with all separate consultants and separate contractors and must freely share all of the Contractor's Project-related information with them to facilitate the timely and proper performance of the Work and of the services and work of the separate consultants and separate contractors.

1.11.3. The Contractor must afford every separate consultant and separate Contractor proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of their services and work.

1.11.4. If the Contractor damages the property or work of any separate consultant or separate Contractor caused by Contractor or by failure to perform the Work with due diligence, delays, interferes with, hinders, or disrupts the services of any separate consultant or separate Contractor who suffers additional expense and damage as a result, the Contractor is responsible for that damage, injury, or expense.

1.12. The Contractor shall remove any snow and ice as may be required for reasonably safe access to the Project, including, without limitation, building entries, driveways, parking lots, and sidewalks.

1.13. If the proper execution or result of any part of the Work depends upon work performed or services provided by GDPM, a separate consultant, or a separate Contractor, the Contractor must inspect that other work and appropriate instruments of service, and promptly report to GDPM in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Work.

1.13.1. The Contractor's failure to inspect and promptly report any issues in writing will constitute an acceptance of the other work and services as fit and proper for integration with the Contractor's Work unless in the opinion of GDPM, the defects and deficiencies in the other work and appropriate instruments of service were not reasonably discoverable at the time of the Contractor's inspection.

1.14. The Contractor shall not delay the Work on account of any claim, dispute, or action between the Contractor and GDPM or the Contractor, a Separate Consultant or Separate Contractor.

1.15. The Contractor shall develop and keep a Construction Progress Schedule and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule for GDPM’s acceptance.

1.16. The Project's regular work hours shall be between 8:00 am and 5:00 pm, or as

determined and approved by GDPM.

1.16.1. The Contractor may modify the regular work hours only if Contractor receives written authorization from GDPM's Project Manager and/or Construction Contract Administrator.

1.17. The Contractor shall coordinate the Work with the activities and responsibilities of the Project's architect or engineer ("A/E"), GDPM and Contractor's surety to achieve the Substantial Completion date and Contract Completion.

1.18. The Contractor shall keep a daily log containing a record of weather, number of workers on Site for the Contractor, identification of equipment, Work accomplished, problems encountered and other similar relevant data. Such information must be made available to GDPM immediately upon request.

1.19. The Contractor hereby represents and agrees that, prior to submitting its bid or quote to perform the Work on the Project, it has had a competent person carefully and diligently review each part of the Contract Documents, including the Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work.

1.19.1. Contractor further represents and agrees that, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors, or omissions in the Contract Documents for which it has not notified GDPM or the A/E.

1.19.2. If there are any such conflicts, inconsistencies, errors, or omissions in the Contract Documents, the Contractor shall notify GDPM and AE of such in writing and Contractor shall:

- Provide the labor, equipment, or materials of the better quality or greater quantity; and/or
- Comply with the more stringent requirements.

1.19.3. The Contractor will not be entitled to any additional compensation for any conflicts, inconsistencies, errors, or omissions that would have been discovered by such careful and diligent review.

1.20. If applicable, the Contractor hereby represents and agrees that the Project is a public project involving public funds.

1.20.1. The Contractor further understands that GDPM expects and requires that each Contractor adhere to the highest ethical and performance standards.

1.20.2. Accordingly, Contractor hereby pledges and agrees that:

- It will act at all times with absolute integrity and truthfulness in its dealings with GDPM and the A/E;
- It will use its best efforts to cooperate with GDPM and the A/E and all other contractors and consultants on the Project and at all times will act with professionalism and dignity in its dealings with GDPM, the A/E, and other contractors;
- It will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her; and
- It has read, understands and will comply with the terms of the Contract Documents.

1.21. Emergency

1.21.1. In the event of an emergency affecting the safety of the Project, other property, or individuals, the Contractor, without special instructions or authorization, shall act to prevent the threatened damage, injury, or loss.

1.21.2. If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of its actions in response to any emergency, the Contractor may request a Change Order by giving written notice no later than 48-hours after the emergency.

1.22. The Contractor's responsibilities will terminate when all work has been completed, the final inspection made, and the Work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

2. ARTICLE II: HOUSING AUTHORITY RIGHTS AND RESPONSIBILITIES

2.1. GDPM shall designate a Project Manager and/or Construction Contract Administrator for the Project.

2.2. GDPM shall have access to the Work and Site at all times, whether the Project is in preparation or p r o g r e s s .

2.3. GDPM is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

2.4. Upon the date indicated in the Notice to Proceed, or other document provided by GDPM that authorizes Contractor to commence Work, GDPM shall provide the Site to the Contractor in a condition to permit the Contractor to perform the Work.

2.5. If the Site provided by GDPM is not in a condition to permit the Contractor to perform the Work, Contractor shall notify, in writing, GDPM's Project Manager and/or Construction Contract Administrator within one working day hours of the Notice to Proceed, or other document as applicable, and identify the conditions which are preventing Contractor from performing the Work.

3. ARTICLE III: A/E'S DUTY, RESPONSIBILITY AND AUTHORITY

3.1. The A/E for this Contract and any successor shall be designated in writing by GDPM.

3.2. The A/E's duties and responsibilities may include, but shall not be limited to:

3.2.1. Attend and conduct the Construction Progress Meetings.

3.2.2. Making periodic visits to the work site and on the basis of his/her on-site inspections, issuing written reports to GDPM which shall include all observed deficiencies.

3.2.2.1. The A/E shall electronically send a copy of the report to GDPM and to the Contractor's designated representative at the site.

3.2.2.2. Said report shall include a summary of up-to-date project completion information, the current potential change order and change order log, and calculation of allowances/contingency used to date.

3.2.3. Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance to the Contracting Officer.

3.2.4. The A/E may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Sum or Contract Time, or both.

3.2.4.1. The A/E has no authority to authorize the Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum or the Contract Time, or both.

3.2.5. Reviewing and making recommendations with respect to:

- The Contractor's Construction Progress Schedules;
- The Contractor's shop and detailed drawings; and
- The Contractor's price breakdown and progress payment estimates.

3.2.6. Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract; and

3.2.7. Approve or certify applicable forms required under the Contract Documents.

3.3. Site Visits and Observation

3.3.1. The A/E shall notify, advice, and consult with GDPM and protect GDPM against Defective Work throughout completion of the Project, which includes the Correction Period, and for such time period GDPM may extend A/E's services.

3.3.1.1. The A/E should designate a field representative, subject to GDPM's approval, to attend meetings, to observe and check the progress and quality of the Work, and to take action as necessary or appropriate to achieve conformity with the Contract Documents.

3.3.1.2. The A/E shall have its consultants attend to the Project at intervals required by its agreement or required by GDPM.

3.3.2. The A/E is authorized to disapprove or reject Defective Work. The A/E shall immediately notify GDPM, in writing, any time the A/E disapproves or rejects an item of Work.

3.3.3. The A/E is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for work safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

3.4. Testing and Inspection Services

3.4.1. Unless otherwise specified in the Contract Documents, the A/E shall apply for, secure, and pay for the costs of structural testing and special inspections under the Ohio Building Code; testing including geotechnical analysis, environmental testing and analysis, concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, HVAC systems and controls, plumbing and piping, air, and water balancing and

testing, or other testing, or approvals required by Applicable Law.

3.5. A/E Review and Approval of Work

3.5.1. Any information the Contractor submits to the A/E is for the sole purpose of determining whether the Work and information is generally consistent with the Contract's intent, and will not relieve the Contractor of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

3.5.2. By reviewing information submitted by the Contractor, A/E is not taking on responsibility for construction means, methods, manners, techniques, sequences, procedures, or for work safety precautions and programs in connection with the Work.

3.6. Limitation of A/E's Authority

3.6.1. The A/E shall serve as the technical representative for GDPM with respect to architectural, engineering, and design matters related to the Work performed under the Contract.

3.6.2. Subject to the Contractor's responsibility under ARTICLE I, the A/E may provide direction on Contract performance.

3.6.3. Such direction shall be within the scope of the Contract and may not be of a nature which:

- Institutes additional work outside of the scope of the Contract;
- Constitutes a change (except as provided for in 3.2.4);
- Causes an increase or decrease in the cost of the Contract;
- Alters the Construction Progress Schedule;
- Changes any of the other express terms or conditions of the Contract;
- Accepts any defective or non-conforming services, Work, or vendor-furnished items;
- Makes any settlements on GDPM's behalf;
- Assumes any responsibilities of the Contractor or Subcontractors; or
- Binds GDPM to any authorizations under, modifications of, or amendments to the Contract Documents other than as expressly provided herein.

3.7. The Contractor acknowledges and agrees that GDPM's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the A/E, as GDPM's representative on the Project.

3.7.1. The Contractor agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be protected by the attorney client privilege and considered confidential work product.

4. ARTICLE IV: PRECONSTRUCTION ACTIVITIES

4.1. Pre-construction Conference

4.1.1. Within ten calendar days, unless otherwise indicated by GDPM, of Contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with GDPM representatives, GDPM's A/E, and other interested parties convened by GDPM.

4.1.1.1. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Contract.

4.1.1.2. The A/E will be responsible for taking minutes and distributing said minutes within seventy-two (72) hours of completion of the meeting.

4.1.1.3. GDPM will provide the A/E and Contractor with the date, time, and place of the conference.

4.2. Certificate of Insurance

4.2.1. Before commencing work, the Contractor and each Subcontractor shall furnish GDPM with certificates of insurance showing the minimum insurance coverage is in force and will insure all operations under the Contract.

4.3. Building and Trade Permits, Licenses and Codes

4.3.1. The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, and regulations.

4.3.1.1. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the Contract, all Work installed shall comply with all applicable laws, ordinances, codes, rules, and regulations, as may be amended by any waivers.

4.3.1.2. Before installing the Work, the Contractor shall examine all drawings and the specifications for compliance with applicable laws, ordinances, codes, rules, and regulations bearing on the Work and shall immediately report, in writing, any discrepancy it may discover to GDPM's Project Manager and/or Construction Contract Administrator and the A/E.

4.3.1.3. If required by any governing jurisdiction, GDPM will modify the Contract by change order so that the Work on the Project will conform to the applicable laws, ordinances, codes, rules, and regulations.

4.3.1.4. If the Contractor installs any Work that does not comply with all applicable laws, ordinances, codes, rules, and regulations before providing notice hereunder to GDPM and receiving direction from GDPM, Contractor shall be responsible for all costs resulting from any removal, demolishing, and disposing of any Work that must be replaced or repaired.

4.3.2. Notwithstanding the provisions below, the Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of Work.

4.3.2.1. Where GDPM can arrange for the issuance of all or part of these permits, fees, and licenses, without cost to the Contractor, the Contract amount shall be reduced accordingly.

4.4. Plan Approval and Permits

4.4.1. The A/E shall facilitate the required structural, plumbing, HVAC, and electrical plan reviews

during the design phase, as required by the governing jurisdiction for securing an overall building permit to start construction.

4.4.2. The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work or any governing jurisdiction.

4.4.3. If applicable, the Contractor shall schedule with the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits.

4.4.4. The Contractor shall give the A/E and GDPM reasonable notice of the dates and times for any inspections.

4.4.4.1. The Contractor shall pay for all initial inspections and re-inspections required as a result of Contractor's failure to receive approval for its Work.

4.5. Trade Permits and Licenses

4.5.1. The Contractor shall secure and pay the fees for any permit, inspection, or license applicable to the Contractor's particular trade.

4.6. Local Permits:

4.6.1. The Contractor shall secure and pay the fees for any permits, inspections, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Work.

4.6.2. The Contractor shall give the A/E and GDPM reasonable notice of the date(s) arranged for inspections.

4.7. National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit:

4.7.1. If applicable, the A/E shall secure the NPDES general permit by submitting a Notice of Intent (NOI) application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction.

4.7.2. The Contractor shall be a co-permitee, if required under Applicable Law.

4.7.3. The A/E shall prepare and certify the storm water pollution prevention plan to provide sedimentation and erosion controls at the Work.

4.8. The A/E shall prepare and process the required Notice of Termination (NOT) prior to Contract Completion.

5. ARTICLE V: CONSTRUCTION REQUIREMENTS

5.1. Commencement of Work on Site

5.1.1. Unless GDPM agrees otherwise in writing, the Construction Stage will commence with GDPM issuing the Notice to Proceed and will terminate upon Substantial Completion, Certificate of Occupancy issuance, and the Completion of all punch list items delivered to Contractor by GDPM which must occur no later than 15 days after date of Substantial Completion.

5.1.2. Notice to Proceed:

5.1.2.1. The Contractor shall begin work upon the date indicated in a written Notice to Proceed from GDPM or its designee.

5.1.2.2. The Contractor shall not begin work prior to receiving such notice.

5.1.2.3. If GDPM Board of Commissioners'' approval is required, the Notice to Proceed shall be issued within 180 days of GDPM Board of Commissioner's approval.

5.1.2.4. When applicable and if the Notice to Proceed is not issued within 180 days of GDPM Board of Commissioners' approval, GDPM may, in its sole discretion, terminate the Contract without recourse from the Contractor.[1]

5.2. Environmental Controls

5.2.1. The Contractor shall protect its Work and materials from damage from water, moisture, and other weather, including damage from water run-off from other property or structures, and damage from heat, cold, and humidity.

5.2.2. Contractor is not authorized to use permanent HVAC system without express written authorization from GDPM

5.2.3. Until the permanent HVAC system is complete and available for use:

5.2.3.1. The Contractor shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and

5.2.3.2. The Contractor shall pay the costs incurred in operating the temporary heating and ventilating systems.

5.2.4. When the permanent HVAC system is complete and available for use:

5.2.4.1. The Contractor shall start up and maintain operation of the permanent HVAC system, including filters, and promptly remove temporary heating and ventilating systems.

5.2.4.2. As part of the requirements for Substantial Completion, the Contractor shall have all duct work professionally cleaned.

5.2.4.3. If the Project consists entirely of new construction, the Contractor shall pay the costs of energy consumed in operating the permanent HVAC system until Substantial Completion.

5.2.4.4. From the date of Substantial Completion, GDPM shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

5.2.4.5. Use of the permanent HVAC system during construction shall not change, modify or reduce the Contractor's warranty and service obligations under the Contract Documents.

5.3. Construction Procedures

5.3.1. The Contractor is solely responsible for and has control over all construction means, methods, techniques, sequences, and procedures, for safety precautions and programs in connection with the Work, and for coordinating all portions of the Work.

5.3.2. If the Contract Documents give instructions that affect construction means, methods,

manners, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety of them and, except as expressly stated herein, be fully and solely responsible for the jobsite safety of the means, manners, methods, techniques, sequences, or procedures.

5.3.3. If the Contractor determines that the means, methods, manners, techniques, sequences, or procedures specified in the Contract Documents may not be safe, the Contractor shall give timely written notice to GDPM. Timely written notice shall occur within 48 hours of the determination.

5.3.4. The Contractor shall not proceed with that portion of the Work without further written instructions from GDPM.

5.3.5. Additional Contractor Responsibilities

5.3.5.1. The Contractor shall perform all cutting, fitting, or patching required for the Work and shall not endanger the Project by cutting, excavating, or otherwise altering the Work or any part of it.

5.3.5.2. The Contractor shall lay out and coordinate all lines, levels, elevations, and measurements for all of the Work, coordinate and verify existing conditions, and notify the A/E and GDPM of discrepancies and conflicts before proceeding with installation or excavation.

5.3.5.3. If the Design requires sleeves for completing the specified Work, the Contractor and all Subcontractors shall coordinate to furnish and install the sleeves.

5.3.5.4. The Contractors are responsible for the exact location of and size of all holes and openings required to be formed or built for the Work.

5.3.5.5. The Contractor's patching shall match and blend with the existing adjacent surfaces.

5.3.5.6. In addition to the items herein, The Contractor is responsible for all items in Article I, Contractor's Responsibilities.

5.4. Utilities

5.4.1. Availability and Use of Utilities

5.4.1.1. If GDPM has existing access to utilities, GDPM shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and service as specified herein so long as the utility use does not interfere with GDPM's operations.

5.4.1.2. Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to GDPM or where the utility is produced by GDPM, at reasonable rates as determined by GDPM.

5.4.1.3. The Contractor shall ~~carefully~~ conserve ~~any~~ utilities ~~furnished~~ provided by GDPM without charge.

5.4.1.4. The Contractor, at its expense and in a manner satisfactory to GDPM, shall install and maintain all necessary temporary connections and distribution lines, and

all meters required to measure the amount of each utility used for the purpose of determining charges.

5.4.1.5. Before final acceptance of the Work by GDPM, the Contractor shall remove all the temporary connections, distribution lines, meters, appurtenances and associated paraphernalia.

5.4.2. The Contractor shall comply with the Ohio Revised Code and any local rules, regulations and ordinances concerning utilities.

5.4.2.1. In addition, before starting excavation or trenching, the Contractor shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.

5.4.3. The Contractor shall give at least 2 business days in advance of excavation to GDPM of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS").

5.4.3.1. The Contractor is required, within 48 hours' notice, to stake, mark, or otherwise designate the location for its utilities in the construction area together with its approximate depth.

5.4.3.2. In the event Contractor damages a utility line, the Contractor shall immediately notify the appropriate utility company or government official, the A/E and GDPM of the problem. The Contractor is responsible, at Contractor's cost, for making the repair(s) immediately.

5.4.4. Water and Drainage

5.4.4.1. The Contractor shall provide water necessary for the Work until the permanent plumbing system is available for use.

5.4.4.2. The Contractor shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

5.4.4.3. The Contractor shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

5.4.4.4. When the permanent plumbing system is complete and available for use:

- The Contractor shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing systems.
- If the Project consists entirely of new construction, the Contractor shall pay the costs of water consumed and sewage charges until Substantial Completion.
- If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, GDPM shall pay the costs of water consumed and sewage charges.

GDPM will charge Contractor the cost of the energy consumed in accordance with 5.4.6.

- If separate metering of utilities is available, the Contractor and GDPM will pay the costs of their respective use.

5.4.4.5. After the date of Substantial Completion, GDPM shall pay the costs of water consumed and sewage charges for the occupied portion of the Project.

5.4.4.6. Use of the permanent plumbing system during construction shall not change, modify, or reduce the Contractor's warranty and service obligations under the Contract Documents.

5.4.5. Electric Service

5.4.5.1. The Contractor shall provide temporary light and power; pay the charges for temporary electric service, installation, and removal if required.

5.4.5.2. If the Project consists entirely of new construction, the Contractor shall pay the cost of energy consumed until Substantial Completion.

5.4.5.3. If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, GDPM shall pay the cost of energy consumed. GDPM will charge Contractor the cost of the energy consumed in accordance with 5.4.6.

5.4.5.4. If separate metering of utilities is available, the Contractor and GDPM will pay the costs of their respective use.

5.4.5.5. From the date of Substantial Completion, GDPM shall pay the cost of energy consumed for the occupied portions of the Project.

5.4.5.6. Use of the permanent electrical system during construction shall not change, modify, or reduce the Contractor's warranty and services obligations under the Contract Documents.

5.4.6. Payment of Utility Services

5.4.6.1. Unless otherwise expressly stated in the Contract Documents, Contractor shall reimburse GDPM the cost of utility services during the Construction Period.

5.4.6.2. Unless otherwise expressly stated in the Contract Documents, payment for reimbursement of GDPM for the cost of utility services during the Contract Period shall be made directly to GDPM.

5.4.6.3. If payment is not received, GDPM may deduct the cost of utility services from payments otherwise due to the Contractor.

5.4.6.4. If the payments otherwise due to the Contractor are not sufficient to fully reimburse GDPM, either Contractor or its surety shall make whatever payments are necessary to fully reimburse GDPM.

5.4.6.5. ***Process for Payment***: Reimbursement from the contactor shall be performed on a quarterly basis unless a more frequent payment schedule is agreed

upon between GDPM and the contractor prior to start of the project.

5.5. Hoisting Facilities

5.5.1. The Contractor shall erect and maintain any hoisting equipment required for its Work.

5.5.2. If the electric service requirements of hoisting facilities differ from that available at the Site, the Contractor shall provide and pay for all necessary connections.

5.5.3. If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the Contractor shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

5.6. Interruption of Existing Services

5.6.1. Whenever it becomes necessary to interrupt existing services in use by GDPM or its tenants, including, but not limited to, sewer, water, gas, steam lines, electric, telephone, Wi-Fi, and cable service, the Contractor shall continue the associated Work on a non-stop 24- hour per day basis until that Work is completed and the service restored, or perform the associated Work at an alternate time as required by and in coordination with GDPM.

5.6.2. Before beginning that Work, the Contractor shall apply in writing to, and receive approval in writing from GDPM to establish a time when interruption of the service will cause a minimum of interference with the activities of GDPM and its tenants.

5.7. Construction Supervision

5.7.1. Unless waived by GDPM in writing, the Contractor shall provide continuous supervision at the Site through a competent project manager or superintendent when any Work is being performed.

5.7.2. The Contractor's project manager and superintendent shall each have responsibility and authority to act on behalf of the Contractor.

5.7.2.1. All communication to the Contractor's project manager and superintendent shall be binding as if given directly by the Contractor.

5.7.3. The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed project manager and superintendent, including references, to GDPM no later than 2 days after request from GDPM.

5.7.3.1. The Contractor shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to GDPM no later than 2 days after GDPM's request.

5.7.3.2. GDPM may reject the Contractor or Subcontractor's proposed project manager and/or proposed superintendent.

5.7.3.2.1. If GDPM does not notify the Contractor of the rejection within 30 days after receiving the required information, it shall then indicate that GDPM does not have an objection, but does not affect GDPM's rights under the Contract Documents or any other provision relative to the project manager or superintendent.

5.7.3.3. If GDPM rejects the Contractor or Subcontractor's proposed project manager or proposed superintendent, the Contractor shall replace, or cause the Subcontractor to replace the project manager or superintendent (as appropriate) with someone acceptable to GDPM at no additional cost.

5.7.4. If GDPM does not object the proposed project manager or superintendent, the Contractor and its Subcontractor shall not replace their respective project managers and superintendents without prior written approval of GDPM.

5.8. Construction Progress Schedule

5.8.1. The Contractor shall, no later than seven days of the issuance of the Notice to Proceed or another period of time determined by GDPM, prepare and electronically submit to GDPM, for approval viable schedule showing the order in which the Contractor proposes to perform the Work, the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including acquiring labor, materials, and equipment).

5.8.2. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.

5.8.3. The Chart must be in a Critical Path Method (CPM) format.

5.8.4. If the Contractor fails to submit a schedule within the time prescribed, GDPM may withhold approval of progress payments or take other remedies under the Contract until Contractor submits the required schedule.

5.8.5. The Contractor shall monitor the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required herein.

5.8.6. The Contractor shall enter the actual progress on the chart as required by GDPM, and immediately provide electronic copies of the annotated schedule to GDPM.

5.8.6.1. If GDPM determines, upon the basis of inspection conducted, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by GDPM, without additional cost to GDPM.

5.8.6.2. In this circumstance, GDPM may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as GDPM deems necessary to demonstrate how the approved rate of progress will be regained.

5.8.7. Failure of the Contractor to comply with the requirements of GDPM shall be grounds for a determination by GDPM that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract.

5.8.7.1. Upon making this determination, GDPM may terminate the Contractor's right to proceed with the work, or any separable part of it.

5.8.8. Unless otherwise agreed to in writing, The Contractor shall develop the Construction Progress Schedule using commercially available, personal computer software acceptable

to GDPM and shall submit all baseline and updated schedules to GDPM in the schedule's native format.

5.8.9. This submission shall be in electronic format.

5.8.10. The Construction Progress Schedule shall not exceed the time limits under the Contract Documents. Further, the Progress Schedule shall provide for reasonable, efficient, and economical execution of the Project and shall relate to the entire project to the extent required by the Contract Documents.

5.8.10.1. In the event that a Construction Progress Schedule submitted by Contractor shows a completion date that extends beyond the Contract Time permitted to Contractor in the Contract Documents, such Construction Progress Schedule shall not be deemed to modify the Contract Time permitted in the Contract Documents.

5.8.10.2. The Contractor shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining work by contract completion within applicable milestones.

- The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequences and/or the progress of the Work.
- The Contractor shall provide a clear graphics legend and other data including without limitation, milestone dates, constraints, and other items required by the Project and GDPM.
- Each submission shall show GDPM's contract number and project name.

5.8.11. The Contractor shall provide the following in each schedule:

5.8.11.1. Activity identification and description of each activity broken down to a maximum duration that is appropriate for the activity;

5.8.11.2. Responsibility of the Contractor;

5.8.11.3. Contractor's resources and crew size for each activity; and

5.8.11.4. Provide early start, early finish, late start, late finish dates.

5.8.11.5. The Construction Progress Schedule shall show all submittal dates, review and approval durations for coordination drawings, Shop Drawings, other action submittals and mock-up Work.

5.8.12. The Contractor shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to GDPM.

5.8.12.1. With each monthly schedule update, the Contractor shall include a list of all changes to the previously approved baseline schedule or monthly updated schedule.

5.8.13. The Construction Progress Schedule shall be managed using early start dates and early finish dates.

5.8.13.1. The Contractor must exhaust all existing float before claiming additional time for a Change Order.

5.8.14. The Contractor's failure to submit and properly maintain an approved Construction Progress Schedule may result in withholding payment in accordance with the Contract

Documents.

5.8.15. For each Progress Meeting, the Contractor shall provide a 2-6 week look-ahead schedule, as appropriate for the Project.

5.8.16. On a monthly basis, the Contractor shall prepare and submit to GDPM a written report describing:

5.8.16.1. Activities begun or finished during the preceding month;

5.8.16.2. Activities in progress and expected completion;

5.8.16.3. Activities to be started or finished in the upcoming month including, without limitation, the Contractor's workforce size and total resource hours associated with those activities;

5.8.16.4. Recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date; and

5.8.16.5. Other information requested by GDPM.

5.8.17. If it is apparent that the Contractor may be unable to meet Critical Path activities, Milestone completion dates, or the Substantial Completion date(s), GDPM shall direct the Contractor to submit within 3 days a Recovery Plan to avoid or minimize a delay in the Project.

5.8.17.1. A Recovery Plan shall include, without limitation, adjustments to one or more of the following:

- Workforce
- Hours per shift
- Shifts per workday
- Workdays per week
- Equipment
- Activity logic

5.8.17.2. If GDPM approves the Recovery Plan, the Contractor shall prepare a revised Construction Progress Schedule within 3 business days to GDPM.

- If GDPM does not approve the Recovery Plan, the Contractor shall submit within 3 days an alternate Recovery Plan to GDPM in writing for review and in accordance the Contract Documents.

5.8.18. The Contractor shall update the Construction Progress Schedule on a monthly basis, or other interval(s) as approved by GDPM, in accordance with the Contract Documents.

5.8.18.1. The Contractor shall submit a tabular copy showing all changes to the previously approved schedule.

5.8.18.2. The original or initially approved Construction Progress Schedule and all subsequent Construction Progress Schedules submitted by the Contractor, and accepted by GDPM, shall serve as an affirmation that the Contractor agrees to meet the applicable requirements and updated Construction Progress Schedule.

5.8.18.3. The Contractor's failure to timely submit updated Construction Progress Schedules as deemed necessary by GDPM may result in withholding payments from Contractor.

5.9. Progress Meetings

5.9.1. Unless otherwise indicated in writing, GDPM shall schedule monthly, weekly and/or bi-weekly, as determined by GDPM, Progress Meetings for the Contractor and other persons involved in the Project as deemed necessary for coordination of the Work by GDPM, including Contractor's Subcontractors on the Project.

5.9.1.1. The purpose of the Progress Meeting is to review progress on the Project during the previous week, discuss anticipated progress during the following weeks, review critical operations, and discuss critical problems.

5.9.2. The Contractor shall be represented at every Progress Meeting by a person authorized with signatory authority to make decisions regarding possible modifications of the Contract Documents or Construction Progress Schedule.

5.9.2.1. GDPM shall notify the Contractor and other persons involved in the Project of the time and place of the Progress Meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless GDPM notifies the Contractor and other Persons involved in the Project of a different day and hour at least 2 days in advance.

5.9.2.2. The Contractor shall have any of its subcontractors attend the Progress Meeting if requested by GDPM.

5.9.2.3. Unless otherwise indicated in writing, A/E shall oversee the Progress Meeting and prepare a written report of each Progress Meeting and distribute the report to the GDPM and the Contractor.

5.9.2.4. If any person in attendance objects to anything in a report of a Progress Meeting, the person shall notify the AE and GDPM and any other affected person in writing explaining the objections within seven calendar days.

5.9.2.5. The report of each Progress Meeting shall reflect any objection made to the report of the previous Progress Meeting and any response.

5.10. Project Coordination

5.10.1. If determined needed by GDPM, the Contractor or Subcontractor(s), The Contractor shall prepare Coordination Drawings for any Coordination Area.

5.10.1.1. The Contractor shall prepare the Coordination Drawings with Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") software acceptable to GDPM.

5.10.1.2. The Coordination Drawings shall show all affected work, including without limitation, plan and elevation dimensions.

5.10.2. After the Contractor completes the Coordination Drawings, the Contractor shall forward a copy of the Coordination Drawings to GDPM.

5.10.2.1. The A/E shall report any concerns in writing to the Coordination Participants within 14 days after receiving the drawings.

5.11. Additional Tests and Inspections

5.11.1. If the A/E or GDPM determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the A/E and/or GDPM shall order such inspection, testing, or approval.

5.11.2. If the special inspection, testing, or approval reveals Defective Work, the Contractor shall pay all associated costs and will not be entitled to any related adjustment of the Contract Times. Those costs may include without limitation:

- The cost of special inspection, testing, or approval;
- The cost of additional special inspections, testing, or approvals, to evaluate Remedial Work;
- The cost of correcting Defective Work; and
- All related GDPM-incurred fees and charges of contractors, engineers, architects, attorneys, and other professionals.

5.11.3. GDPM may deduct the costs described under the Contract Documents from payments then or thereafter due the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover those amounts, the Contractor or its surety shall immediately pay the amount of the insufficiency to GDPM.

5.11.4. If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, and the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of the special inspection, testing, or approval, the Contractor may file a Claim by requesting a Change Order by giving written notice within 7 days after the special inspection, testing, or approval.

5.11.5. If the Contractor is aware of the need of an inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, then the Contractor shall timely communicate such information to GDPM.

5.11.6. Except as described in Additional Tests and Inspections, GDPM shall pay for any inspection, testing, or approval that did not become a requirement until after award of Contract.

5.11.7. If inspections, testing or approvals are contained within the project specifications the costs of such inspections, testing, or approvals shall be paid by the Contractor.

5.11.8. The Contractor shall coordinate with and give GDPM reasonable notice of the anticipated dates of all inspections, testing, or approvals.

5.12. Review of Contract Documents

5.12.1. Before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Site affecting it.

5.12.2. If the Contractor finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the Contract Documents, or between any of the Contract Documents and any Applicable Law, the Contractor, before proceeding with the

Work, shall promptly submit of Requests for Information ("RFI") to GDPM for an interpretation or clarification.

5.12.2.1. Before submitting any RFI, the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.

5.12.2.2. If Contractor indicates that the information requested in the RFI affects the critical path of the Project's Construction Progress Schedule and attaches the portion of the Project's Construction Progress Schedule that verifies that the information requested in the RFI affects the critical path, GDPM shall make all reasonable efforts to respond to the RFI within 7 business days of receiving the RFI.

5.12.3. If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of clarifications or instructions issued in response to a RFI, the Contractor may submit a Claim by requesting a Change Order by giving notice within 3 business days of receiving the RFI response.

5.12.4. If Contractor does not notify GDPM in accordance with this Article Five or any other section of the Contract Documents that addresses adjustments to the Contract Sum and Contract Time, the Contractor will have accepted the RFI response without an adjustment to the Contract Sum or Contract Time and irrevocably waives his right to submit or request an adjustment to the Contract Sum and/or Contract Time.

5.12.5. Frivolous RFI

5.12.5.1. If the Contractor submits a frivolous RFI, as determined by GDPM, Contractor shall be liable to GDPM for the costs related to the review and response of the RFI.

5.12.5.1.1. GDPM may deduct the costs described herein from payments then or thereafter due to the Contractor.

5.12.5.1.2. If payments then or thereafter due to the Contractor are not sufficient to cover GDPM's costs, the Contractor or its surety shall immediately pay the amount of the insufficiency to GDPM.

5.12.5.1.3. Frivolous RFIs may be returned unanswered.

5.12.5.1.4. Delays caused by improper or frivolous RFI's are the sole responsibility of the Contractor who shall waive the Contractor's right to seek adjustments to the Contract Sum and Contract Time.

5.13. Site Investigation and Conditions Affecting the Work

5.13.1. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including, but not limited to:

- Conditions bearing upon transportation, disposal, handling, and storage of materials;
- The availability of labor, water, electric power and roads;
- Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- The conformation and conditions of the ground; and

- The character of equipment and facilities needed preliminary to and during work performance.

5.13.2. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by GDPM, as well as from the drawings and specifications made part of this contract.

5.13.2.1. Any failure of the Contractor Site Investigation and Conditions Affecting the Work will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceedings to successfully perform the Work without additional expense to GDPM.

5.13.3. GDPM assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by GDPM. Nor does GDPM assume responsibility for any understanding reached or representations made concerning conditions which can affect the Work by any of its officers or agents before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

5.14. Protection of the Project

5.14.1. The Contractor shall protect the Project from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

5.14.1.1. The Contractor shall at all times cover or protect the Work and materials.

5.14.1.2. The Contractor, at its own expense, shall remove, and replace with new, any Work damaged as a result of the Contractor's failure to provide coverage or protection.

5.14.1.3. After the date of Substantial Completion of the Work, GDPM is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project from injury or damage.

5.14.2. The Contractor shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, lateral support, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

5.14.3. Temporary Heating

5.14.3.1. The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to protect all Work and materials against damage by dampness and cold, to dry out the Work, and to facilitate the completion of Work.

5.14.3.2. Any permanent heating equipment used shall be turned over to GDPM in the condition and at the time required by the specifications.

5.14.4. The Contractor shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any proportion thereof.

5.14.4.1. The Contractor shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

5.14.5. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

5.14.5.1. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed under this Contract, and which do not unreasonably interfere with the Work required under this Contract.

5.14.5.2. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.

5.14.5.2.1. If any limbs or branches of trees are broken during performance of this Contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as specifically directed by GDPM.

5.14.5.3. The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

5.14.5.3.1. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

5.14.5.4. The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the Project.

5.14.5.5. Any equipment temporarily removed as a result of work under this Contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this Contract.

5.14.5.6. New work which connects to existing Work shall correspond in all respects with that to which it connects and/or be similar to existing Work unless otherwise required by the specifications.

5.14.5.7. No structural members shall be altered or in any way weakened without the written authorization of GDPM, unless such work is clearly specified in the Plans or specifications.

5.14.5.8. If the removal of the existing Work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious.

- This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different plans or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.

5.14.5.9. The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before commencement of any Work.

5.14.5.10. The Contractor shall indemnify and save harmless GDPM from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which GDPM may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

5.14.5.11. The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work.

- If the Contractor fails or refuses to repair the damage promptly, GDPM may have the necessary Work performed and charge the cost to the Contractor.

5.14.6. Vibration, Noise, and Dust Control

5.14.6.1. The Contractor shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

5.14.6.2. The Contractor will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building.

5.14.6.2.1. GDPM may limit or stop the Work if the Contractor does not maintain proper air- quality standards.

5.14.6.2.2. Such stoppage may result in a charge to the Contractor.

5.14.6.3. In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated.

- In such spaces and as approved by GDPM, Work may be scheduled for other than normal working hours.
- The Contractor is cautioned that weekend or overtime work, if required, shall be performed at no additional cost.
- Permission to work other than standard hours shall be received from GDPM prior to the occurrence.
- Weekend or overtime Work shall be reflected in the Construction Progress Schedule.

5.14.6.4. The Contractor is responsible for vibration control and control of transmission of noise arising from the Work. Principal considerations that shall be given to noise and vibrations control are:

- Noise control in compliance with Occupational Safety and Health Administration (OSHA) shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.
- Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in the building and the building structure.
- Vibration control to provide for the maximum usefulness of the facility by keeping levels of vibration within ranges conducive to peaceful enjoyment of

residential living or work or other uses for which the facility was designed

5.15. General Warranty - Materials, Equipment and Workmanship

5.15.1. The Contractor warrants to GDPM and A/E that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise.

5.15.1.1. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.

5.15.1.2. Work, materials, or equipment not conforming to these requirements may be considered defective.

5.15.1.3. If required by the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.15.2. If the Contractor breaches any of its obligations, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

5.15.3. The Contractor's obligation shall be joint and several.

5.15.4. Additional Warranties: The Contractor gives the Owner the following additional warranties:

- If the Contractor's Work includes all or part of the exterior roofing system, provided that the Architect has designed the roofing system to be weather tight, the Contractor warrants that the roofing system will be weather tight; and
- If the Contractor's Work includes all or part of the exterior wall system, provided that the Architect has designed the wall system to be weather tight, the Contractor warrants that the wall system will be weather tight. Weather tight shall mean the roofing and/or wall system does not permit any infiltration of water in any form that would have any adverse effect on GDPM's operations or the Project.

5.15.5. The Contractor shall, at the time of final completion of the Work and as a condition precedent to final payment to Contractor, assign to GDPM all manufacturer's warranties related to the materials and labor used in the Work and further agrees to perform the Work in such manner as to preserve any and all such manufacturer's warranties and deliver to the A/E the warranties, project manual, operating procedures, and other materials related to each of the building systems and materials included in the Contractor's Work and as required by the Specifications.

5.15.6. Upon notice of the breach of any of the warranties or guarantees identified herein, or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, shall commence to correct such breach and all damage resulting therefrom within two (2) business days from written notice thereof, thereafter use its best efforts to correct such breach and damage to the satisfaction of GDPM and A/E, and, except when an extension of time is granted in writing by GDPM, correct such breach and damage to the satisfaction of GDPM within thirty (30) calendar days of such notice, or such other time as provided in the notice;

provided, however, that if such notice is given after final payment the 2-day period shall be extended to seven (7) calendar days.

5.15.6.1. If the Contractor fails to commence to correct such breach and damage, or to correct such breach or damage as provided above, GDPM, without prejudice to any of its other rights or remedies at law or under the Contract Documents, may correct the breach without further notice to Contractor.

5.15.6.2. The Contractor shall pay GDPM's reasonable costs and expenses incurred in connection with the or related to such correction and/or breach, including without limitation GDPM's administrative, legal, and consulting expenses and additional service fees of the A/E.

5.15.6.3. The foregoing warranties and obligations of the Contractor shall survive final payment and/or termination of the Contract and shall not be limited by any other terms contained in the Contract Documents.

5.15.6.4. If the Contractor fails to pay the GDPM any amounts due hereunder, the Contactor shall pay the GDPM, in addition to the amounts due, a late payment fee of one and one- half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.

5.15.7. Contractor shall bring to or store at the Site only the materials and equipment required for the Work. If possible, materials and equipment should be installed in their final positions when brought to the Site.

5.15.8. All equipment, material, and articles furnished under this Contract shall be of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract.

5.15.8.1. References in the Contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.

5.15.8.2. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by GDPM in writing, is equal to that named in the specifications, unless otherwise specifically provided in this Contract so long as Contractor has submitted a substitution request to GDPM.

5.15.8.3. If the substituted material has not been approved by GDPM in writing, the substituted material may be considered Defective Work by GDPM or A/E.

5.15.9. Approval of Equipment and materials

5.15.9.1. The Contractor shall obtain GDPM's approval of the machinery and mechanical and other equipment to be incorporated into the work.

I. When requesting approval, the Contractor shall furnish to GDPM the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.

II. When required by this contract or by GDPM, the Contractor shall also obtain GDPM's approval of the material or articles which the Contractor

contemplates incorporating into the work.

III. When requesting approval, the Contractor shall provide full information concerning the material or articles.

IV. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

5.15.9.2. When required by the specifications or GDPM, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid.

- The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.

5.15.9.3. Certificates shall be submitted electronically describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

5.15.9.4. Approval of a sample shall not constitute a waiver of GDPM's right to demand full compliance with contract requirements.

- Materials, equipment and accessories may be rejected for cause even though samples have been approved.

5.15.9.5. Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other Contract requirements.

- GDPM may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples.
- Check tests will be made on materials delivered for use only as frequently as GDPM determines necessary to insure compliance of materials with the specifications.
- The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

5.15.9.6. After approval, samples will be kept in the Project office until completion of work.

5.15.10.BUILD AMERICA BUY AMERCIA BABA REQUIREMENTS: Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the “Buy America Preference” or “BAP”) for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at:

https://www.hud.gov/program_offices/general_counsel/build_america_buy_america.

BABA is the Build America, Buy America Act. BABA requires any "infrastructure project" funded by any "Federal Financial Assistance" (FFA) apply a domestic content procurement preference, meaning that all iron, steel, manufactured products, and construction materials used in the infrastructure project have been produced in the United States, unless the awarding agency has issued a waiver of this requirement. This is called the "Buy American Preference" (BAP).

In order to ensure compliance with BABA requirements, Contractor will required to:

- Request waiver will be required if the contractor cannot fulfill BABA requirements.
- Provide sufficient product purchase info to enable GDPM to comply with the documentation requirements. Sufficient documentation may include:
    - A certificate from the manufacturer or reseller that the product complies with BABA;
    - For products that cost less than $100 per product, a copy of a label that indicates the product was made in the United States; or
    - For small purchases of product that are less than the simplified acquisition threshold either a copy of a product specification that provides sufficient detail to conclude that the product complies with BABA or a communication other than a certification from a manufacturer or reseller of a product that confirms that the product is BABA compliant.

5.15.11. Requirements concerning lead-based paint: The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act.

5.15.12. Substitutions

5.15.12.1. If the Contractor provides approved Substitutions that require changes to the Contract Documents, the Contractor shall be solely responsible for the additional costs incurred as a result, including without limitation changes to the design by the A/E.

5.15.12.2. GDPM shall consider Requests for Substitutions after the bid opening only when the Contractor can conclusively demonstrate to GDPM the following conditions:

I. The AE is agreement with the substitution; and

II. The specified Basis of Design Components, Acceptable Components, or previously approved Substitutions through no fault of the Contractor are not available; or

III. The specified Basis of Design Components, Acceptable Components, or previously approved Substitutions will not perform as designed or intended.

5.15.12.3. The Contractor's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

5.15.12.4. If the Contractor provides an unacceptable Component, the Contractor shall be solely responsible for the costs of coordination and modification required.

5.16. Specifications and Drawings for Construction

5.16.1. The Contractor shall keep on the work site a stamped, permit set of the drawings and specifications and shall at all times give GDPM access thereto.

5.16.1.1. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

5.16.1.2. In case of difference between drawings and specifications, the specifications shall govern.

5.16.1.3. In case of a discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to GDPM, who shall promptly make a determination in writing.

5.16.1.4. Any adjustment by the Contractor without such determination shall be at its own risk and expense.

5.16.1.5. GDPM shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

5.16.2. Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of GDPM is intended.

5.16.3. Where "shown," indicated", "detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless otherwise stated, the word "provided" as used herein shall be understood to mean "provide complete in one place" that is "furnished and installed".

5.16.4. "Shop Drawings" means drawings, submitted to GDPM by the Contractor, subcontractor or any lower tier subcontractor, showing in detail, 1) the proposed fabrication and assembly of structural elements and 2) the installations (i.e., form, fit, and attachment details) of materials of equipment.

5.16.4.1. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract.

5.16.4.2. GDPM may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

5.16.5. If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other Contract requirements and shall indicate its approval thereon as evidence of such coordination and review.

5.16.5.1. Shop Drawings submitted to the A/E without evidence of the Contractor's approval may be returned for resubmission.

5.16.5.2. GDPM will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate GDPM's reasons therefore.

5.16.5.3. Any Work done before such approval shall be at the Contractor's risk.

5.16.5.4. Approval by the A/E shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to approved variations.

5.16.6. If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission.

5.16.6.1. If the A/E approves any such variation and GDPM concurs, GDPM shall issue an appropriate modification to the Contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

5.16.7. It shall be the responsibility of the Contractor to make timely requests to GDPM for such large scale and full size drawings, color schemes, and other additional information, not already in possession, which shall be required in the planning and production of the work.

5.16.7.1. Such requests may be submitted as the need arises, but each such request shall be filed with ample time to permit appropriate action to be taken by all parties involved so as to avoid d e l a y .

5.16.8. The Contractor shall electronically submit to GDPM for approval (unless otherwise indicated) all shop drawings as called for under the various headings of the specifications.

5.16.8.1. As required by GDPM, the Contractor, upon completing the work under this Contract, shall furnish a complete set of drawings as finally approved.

5.16.8.2. These drawings show all changes and revisions made up to the time the work is completed and accepted.

5.16.9. Specifications and Drawings for Construction shall be included in all subcontracts at any tier.

5.16.9.1. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to GDPM.

5.17. As Built Drawings

5.17.1. "**As-built drawings**," means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or Work as actually completed under the Contract.

5.17.1.1. "**As-built drawings**" shall be synonymous with "**Record Drawings**".

5.17.2. As required by GDPM, the Contractor shall provide GDPM accurate information to be used in the preparation of permanent as-built drawings.

5.17.2.1. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset

distances to permanent surface improvements such as buildings, curbs, or edges of walks.

5.17.3. As Built Drawings shall be included in all subcontracts at any tier.

5.17.4. It shall be the responsibility of the Contractor to ensure that all As-Built Drawings prepared by subcontractors are submitted to GDPM.

5.18. Project Document Maintenance and Submittal

5.18.1. During Construction

5.18.1.1. The Contractor shall maintain in good order at a secure location on the Site:

I. A complete copy of all Contract Documents; Shop Drawings, Product Data, samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; RFIs and responses thereto; and other Project- related documents, all marked currently and accurately to record field changes and selections made during construction and to show

Actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines; and

II. A set of Drawings as approved by any applicable jurisdiction and Specifications.

5.18.1.2. Before submitting each Contract Payment Request, the Contractor shall record all changes on the Contract Documents, neatly in a contrasting color, noting new information not shown on the original Contract Documents.

- Failure to record all changes may cause payment to be withheld or delayed by GDPM.

5.18.1.3. The Contractor shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

5.18.1.4. If the Contractor uses Shop Drawings to indicate as-built conditions, the Contractor shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Contract Documents.

- The Contractor shall note related numbers where applicable.

5.18.2. Before Contract Completion

5.18.2.1. The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize the As-Built Documents into manageable sets, bind the sets with durable paper cover sheets, and deliver the As-Built Documents to GDPM.

5.18.2.2. When applicable, The Contractor's As-Built Documents submission shall include, but is not limited to:

I. Certificate of Occupancy;

II. Inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.

III. Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;

IV. Operation and Maintenance Manuals, organized into suitable sets of manageable size;

V. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;

VI. Neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;

VII. Detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;

VIII. Assignment to GDPM of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;

IX. An affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;

X. Final certified payroll reports; and

XI. An affidavit to certify that the Contractor and each of its Subcontractors, regardless of tier, have complied with all requirements of HUD and the Ohio Revised Code.

5.18.2.3. By submitting the As-Built Documents to GDPM, the Contractor certifies that it's As- Built Documents are complete, correct, and accurate.

5.19. Temporary Buildings and Transportation of Materials

5.19.1. Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of GDPM and shall be built with labor and materials furnished by the Contractor without expense to GDPM.

5.19.1.1. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work.

5.19.1.2. With the written consent of GDPM, the buildings and utilities may be abandoned and need not be removed.

5.19.2. The Contractor shall, as directed by GDPM, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by GDPM.

5.19.2.1. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation.

5.19.2.2. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage.

5.19.2.3. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

5.20. Facilities

5.20.1. The Contractor shall provide and maintain in a clean condition:

5.20.1.1. Suitable facilities, including temporary facilities, equipment, services, and enclosed storage for its use at the Site;

5.20.1.2. Adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits;

5.20.1.3. Adequate sanitary facilities for use by all Persons at the Site.

5.21. Progress Cleaning

5.21.1. The Contractor shall remove all waste materials, rubbish, and mud attributable to the Work in accordance with the Specifications, if applicable, and to an appropriate disposal location.

5.21.2. The Contractor shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

5.21.3. The Contractor shall remove, at the end of each working day or more frequently, as appropriate, for the Project, all waste materials and rubbish from the disposal location.

5.21.4. The Contractor shall remove, as appropriate for the Project or as the A/E or GDPM directs, any waste materials or rubbish from areas adjacent to the Project.

5.21.5. The Contractor shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills and record of such disposal shall be available upon written request of GDPM.

5.21.6. If the Contractor fails to clean up during the progress of the Work, GDPM may clean up on behalf of the Contractor and at the Contractor's expense.

5.21.6.1. If the Contractor fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, GDPM may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Contractor's expense.

5.21.6.2. GDPM may deduct the cleaning costs from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

5.21.7. The Contractor shall remove excavated material and spoil to a suitable off-site location approved by GDPM.

5.21.7.1. If GDPM designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the Contractor shall remove such materials to the designated location.

5.22. Use of Premises

5.22.1. The Contractor shall use corridors, stairs, and elevators as designated by GDPM and only during those times that are designated by GDPM.

5.22.2. The Contractor shall exercise extreme care to not exceed the carrying capacity of elevators or damage the cab interior, including but not limited to damaging the cab padding, in any way.

5.22.3. Loitering or wandering through interior of buildings or exterior grounds outside the limits of the Work will not be permitted.

5.22.4. The Contractor shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits and the directions of GDPM.

5.22.5. Unless expressly required or approved by GDPM, no signs or advertising of any kind will be permitted on or about the Site, except those appearing on trucks and trailers.

5.22.6. GDPM may deduct the costs associated with remedying Contractor's misuse of the premises from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

5.23. GDPM Use of Premises / Possession Prior to Completion

5.23.1. GDPM shall have the right to take possession of or use any completed or partially completed part of the Work.

I. Before taking possession of or using any Work, GDPM shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that GDPM intends to take possession of or use.

II. However, failure of GDPM to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract.

III. GDPM's possession or use shall not be deemed acceptance of Work under the Contract.

5.23.2. While GDPM has such possession or use, the Contractor shall be relieved of the responsibility for:

I. The loss of or damage to the Work resulting from GDPM's possession or use, notwithstanding the terms herein;

II. All maintenance costs on the areas occupied; and

III. Furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore.

5.23.3. If timely requested by the Contractor and if prior possession or use by GDPM delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the Contract shall be modified in writing accordingly.

5.24. Smoking and Tobacco Products

5.24.1. Smoking is not permitted at any property under construction, unless GDPM has a specifically designated area for smoking, and is not permitted within 50 feet of any entrance of a GDPM owned building.

5.24.2. This prohibition applies to new construction and rehabilitation.

5.24.3. The Contractor shall enforce these restrictions on any individual employed by the Contractor, or a Subcontractor.

5.24.4. A violation of GDPM's Non-Smoking Policy may result in a fee for damages to be made payable by Contractor to GDPM in the amount of $250 per incident per day. Parties acknowledge and agree that this fee for damages is a reasonable amount to provide for the violation of the Non-Smoking Policy and is not necessarily putative in nature, but covers the actual reasonable cost to remedy such breach.

5.24.5. GDPM may deduct the costs associated with Contractor's breach of GDPM's Non-Smoking Policy from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

5.25. Correction of the Work

5.25.1. *Before Substantial Completion*

5.25.1.1. If the Contractor provides Defective Work or fails or neglects to perform the Work in accordance with the Construction Progress Schedule, GDPM or the A/E may issue a written notice to the Contractor and Contractor's Surety directing the Contractor to correct the Defective Work or recover schedule deficiencies.

- Unless otherwise specified in that written notice, the Contractor shall begin to correct the Defective Work and recover the schedule deficiencies within no more than three days after GDPM issues the written notice.

5.25.1.2. If the Contractor fails to commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies within three (3) business days of Contractor's receipt of written notice from GDPM or the A/E, GDPM may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the Contractor or Contractor's Surety.

5.25.2. *During the Correction Period*

5.25.2.1. If GDPM issues a notice during the Correction Period, GDPM may correct the Defective Work itself without giving further notice to the Contractor or Contractor's Surety if the Contractor fails to:

a. Notify GDPM in writing of the Contractor's intent to correct the Defective Work within 3 days after GDPM issues the notice; and

b. Thereafter promptly commence and diligently pursue correction of Defective Work.

5.25.2.2. The Correction Period:

a. Commences on the date of issuance of the written notice of Defective Work to

Contractor and/or Contractor's surety and expires upon the date indicated in said written notice;

b. Relates only to the Contractor's specific obligation and opportunity to correct the Work during the Correction Period;

c. Does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;

d. Has no relationship to the time within which GDPM may seek to enforce the Contract; and

e. Does not establish a period of limitation with respect to the commencement of litigation to establish the Contractor's liability under the Contract or otherwise.

5.25.3. ***After the Correction Period:***

5.25.3.1. GDPM may correct, at the Contractor's expense, the Defective Work without giving further notice to the Contractor or Contractor's Surety if the Contractor or Contractor's surety fails to

a. Notify GDPM in writing of the intent to correct the Defective Work; and

b. Promptly commence and diligently pursue correction of Defective Work.

5.25.4. After Substantial Completion

5.25.4.1. In addition to the Contractor's other obligations under the Contract Documents, if any of the Work is found to be Defective Work after Substantial Completion, the Contractor shall correct it promptly after receipt of written notice from GDPM to do so, unless GDPM has previously acknowledged and accepted the Defective Work in writing.

5.25.4.2. GDPM may send a copy of the written notice to the Contractor's Surety, but is not obligated to do so.

5.25.5. Emergency Correction of Defective Work

5.25.5.1. Notwithstanding any other provision of the Contract, if in GDPM's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, GDPM may order the Contractor to immediately correct Defective Work or GDPM may correct the Defective Work, at Contractor's expense, itself without any prior notice to the Contractor or Contractor's Surety.

5.25.6. Responsibility for Costs of Correction

5.25.6.1. The Contractor shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies.

5.25.6.2. Those costs and damages may include, but are not limited to:

- The related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and
- The cost of correcting or replacing adjacent work.

5.25.6.3. GDPM may deduct those costs and damages from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

6. ARTICLE VI: SUBCONTRACTORS

6.1. Definitions: As used in this Contract:

6.1.1. "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

6.1.2. "Subcontractor" means any supplier, vendor, or firm that furnished supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

6.2. Evaluation and Approval

6.2.1. When submitting its Bid, the Contractor shall submit a Subcontractor and Material Supplier Declaration Form through which the Contractor identifies its Subcontractor(s) and provide a list of subcontractors and material suppliers and equipment with bid.

6.2.2. Within 10 days after the Notice to Proceed, the Contractor shall submit to GDPM, an updated Subcontractor and Material Supplier Declaration form.

6.2.3. In its discretion, GDPM will evaluate the use of proposed subcontractors. If GDPM rejects any proposed Subcontractor, the Contractor shall propose a replacement Subcontractor with no adjustment of the Contract Sum. The proposed replacement will also be evaluated.

6.2.4. If requested by GDPM, Contractor must supply additional information on use of proposed subcontractor within five business days of such request. The Contractor's failure to timely submit the information regarding a proposed Subcontractor may result in withholding payment to Contractor.

6.3. Suspension/Debarment

6.3.1. The Contractor shall not enter into any subcontract with any subcontractor who has been denied participation by GDPM or has been temporarily or permanently denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or the State of Ohio.

6.4. Contractor's Responsibility

6.4.1. The Contractor shall be as fully responsible for the acts or omissions of its Subcontractors and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

6.4.2. Contractor is responsible for scheduling and coordinating the Work of the Subcontractors.

6.4.3. The Contractor is fully responsible for any delay, interference, disruption, or hindrance attributable to the Contractor's Subcontractors.

6.4.4. The Contractors shall require that each of its Subcontractors have a competent supervisor

at the Site whenever the Subcontractor is performing Work.

6.4.5. The Contractor shall use GDPM's form of Subcontract for each of its subcontractors and material suppliers.

6.4.6. Contractor shall not agree to any provision, which seeks to bind GDPM, or with terms inconsistent with or at variance from these Contract Documents.

6.4.7. The Contractor will not be relieved of its full responsibility for Subcontractors and their performance of the Work by: (1) the participation of GDPM, HUD, or the A/E in the processes described under this ARTICLE VI SUBCONTRACTORS or other related provisions of the Contract Documents; or (2) GDPM's rejection of a Subcontractor or failure to reject a Subcontractor.

6.5. Mandatory Contract Provisions/Forms

6.5.1. The Contractor shall insert appropriate clauses in all subcontracts to bind Subcontractors to the terms and conditions of this Contract insofar as they are applicable in the work of Subcontractors.

6.5.2. GDPM reserves the right to reassign accepted agreements

6.5.3. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and GDPM or between the Subcontractor and HUD.

6.5.4. The Contractor must include in the contract with its Subcontractors the applicable labor provisions and prevailing wages as was provided to the Contractor by GDPM.

6.5.5. No less than 10 days before the Work is to be performed by a Subcontractor, or within a shorter period as mutually agreed by the Contractor and GDPM, the Contractor shall submit to GDPM a complete copy of the executed Subcontract between the Contractor and Subcontractor.

6.6. Replacement of Subcontractors

6.6.1. The Contractor shall not replace any Subcontractor after execution of the Subcontract without prior written approval of GDPM.

6.6.2. The Contractor shall not add any subcontractors after the Contract Execution without updating the Material Supplier and Subcontractor Form or prior to written approval of GDPM.

6.7. Contingent Assignment of Subcontract

6.7.1. The Contractor hereby assigns its Agreement with each Subcontractor to GDPM provided that the assignment is effective only after termination of the Contract by GDPM and only for those agreements that GDPM accepts by notifying Contractor and applicable Subcontractor in writing.

6.8. Prompt Payment of Subcontracts

6.8.1. The Contractor shall make payments to the Subcontractor in accordance with Applicable Law, including the Ohio Revised Code that include, without limitation, the requirements under this Section, 6.8 - Prompt Payment of Subcontracts.

6.8.2. If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Application Request the Contractor, within ten calendar days after receipt of payment from GDPM, shall pay to the:

6.8.2.1. Subcontractor, an amount equal to the percentage of completion of the subcontractors contract allowed by GDPM for the amount of labor or work performed;

6.8.2.2. Material Supplier, an amount that is equal to all or a portion of the invoice for materials which represents the materials furnished by the material supplier

6.8.3. The Contractor may reduce the amount paid by any retainage provision contained in the Contract, invoice, or purchase order between the Contractor and Subcontractor and may withhold amounts that may be necessary to:

6.8.3.1. Resolve disputed liens or claims involving the Work or labor performed by the Subcontractor; or

6.8.3.2. Account for failure of the Subcontractor to perform its obligations under its agreement with the Contractor as required under the Ohio Revised Code.

6.8.4. ***Labor Payments:*** Within ten days of receipt of payment from GDPM, the Contractor shall pay Subcontractor in the following manner:

6.8.4.1. Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is up to 50% complete.

6.8.4.2. After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

6.8.5. ***Material Payment***

6.8.5.1. Required by ORC for payment to Contractor by GDPM:

- The Contractor shall pay the Subcontractor at the rate of 95% of the invoice cost, not to exceed the scheduled value in a unit price or lump sum Subcontract, for materials delivered to the Site, or other offsite storage location approved by GDPM, provided the Subcontractor provides the information required with its request for payment.

- The Contractor shall pay the Subcontractor at the rate of 100% of the scheduled value for materials incorporated into the Project.

6.8.6. If Contractor fails to comply with the payment provisions set forth, the Contractor shall pay to the applicable Subcontractor, in addition to any payment due, interest in the amount of 18 percent per annum of the payment due, beginning the eleventh day following the receipt of payment from GDPM and ending on the date of full payment of the payment due plus interest.

6.8.7. If GDPM receives a Claim Affidavit from a Subcontractor, Subcontractor shall proceed in accordance with Applicable Law, including the Ohio Revised Code.

6.8.8. Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including the Ohio Revised Code.

6.9. Subcontracting To Meet Diversity & Contracting Goals

6.9.1. The Contractor shall take the following steps to ensure that, whenever possible,

Subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

6.9.1.1. Place qualified small and minority businesses and women's business enterprises on solicitations lists;

6.9.1.2. Ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential resources

6.9.1.3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

6.9.1.4. Establish a delivery schedule, where the requirements of the Contract permit, which encourages participation by small and minority businesses and women's business enterprises; and

6.9.1.5. Use the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

7 ARTICLE VII: Payments

7.1. GDPM Obligation

7.1.1. GDPM shall pay the Contractor the price as provided in the Contract.

7.2. Forms

7.2.1. Unless expressly authorized to the contrary, Contractor must use appropriate GDPM forms.

7.3. Step One - Pencil Application

7.3.1. The purpose of a pencil application is assisting the Contractor in identifying any potential error or omission in the pay application.

7.3.2. If submitted timely (as set forth below) GDPM will review and help identify any potential issues.

However, the GDPM Construction Administrator's approval or suggestion does not guarantee approval of the payment application by GDPM.

7.3.3. The Contractor shall initially submit a pencil application by no later than the 15th of each month.

7.3.4. Generally, the GDPM Construction Administrator will review the pencil application, and make any suggested corrections and return to the Contractor within a reasonable amount of time.

7.3.5. The Contractor shall then submit the final payment application to the GDPM Construction Administrator or project manager by the 23rd of each month.

7.3.6. Failure to submit a pencil application may result in a significant delay in payment.

7.4. Progress Payments

7.4.1. GDPM shall make progress payments approximately every 30 days as the work proceeds on estimates of Work accomplished which meets the standards of quality established under the Contract, as approved by GDPM.

7.4.2. Subject to G DPM ' s written determination and approval more frequent payments may be made to contractors which are qualified as small businesses.

7.4.3. Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by GDPM, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments.

- The breakdown shall be approved by GDPM and must be acceptable to HUD, if applicable.
- If the contract covers more than one Project, the Contractor shall furnish a separate breakdown for each.
- The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price.
- The Contractor shall prorate its overhead and profit over the construction period of the contract.

7.4.3. The Contractor shall submit, on forms provided by GDPM, periodic estimates showing the value of the work p e r o f r m e d during each period based upon the approved breakdown of the contract price.

- Such estimates shall be submitted not later than thirty (30) days in advance of the date set for payment and are subject to correction and revision as required.
- The estimates must be approved by GDPM prior to payment.
- If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

7.4.4. Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

I hereby certify, to the best of my knowledge and belief, that:

- The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract;
- Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and
- This request for progress payments does not include any amounts which the prime Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

7.5. Allowances

7.5.1. The Contract Sum includes the Allowances (if any) identified in the Contract.

7.5.2. All allowances include the costs to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes.

7.6. Unit Prices

7.6.1. Where the Contract provides that all or a part of the Work is to be Unit Price Work, initially that Contract Sum will include for all Unit Price Work:

7.6.1.1. 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 Contract

7.6.1.2. The Contractor's fee on that Unit Price Work

7.6.2. 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 Sum.

7.6.2.1. GDPM will determine the actual quantities and classifications of Unit Price Work performed by the Contractor.

7.6.2.2. Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amount due to the Contractor on account of Unit Price Work actually performed.

7.7. Schedule of Values

7.7.1. Within seven days after issuance of Notice of Contract Award or other period as mutually agreed by the Contractor and GDPM, the Contractor shall submit to GDPM a Schedule of Values on a form provided for by GDPM, with separate amounts shown for labor and materials for each branch of Work.

7.7.1.1. The Contractor shall clearly indicate on the Schedule of Values, but is not necessarily limited to, the cost of payment and performance bond(s), permit costs, the amount(s) allocated, including separate items for the Contractor's Fee (Overhead and Profit), and the amount(s) of labor and materials, as appropriate.

7.7.2. The grand total shown on the Schedule of Values shall equal the total Contract Sum.

7.7.3. GDPM may use the approved Schedule of Values to determine cost or credit to GDPM resulting from any change in the Work.

7.7.3.1. The first items shall be a breakdown of the General Conditions Cost

7.7.3.2. The amounts for labor and materials shall accurately reflect the cost for each item.

7.7.3.2.1. The Contractor shall clearly indicate on the Schedule of Values, the amount(s) allocated, including separate items for Contractor's Fee (overhead and profit), for each Section 3 certified Business used in the performance of the Work.

7.7.3.2.2. Contractor's Fee shall be included in the totals for labor and materials.

7.7.3.3. If the material allocation exceeds 55 percent of the Contract Sum, the Contractor shall provide, upon request, sufficient information to support the higher percentage.

7.7.3.4. Subcontract Work shall show amounts for labor and materials.

7.7.3.2.3. Fringe benefits shall be shown as a part of labor costs.

7.7.3.5. When more than one major structure is included in the Work, the Contractor shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.

7.7.3.6. The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.

7.7.3.7. Mechanical and electrical Work shall be included in separate line items for all major pieces of equipment, and group smaller equipment items by type.

7.7.3.8. Line items shall be included for each Allowance, Punch List Work, and Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.

7.7.4. GDPM may return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if GDPM determines that it conforms to section 7.7

7.7.5. No payment shall be made until the GDPM has approved the Contractor's Schedule of Values.

7.8. Labor Payments/Retainage

7.8.1. The unit or lump sum price stated in the contract shall be used in determining the amount to be paid and shall constitute full and final compensation for all the work.

7.8.2. Partial payment to the contractor for work performed under the lump sum price shall be based on a schedule prepared by the contractor and approved by GDPM and/or A/E who shall apportion the lump sum price to the major components entering into or forming a part of the work under the lump sum price.

7.8.3. GDPM shall make partial payments to the contractor for labor performed under either a unit or lump sum price contract at the rate of ninety per cent of the estimates prepared by Contractor and approved by the A/E.

7.8.4. All labor performed after the job is fifty percent completed shall be paid for at the rate of one hundred per cent of the estimates submitted by the contractor and approved by GDPM and/or the A/E.

7.9. Material Payments/Retainage

7.9.1. Provided such materials have been inspected and found to meet the specifications, GDPM shall pay the Contractor at the rate of ninety percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum contract, for materials delivered to the

Site, or other off-Site storage location approved by GDPM, provided the Contractor provides the following information with the Contractor Payment Request:

- A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and
- A certification of materials stored off-site, prepared by the Contractor and signed-off on by GDPM and/or the A/E, to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project.

7.9.2. The Contractor shall directly reimburse GDPM and/or the A/E for all costs incurred to visit a storage site, other than the areas adjacent to the Site.

7.9.3. When payment is allowed for materials delivered to the Site or other off-site storage location, approved by GDPM, but not yet incorporated into the Project, such material shall become the property of the GDPM, but if such material is stolen, destroyed, or damaged by casualty before being used, the contractor shall be required to replace it at the contractor's own expense.

7.9.4. GDPM may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the Contractor for credit of an amount proportionate to the value of the extra materials.

7.9.5. Payment on approved estimates filed with GDPM or its representative shall be made within (30) thirty days.

7.9.6. Release of Retainage

7.9.6.1. When the Contractor has achieved Substantial Completion of all Work, and there is no other reason to retain funds; upon request of the Contractor, the funds retained in connection with the Work shall be released and paid to the Contractor, withholding only that amount necessary to assure faithful completion in the sole discretion of GDPM. Typically, GDPM will determine that an amount necessary to assure faithful completion is equal to an amount up to 10% of collected retainage.

7.10. Payments Withheld

7.10.1. GDPM may withhold funds from or may assess Liquidated Damages against a Contractor Payment Request.

7.10.2. GDPM may decline to approve any Contractor Payment Request or part thereof, or nullify any previous Contractor Payment Request, in whole or in part, to the extent necessary in GDPM's sole opinion to protect GDPM from loss because of:

- Defective Work not remedied;
- Overpayment of any schedule of values line item without prior approval of related change order by Contracting Officer
- Overpayment due to calculation error;
- Damage caused by the Contractor;
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- Reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay;
- Failure to comply with Applicable Law including, but not limited to, the requirements of the Ohio Revised Code.

7.11. Payment Request

7.11.1. The Contractor and each of its subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the Contractor and each of its subcontractors, regardless of tier, have complied with all applicable requirements of the ORC, and to certify that all of its subcontractors have been paid in full for all Work performed or materials furnished under the Contract.

7.11.2. GDPM shall pay Contractor in approximately 30 days from the date of acceptance of the Payment Request.

7.11.3. The Contractor, as a condition precedent to final payment, shall complete all requirements of the Contract Documents.

7.11.4. Acceptance of final payment by the Contractor or a Subcontractor constitutes the payee's waiver of all claims against GDPM except those previously made in writing and identified by that payee as unsettled at the time of the final Contractor Payment Request.

8 Article VIII: Contract Modifications

8.1. Changes in Work

8.1.1. GDPM may order changes in the Work without invalidating the Contract, subject to the limitations set forth in this Article and elsewhere within the Contract Documents, a change in the Work may be accomplished by a Change Order, Change Directive, or order for a minor change in the Work.

8.1.2. Except as provided, no order, statement or conduct of GDPM shall be treated as a change or entitle the Contractor to an equitable adjustment.

8.1.3. Only GDPM's Contracting Officer has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.

8.1.4. The Contracting Officer may modify the contract unilaterally:

- Pursuant to a specific authorization stated in a Contract clause; or
- For administrative matters which do not change the rights or responsibilities of the parties.

8.1.5. All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and GDPM.

8.1.6. Except as expressly stated herein, the Contractor's failure to obtain prior written authorization from GDPM for a change in the Work constitutes a waiver by the Contractor of an adjustment to the Contract Sum or Contract Time or both.

8.1.7. The Contractor shall perform all changes in the Work under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the change unless otherwise provided in the Change Order, Change Directive or order for a minor change in

the Work.

8.1.8. **HUD Approval:** When a proposed modification requires the approval of HUD prior to its issuance; such modification shall not be effective until the required approval is received by GDPM.

8.2. Change Order

8.2.1. GDPM may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the

Contract including changes:

- In the specifications (including drawings and designs);
- In the method or manner of performance of the Work;
- GDPM-furnished facilities, equipment, materials, services, or site; or
- Directing the acceleration of the Work.

8.3. Increase or decrease of cost

8.3.1. If any change causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the Work under this contract, whether or not changed by any such order, GDPM shall make an equitable adjustment as set forth in Section 8.8 *Change Order Cost or Credit Determination* below and modify the Contract in writing.

8.3.2. The Contractor shall proportionally increase the amount of the Bond whenever the Contract Sum is increased.

8.3.3. If any notice of any change affecting the Contract is required by the provision of the Bond, notice is the Contractor's responsibility.

8.3.4. Except for an adjustment based on defective specifications, no proposal for any change shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required.

8.3.4.1. In the case of defective specifications for which GDPM is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specification.

8.3.5. The Contractor must assert its right to an adjustment within 30 days after:

8.3.5.1. Receipt of a written change order, or

8.3.5.2. The furnishing of a written notice by submitting a written statement describing the general nature and the amount of the proposal.

8.3.6. If the facts justify it, GDPM may extend the period for submission.

8.4. Change Directive

8.4.1. In accordance with the Changes clause (Article 29 of HUD Form 5370), the Contracting Officer may, by written order, and without notice to the sureties, order changes within the general scope of this Contract, including changes in the specifications (including drawings

and designs), method or manner of performance of the Work, or GDPM-furnished facilities, equipment, materials, services, or site. Pursuant to that authority, Change Order Directives may be utilized by GDPM during the course of the Work.

8.4.2. A Change Directive is a written order prepared by GDPM directing a change in the Work and May, if necessary, state a proposed basis for adjustment, if any, of Contract Sum or Contract Time, or both.

8.4.3. A Change Directive shall be used to direct a change in the Work in the absence of a total agreement on the terms of a Change Order and shall only be used in the absence of total agreement on the terms of a Change Order concerning the associated change of the Work.

8.4.4. Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work involved.

8.4.5. Within 14 days after receiving the Change Directive, the Contractor shall respond with a Change Order Proposal for adjustment of the Contract Sum or Contract Time or both.

8.4.6. If the Contractor does not respond to the Change Directive as required above, GDPM shall determine the adjustments, if any, of the Contract Sum and Contract Times.

- If the Contractor does not agree with GDPM's determination, the Contractor shall initiate a claim within 10 days of the date on which GDPM issues the determination, and the Contractor's failure to do so shall constitute an irrevocable waiver the Claim.

8.4.7. If GDPM and the Contractor agree on the adjustment of the Contract Sum and Contract Time associated with the Change Order Directive, GDPM shall prepare an appropriate Change Order.

8.5. Change Order Procedure

8.5.1. Any Change Order Request must be in writing and submitted by the Contractor to GDPM in accordance with the Notice Provision.

8.5.2. The Contractor's cost of preparing and providing Proposals is included in the Contract Sum.

8.5.3. If GDPM Agrees with Change Order Proposal:

- GDPM shall prepare each Change Order, attach the supporting documentation, and issue the Change Order to the Contractor for signature.
- Within 3 days after issuance of Change Order to Contractor, Contractor must sign the Change Order and resubmit to GDPM.
- Change Order is not approved until GDPM's Contracting Officer signs the Change Order.

8.5.4. If GDPM disagrees with Change Order Proposal or Contracting Officer doesn't approve Change Order:

- GDPM will notify Contractor in writing with reasons; and
- Contractor has 14 days to modify the Change Order Request or invoke Article Dispute Resolution/Claim Procedure.

- Failure to reach an agreement on any proposal shall be a dispute under Article Dispute Resolution/Claim Procedure.

8.5.5. Nothing in the change order procedure, however, shall excuse the Contractor from proceeding with the contract change pursuant to an issued Change Directive.

8.6. Change Order Proposal

8.6.1. The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract with at least the following details:

8.6.1.1. Direct Costs:

- Materials (list individual items, the quantity and unit cost of each, and the aggregate cost)
- Transportation and delivery costs associated with materials
- Labor breakdowns by hours or unit costs (identified with specific Work to be performed)
- Construction equipment exclusively necessary for the change
- Costs of preparation and/ or revision to shop drawings resulting from the change
- Worker's Compensation and Public Liability Insurance
- Employment taxes under FICA and FUTA
- Bond Costs

8.6.1.2. Indirect Costs: Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

8.6.1.3. Profit:

8.6.1.3.1. The amount of profit shall be negotiated and paid in accordance with Section 8.9 *Change Order Cost or Credit Determination* below and may vary according to the nature, extent, and complexity of the work required by the change.

- The allow-ability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), in effect on the date of this Contract.
- The Contractor shall not be allowed a profit on the profit received by any subcontractor.
- Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs.
- On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net- change in direct costs for the Contractor or subcontractor performing the Work.

8.6.2. The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety.

8.6.3. GDPM shall act on proposals within 30 days after their receipt, or notify the Contractor of the date such action will be taken. Equitable adjustments shall be made in accordance with Section8.9 *Change Order Cost or Credit Determination* below

8.6.4. Failure to reach an agreement on any change order proposal shall be a dispute under the Disputes Article herein. Nothing in this Section, however, shall excuse the Contractor from proceeding with the contract as changed.

8.6.5. By signing a Change Order, the Contractor irrevocably certifies that the elements of a Change Order described herein are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work, including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more of the other changes in the Work.

8.6.6. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

8.6.7. Except in an emergency endangering life or property, as determined by GDPM, no change shall be made by the Contractor without a prior written authorization from GDPM's Contracting Officer. When the Change Order is signed by the Contractor and GDPM's Contracting Officer, the fully executed Change Order modifies the Contract Documents and authorizes and directs the Contractor to proceed, and the Contractor shall promptly proceed with the associated change in the Work.

8.7. Differing Site Conditions

8.7.1. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to GDPM of:

- Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
- Unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract. Written notice of the condition shall be given immediately to GDPM.
    - The Contractor's failure to give notice of the Differing Site Condition as required shall constitute an irrevocable waiver of any associated claim.

8.7.2. GDPM shall investigate the site conditions promptly after receiving the notice.

- Work shall not proceed at the affected site, except at the Contractor's risk, until GDPM has provided written instructions to the Contractor.
- If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to GDPM within ten days after receipt of such instructions and, in any event, before proceeding with the Work.

- An equitable adjustment in the Contract price, the delivery schedule, or both shall be made under this Section and in accordance with Section 8.9 *Change Order Cost or Credit Determination* below, and the Contract modified in writing accordingly.

8.7.3. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed, unless the Contractor has given the written notice required; provided that the time prescribed for giving such written notice may be extended by GDPM.

8.7.4. No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed if made after final payment under this contract.

8.7.5. If GDPM determines that the Contractor has not encountered a Differing Site Condition and the Contractor does not agree with that determination, the Contractor must initiate a Claim within 10 days of the date that GDPM issues its determination.

8.8. Minor Changes in the Work

8.8.1. Consistent with the Changes clause (Article 29 of HUD Form 5370), GDPM may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly.

- Such changes shall be effected by written order ("no cost change order") issued to the Contractor.

8.8.2. The Contractor shall promptly carry out each order for a minor change in the Work if the Contractor agrees that the order does not involve adjustment of the Contract Sum and Contract Times.

8.8.3. If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the Contractor, within 3 business days after receiving the order, shall give GDPM written notice of the Contractor's position, and not proceed with the subject Work without

First receiving a Change Order related to it.

8.8.4. The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

a. Starting the Work that is the subject of the order for a minor change in the Work; or

b. Failing to give the notice described herein within 3 business days after receiving the order for a minor change in the Work.

8.9. Change Order Cost or Credit Determination

8.9.1. Notwithstanding any provisions set forth in this Section 8.8 *Change Order Cost of Credit Determinations*, the allowability of any direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this Contract.

8.9.2. The maximum cost or credit resulting from a change in the Work shall be determined as

described below.

a. Proposals shall include the information required.

b. A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order.

c. The maximum cost or credit includes all compensation for impact costs.

However, additional costs for impacts shall not be allowed.

8.9.3. The Contractor shall not assign any portion of the Work to another Person whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

8.9.4. GDPM may require notarized invoices for material costs and may audit the records of the Contractor and Subcontractors.

8.9.5. For each change in the Work, the Contractor shall furnish a detailed Proposal itemized on Contractor's letterhead which shall document the related changes in the Contract Sum.

a. Any Subcontractor pricing shall also be itemized on the Proposal.

8.9.6. Pricing Criteria

8.9.6.1. This Section *Pricing* Criteria establishes the exclusive and maximum amount that GDPM shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work

a. These Pricing Criteria also govern the value of deduct Change Orders and the Contractor's entitlement to additional compensation or damages through the claims and dispute resolution processes on account of changes in the Work.

8.9.6.2. In order to expedite the review and approval process, Proposals shall be prepared in the categories and order as listed below.

8.9.6.3. **<u>Contractor Personnel Costs</u>**

a. The Contractor's on-Site management (including supervision and administrative personnel) are not subject to State or Federal Prevailing Wage Rates.

b. These costs will be calculated on an hourly basis according to the rates acceptable to GDPM.

c. In no event will the Contractor be entitled to an increase in the Contract Sum on account of Contractor Personnel Costs unless the Contractor actually incurs

Additional Contractor Personnel Costs solely on account of the associated change in the Work.

8.9.6.4. **<u>Labor</u>**

a. Field labor directly involved in the Work shall be based upon the actual rate of pay to the worker.

b. If the Project is subject to payment of prevailing wage rates, field labor shall be paid according to the relevant classification of labor as established in the applicable prevailing wage determination.

c. In no event will the Contractor be entitled to an increase in the Contract Sum on account of labor costs unless the Contractor actually incurs additional labor costs solely on account of the associated change in the Work.

d. Under no conditions will the increase exceed those additional labor costs the Contractor actually incurs.

e. The cost for supervision above the level of working forepersons (such as general forepersons, superintendent, project manager, etc.) is included in the adjustment to Contractor Personnel Costs.

8.9.6.5. Fringes

a. Fringe benefit credit for labor is only allowable for prevailing wage fringe benefits including, but not limited to, Health and Welfare, vacation, apprenticeship training, and certain types of pension plans.

b. Each fringe benefit for which credit is requested shall be calculated on an hourly basis and listed as a separate line item.

c. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

8.9.6.6. Allowable Payroll Expenses: Allowable payroll expenses for labor including payroll taxes as well as other benefits that are required by Applicable Law, shall each be a separate line item.

8.9.6.7. Equipment Rentals

a. All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost

b. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc.

c. Downtime due to repairs, maintenance and weather delays shall not be allowed.

d. Contractor shall submit copies of actual paid invoices to substantiate rental costs.

8.9.6.8. Owned Equipment

a. All charges for certain heavy or specialized equipment owned by the Contractor or Subcontractor performing the Work shall be paid at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors' *AED Green Book* heavy equipment rental rates.

b. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc.

c. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing.

d. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

8.9.6.9. Trucking

a. A reasonable delivery charge or per-mile trucking charge for delivery of required

Materials or equipment.

b. Charges for use of a pick-up truck shall not be allowed.

8.9.6.10. Materials

a. The actual cost (including all discounts, rebates or related credits) of all materials incorporated into the changed Work.

b. Documentation shall show costs, quantities, or Unit Prices of all items, as appropriate.

c. The cost or credit for reusable materials shall be limited to 33 percent of the material cost for each use.

8.9.6.11. Contractor's General Conditions Costs

a. The Contractor's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of Final Acceptance resulting from the change in Work.

b. In no event shall the Contract Sum adjustment per day of Contract Time adjustment exceed an amount equal to (1) the sum of the General Conditions Costs line items in the Contractor's Schedule of Values approved by GDPM, (2) divided by the total number of days of the original Contract Time for achievement of Final Acceptance.

c. The Contractor shall:

- Exclude the bond premium from the Schedule of Values for the purposes of the calculation; and
- Include the actual adjustment of the Bond Premium attributable to an associated change in the Contract Sum.

d. If the Contractor purchases Builder's Risk insurance for the Project, the Contract shall:

- Exclude the Builder's Risk insurance premium from the Schedule of Values for the purposes of the calculation; and
- Include the actual adjustment of the Builder's Risk insurance premium attributable to an associated change in the Contract Sum.

8.9.6.12. Subcontractor Overhead and Profit

a. Adjustment of the Contract Sum on account of a change in Subcontractor-performed Work shall include the Subcontractor's aggregate overhead and profit allowance equal to 8 percent of the sum of the Subcontractor's costs that are associated with that changed Work.

b. The allowance applies to each Subcontractor tier.

c. The allowance covers:

1. The costs required to schedule and coordinate the Work
2. Telephone

3. Telephone charges
4. Facsimile
5. Telegrams
6. Postage
7. Photos
8. Photocopying
9. Hand tools
10. Simple scaffolds (one level high)
11. Tool breakage
12. Tool repairs
13. Tool replacement
14. Tool blades
15. Tool bits
16. Home office estimating and expediting
17. Home office clerical and accounting support
18. Home office labor (management, supervision, engineering)
19. All other home office expense, legal services, travel, and parking expenses

d. An exception is allowed for shop or engineering labor, which shall not be subject to Prevailing Wage rates for steel fabricators, sheet metal fabricators, and sprinkler system fabricators performing work off-site.

- Recovery for these matters shall be allowed on an hourly basis.

e. An exception is allowed for field supervision labor, for those portions of the Change

Order Work that will be performed, or was performed, at times when the superintendent is not required to be on site, including but not limited to overtime hours due to acceleration and\or extensions of the Contract Times.

- Recovery for this matter will be allowed on an hourly basis.

8.9.6.13. Contractor's Fee: Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the Contractor's Fee equal to fourteen percent (14%) of the sum of the costs that are associated with that changed Work.

8.9.6.14. **Miscellaneous**

a. Adjustment of the Contract Sum on account of a change in Work may include the following costs with no allowance for Contractor's Fee or Subcontractor overhead and profit.

- The premium portion only for approved overtime (labor and fringes).

- The straight time portion is included.

8.9.6.15. <u>Costs that shall not be reimbursed for Change Order Work include the following</u>

b. Voluntary employee deductions including, but not limited to, deductions for charitable donations or U.S. savings bonds

c. Employee profit sharing

8.10. Time Extension

8.10.1. Contractor's Change Order Proposal shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety. Every adjustment of the Contract Times associated with any Change Order Proposal shall be determined as provided herein, which establishes the Contractor's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work.

8.10.2. This also governs time adjustments for deduct Change orders and Contractor's entitlement to additional time through the claims and dispute resolution process on account of changes in the Work.

8.10.3. The Contractor shall substantiate all changes in the Contract Times with:

a. written description of the nature of the interference, disruption, hindrance or Delay ("disruption or delay");

b. Identification of Persons and events responsible for the disruption or delay; Date, or anticipated date, of commencement of the disruption or delay;

c. Identification of activities by schedule activity number and name on the Construction Progress Schedule, which may be affected by the disruption or delay, or new activities created by the disruption or delay and the relationship with existing activities;

d. Anticipated duration of the disruption or delay and of any remobilization period;

e. Specific number of days of extension requested and specific number of days for remobilization requested;

f. Recommended action to avoid or minimize any future disruption or delay; and

g. A detailed written proposal for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

8.10.4. A Change Order may authorize extension of the Contract Time for specific elements, while maintaining milestone dates for unaffected elements. Such a Change Order may also authorize an appropriate adjustment to Liquidated Damages.

8.11. Critical Path

8.11.1. Time extensions shall depend upon the extent to which the Work on the critical path

of the Construction Progress Schedule is affected.

8.12. Granting Time Extension

8.12.1. A Change Order granting a time extension may provide that the Contract Times shall be extended for only elements so interfered with, disrupted, hindered, or delayed and related remobilization and that shall not be altered and may further provide for adjustment of Liquidated Damages.

9 ARTICLE IX: DISPUTE RESOLUTION & CLAIM PROCEDURE

9.1. General

9.1.1. "**Claim**," as used in this Article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

9.1.2. A claim arising under the Contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

9.1.3. A voucher, invoice, application for payment, or other routine request for payment that is not in dispute when submitted is not a Claim. However, the submission may be converted to a Claim by complying with the requirements of this Article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

9.1.4. Except for disputes arising under the article entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this Article. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

9.1.5. All Claims by the Contractor shall be made in writing and submitted to GDPM for a written decision.

9.1.6. A claim by GDPM against the Contractor shall be subject to a written decision by the Contracting Officer.

9.2. Initiation of a Claim by Contractor

9.2.1. Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

9.2.2. Except as provided, the Contractor shall initiate every Claim by giving written notice of the Claim to GDPM within fourteen (14) days after occurrence of the event giving rise to the Claim, with the following exceptions:

9.2.2.1. The 14-day time limit on initiating a Claim arising from the response of an RFI by GDPM begins to run on the date of the response.

9.2.2.2. The 14-day time limit on initiating a Claim arising from GDPM's determination concerning a Differing Site Condition begins to run on the date of the determination.

9.2.2.3. Contractor's written notice of claim must be delivered to the Contracting Officer prior to GDPM's issuance of final contract payment.

9.2.3. The Contractor's written notice of a Claim shall provide the following information:

9.2.3.1. Nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the Contractor;

9.2.3.2. Identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;

9.2.3.3. Identification of activities on the Construction Progress Schedule that will be effected by the impact or new activities that may be created and the relationship with existing activities;

9.2.3.4. Anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and

9.2.3.5. Recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

9.2.4. The Contractor's failure to initiate a Claim as and when required shall constitute the Contractor's irrevocable waiver of the Claim.

9.3. Substantiation of Claims General

9.3.1. Within 30 days after the initiation of a Claim, the Contractor shall submit to the project manager or other GDPM designee, an electronic copy of all information and statements required to substantiate a Claim and all other information that the Contractor believes substantiates the Claim.

9.3.2. The Contractor shall file the one electronic copy with GDPM.

9.3.3. The Contractor shall substantiate all of its Claims by providing the following minimum information:

- A narrative of the circumstances, which gave rise to the Claim, including without limitation the start date of the event or events and the actual or anticipated finish date;
- Detailed identification of the Work affected by the event giving rise to the Claim;
- Copies of the Contractor's daily log for each day of impact;
- Copies of relevant correspondence and other information regarding or supporting Contractor's entitlement;
- Copies of any and all information related to the Contractor's costs, including all job cost reports, bid take offs, and other financial information related to the Contractor's Claim;
- A notarized certification

9.4. Substantiation of Claims for increase of the Contract Sum

9.4.1. In addition to the minimum information required by Contractor, the Contractor shall substantiate each Claim for an increase of the Contract Sum with:

- Written documentation of the actual additional direct and indirect costs to the Contractor due to the event giving rise to the Claim;
- A written statement from the Contractor that the increase requested is the entire increase in the Contract Sum associated with the Claim; and
- The general substantiation documentation.

9.5. Substantiation of Claims for Extension of the Contract Time

9.5.1. In addition to the minimum information required by Contractor, the Contractor shall substantiate each Claim for an extension of the Contract Times with:

- Written documentation of the actual delay to the critical path of the Construction Progress Schedule due to the event giving rise to the Claim;

  •A detailed written Proposal for an increase in the Contract Sum that would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay. A written statement from the Contractor that the extension requested is the entire extension of the Contract Times associated with the Claim; and
- The general substantiating documentation.
- In addition, if adverse weather conditions are the basis for a Claim for additional time, the Contractor shall document the Claim with data substantiating that weather conditions were abnormal for the period, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction.

9.6. Certification of a Claim

9.6.1. The Contractor shall certify each Claim within 30 days after initiating the Claim or before Contract Completion, whichever is earlier, by providing the notarized certification specified below, signed and dated by the Contractor:

> "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes that GDPM is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor."

9.7. Delay and Delay Damage Limitations

9.7.1. Subject to other provisions of the Contract, the Contractor will be entitled to an extension of the Contract Times if Contractor demonstrates that delay is "excusable". To be excusable, the delay must be a delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule and shall be caused by acts of unforeseeable nature or the public enemy, acts of the government not arising from the Contractor's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor's control. The delay shall be beyond the control of the Contractor and without fault or negligence of Contractor and shall be unforeseeable prior to submitting a response to the initial solicitation for construction Work.

9.7.2. Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Times, or both:

- On account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;
- Unless contractor demonstrates that the event giving rise to the claim caused a delay to the overall completion of the Contract;
- To the extent that a delay occurs concurrently with a delay attributable to the Contractor; or
- On account of the delay of any Work not on the critical path.

9.7.3. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

Month(s)	Number of Workdays
January & February	8
March	7
April	6
May	5
June - August	4
September	5
October - December	6

9.7.4. Contractor shall not be entitled to an increase in Contract Time and/or Contract Sum for non-excusable delays. Non-excusable delays include, but are not limited to, delays which are foreseeable or preventable by the Contractor (e.g. financial difficulties, supplier delays where supplies are obtainable from other sources, defective specifications where defect is apparent prior to start of the Contract Work.).

9.7.5. Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path. Such claims may be compensable in limited circumstances and in accordance with the following:

9.7.5.1. GDPM Ordered Suspension of Work. Increased sum may be permitted for increased costs of performance, excluding profit, for "unreasonable delays", ordered by GDPM.

9.7.5.2. Constructive Suspension of Work: work is prevented by GDPM without express order of Contracting Officer (e.g. delay in issuance of notice to proceed, delay in availability of site, delay due to interference with Contractor's Work, delay of approvals, delay in inspections).

9.7.5.3. If GDPM does not order a Suspension of Work, the delay will generally not be compensable unless Contractor demonstrates that GDPM is solely at fault for the

delay

(E.g. GDPM implied duty to cooperate).

9.7.5.4. For such delay claims, Contractor must notify GDPM in writing within 14 days of event giving rise to the claim.

9.7.5.5. For such delay claims, potential recovery is limited to:

9.7.5.5.1. Indirect cost increase that occurred during the extended performance period;

9.7.5.5.2. Unabsorbed office overhead that occurred during the extended performance; period

9.7.5.5.3. Material cost increases that occur during the delay;

9.7.5.5.4. Lost productivity caused by the delay;

9.7.5.5.5. Damages directly related to or attributable to the delay.

9.7.6. Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of Work caused by the occurrence or non-occurrence of an event beyond GDPM's control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics/pandemics, labor disputes, unusual delivery delays, weather, or damages caused by the Contractor. The Contractor further agrees that any increases in costs due to the enactment, modification, or enforcement of tariffs, duties, import restrictions, or other trade regulations occurring after Contract execution shall not constitute grounds for a change order, equitable adjustment, or increase in the Contract Price. All such cost increases shall be borne exclusively by the Contractor.

9.8. Derivative Claims

9.8.1. Notwithstanding any other provision of the Contract Documents to the contrary, if GDPM prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the Contractor suffers on account of the acts or negligent acts of a Separate Consultant or Separate Contractor or person or entity for whom either is legally responsible, GDPM's liability to the Contractor shall not exceed the amount GDPM actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs GDPM incurs recovering them. GDPM is not obligated to prosecute any such claim, suit, or appeal.

9.9. Claim Decision

9.9.1. GDPM shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

9.9.2. The Contracting Officer's decision shall be final unless the Contractor:

- Appeals in writing to a higher level at GDPM in accordance with GDPM's policy and procedures;
- Refers the appeal to an independent mediator or arbitrator; or

- Files suit in a court of competent jurisdiction. Such appeal(s) must be made within 15 days after receipt of GDPM's decision.

9.9.3. The Contractor shall proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of GDPM.

9.10. Audit of a Claim

9.10.1. All Claims shall be subject to audit at any time following filing of the Claim, whether or not the Claim is part of a lawsuit.

9.10.2. The audit may be performed by GDPM staff or by a consultant engaged by GDPM.

9.10.3. The audit may begin upon 10-days' notice to the affected Contractor or affected Subcontractor.

9.10.4. The Contractor shall cooperate with the request.

9.10.5. Failure of the Contractor or Subcontractor to produce sufficient records to allow GDPM to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or portion of the Claim that could not be completely audited.

9.10.6. The Contractor shall make available to GDPM all Contractor and Subcontractor documents related to the Claim including, without limitation, the following documents:

1. Daily time sheets and superintendent's daily reports;
2. Union agreements, if any, and employer agreements;
3. Insurance, welfare, fringes, and benefits records;
4. Payroll tax returns;
5. Material invoices, purchase orders, Subcontracts, and all material and supply acquisition contracts;
6. Material cost distribution worksheets;
7. Equipment records (list of Contractor equipment, rates, etc.);
8. Vendor rental agreements and Subcontractor invoices;
9. Subcontractor payment certificates;
10. Canceled checks (payroll and vendors);
11. Job cost report;
12. Job payroll ledger;
13. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
14. Cash disbursements journal;
15. Financial statements for all years reflecting operations on the Project;
16. Income tax returns for all years reflecting operations on the Project;

17. Depreciation records on all equipment utilized whether the records are maintained by the Contractor, its accountant, or others;

18. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;

19. All documents that reflect the Contractor's actual profit and overhead during the years the Project was being performed;

20. All documents related to the preparation of the Contractor's Bid, including the final calculations on which the Bid was based, unless the documents are placed in escrow under provisions of the Instructions to Bidders;

21. All documents that relate to the Claim together with all documents that support the amount of damages as to the Claim;

22. Worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents that establish the periods of time, individuals involved, the hours and rate of pay for the individuals; and

23. All other documents requested by GDPM to review the Claim.

9.11. False Certification of a Claim

9.11.1. If the Contractor falsely certifies all or any part of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for GDPM to exclude Contractor from future contracting opportunities.

9.11.2. The Contractor shall not knowingly present or cause to be presented to GDPM a false or fraudulent Claim. *"Knowingly"* shall have the same meaning as in the Federal False Claims Act.

9.12. If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim,

then the Contractor shall be liable to the GDPM for the same civil penalty and damages as the United States Government would be entitled to recover and shall also indemnify and hold GDPM harmless from all costs and expenses, including GDPM's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

9.13. **Claims based upon Defective Specifications**: Contractor may be entitled to compensation for increased costs of performance when increased cost is due to Contractor following GDPM-provided defective design specifications.

9.14. **Claims based on GDPM ordered Change:** If the Contracting Officer makes a direct change

Within the scope of the contract, Contractor may be entitled to an increase in Contract Sum or Time if the change increases or decreases the cost or time of performance. Recovery under this provision is limited to changes by the Contracting Officer or a formally designated representative. Contractor shall not be entitled to compensation for any change ordered by un-

designated person even if such person is a GDPM agent or employee. Claims for changes must be asserted within 14 calendar days after written change order.

9.15. Claims based upon Differing Site Conditions: To be compensable, Claims based upon Differing Site Conditions is limited to the following:

9.15.1. Differing Site Condition must be an actual physical condition of the job site.

9.15.2. Differing Site Condition must have existed at the time of contract commencement

9.15.3. Differing Site Condition must not have been discoverable during site inspection.

9.15.4. Differing Site Condition must be of a nature that materially differs from conditions indicated in the information provided by GDPM in the solicitation documents.

9.15.5. Differing Site Condition must be an unknown and unusual condition that differs materially from what is ordinarily encountered on the particular type of Work in the particular locality (it must be unusual for that particular area).

9.16. Subcontractor Claims: A subcontractor shall not submit a claim directly to GDPM. Any claim related to a Subcontractor must be brought directly by and certified by the Contractor as if the Claim were brought by the Contractor itself. The Contractor may "sponsor" the Subcontractor Claim only by affirmatively and clearly agreeing to do so in writing and must be expressly permitted in the initial agreement between Contractor and Subcontractor. Any claim falsely certified will subject the Contractor to debarment from future GDPM contracting opportunities.

9.17. Initiation of Claim by GDPM: All GDPM initiated Claims must be presented within eight

(8) Years of notice of event giving rise to the Claim unless such claim is based upon breach of warranty in which case the term of the warranty shall apply.

10. ARTICLE X: SUSPENSION AND TERMINATION

10.1. Suspension of the Work

10.1.1. The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of GDPM.

10.1.2. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of GDPM in the administration of this Contract, or by GDPM's failure to act within the time specified (or within a reasonable time if not specified) in this Contract, an adjustment shall be made for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly.

10.1.3. However, no adjustment shall be made for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this Contract.

10.1.4. A claim shall not be allowed:

- For any costs incurred more than 20 calendar days before the Contractor shall have notified GDPM in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, for interruption, but no later than the date of final payment under the Contract.

10.1.5. If GDPM suspends the Work under this Article and the Contractor submits a proper Payment Request, subject to all other provisions of the Contract Documents, the Contractor shall be entitled to payment of compensation due under the Contract Documents for the Work performed before the suspension based upon the Schedule of Values.

10.1.6. GDPM, without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as GDPM may determine for any of the following reasons:

- Defective Work;
- The Contractor is causing undue risk of damage to any part of the Project or adjacent area;
- The Contractor fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or
- Any other cause GDPM reasonably believes justifies suspension.

10.1.7. GDPM's exercise of its right to suspend the Work shall not entitle Contractor to any adjustment of the Contract Sum, Contract Time or both.

10.1.8. Upon receipt of the notice of suspension, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs.

10.1.9. The Contractor shall furnish a report to GDPM within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as GDPM may require.

10.1.10. GDPM's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the Contractor or any other party, and GDPM's exercise or failure to exercise the right shall not prejudice any of GDPM's other rights including the right to suspend the Work in the future under the same or similar circumstances.

10.2. Termination for Convenience

10.2.1. GDPM, through the Contracting Officer, may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of GDPM.

10.2.2. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which termination becomes effective.

10.2.3. Upon delivery of the Notice of Termination, the Contractor shall immediately

proceed with performance of the following duties in accordance with instructions from GDPM:

1. Cease operations as specified in the Notice;
2. Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project;
3. Terminate all subcontracts and orders to the extent they are related to the Work terminated;
4. Proceed with Work not terminated; and
5. Take actions that may be necessary, or that GDPM may direct, for the protection and preservation of the terminated Work.

Failure to do any actions set forth in this Provision (**10.2.3**), may lead to Contractor's liability for actual damages as a result of Contractor's failure to protect the Work.

10.2.4. If the performance of the work is terminated, either in whole or in part, GDPM shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by GDPM of a properly presented claim setting out in detail:

1. The total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor;
2. The cost of settling and paying claims under subcontracts and material orders for

   Work performed and materials and supplies delivered to the site, payment for which has not been made by GDPM to the Contractor or by the Contractor to the subcontractor or supplier;
3. The cost of preserving and protecting the work already performed until GDPM or assignee takes possession thereof or assumes responsibility therefore; and
4. An amount constituting a reasonable profit on the value of the work performed by the Contractor.

10.2.5. Unless GDPM deems in writing that additional time is needed for review, GDPM will act on the Contractor's claim within 60 days of receipt of the Contractor's claim.

10.2.6. Any disputes are expressly made subject to the Article titled ***Dispute Resolution and Claim Procedure*** of this Contract.

10.2.7. If GDPM terminates the Work, the termination shall not affect the rights or remedies of GDPM against the Contractor then existing or which may thereafter accrue.

10.2.8. Notwithstanding this Provision ***10.2*** *Termination for Convenience*, if GDPM terminates the Work but there exists an event of Contractor's default, the Contractor shall be entitled to receive only such amounts as it would be entitled to receive following the occurrence of an event of default as provided for below.

10.3. Termination for Cause/Default

10.3.1. If the Contractor materially breaches this Contract, including without limitation, the

Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, GDPM may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. Other examples of material breaches of the Contract include but are not limited to:

- Refusal to remedy defective work;
- Failure to supply enough properly skilled workers or proper materials;
- Failure to provide revised Construction Progress Schedule or Recovery Plan;
- Failure to properly make payment to Subcontractors or Consultants; or
- Disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

10.3.2. In the event of a Termination under this Provision, GDPM may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work.

10.3.3. The Contractor and its sureties shall be liable for any damage to GDPM resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by GDPM in completing the Work.

10.3.4. In accordance with the Ohio Revised Code, if GDPM intends to exercise its termination right, GDPM shall issue not less than 5 days written notice ("5-Day Notice") to the Contractor and the Contractor's Surety. However, notwithstanding any provision of the Contract to the contrary, the issuance of the 5-Day Notice is not a condition precedent to GDPM's exercise of its rights and GDPM's decision to not issue a 5-Day Notice will not

Prejudice GDPM's rights under this Contract.

10.3.5. If the Contractor fails to satisfy the requirements set forth in the Notice to Cure within 15 days of receipt of the Notice to Cure or as otherwise specified in the Notice, GDPM may declare the Contractor in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.

10.3.6. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been for convenience of GDPM.

10.3.7. If the Contract is terminated, the Contractor's Surety may perform the Contract. Contractor and its Surety are subject to the following provisions and Contractor shall ensure the following provisions are contained within the Agreement between the Surety and Contractor regarding the Work that is the subject of this Contract.

10.3.7.1. If the Contractor's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, GDPM may complete the Work by means that GDPM deems appropriate.

10.3.7.2. GDPM may take possession of and use all materials, facilities, and equipment

at the Site or stored off-site, for which GDPM has paid.

10.3.7.3. If GDPM notifies the Contractor's Surety that the Contractor is in default or terminates the Contract, the Surety shall promptly and in not more than 21 days complete an investigation of the claimed material default or termination.

10.3.7.4. As part of such investigation, the Surety shall visit the offices of the Contractor, A/E and GDPM to review the available project records.

10.3.7.5. If the Surety proposes to take over the Work, the Surety shall do so no later than the expiration of such 21 day period or 10 days after the date GDPM terminates the Contract, whichever is later.

10.3.7.6. If GDPM terminates the Work, and the Surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor.

10.3.7.7. The surety shall provide GDPM with the results of its investigation, including any written report or documents.

10.3.7.8. Termination for Cause/Default is in addition to GDPM's other rights under the Contract Documents and is not intended to create any rights of the Surety, including but not limited to the right to take over the Contractor's obligations.

10.3.7.9. If the Contract is terminated for cause, the Contractor shall not be entitled to further payment. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including without limitation the fees and charges of engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by GDPM and not expressly waived, the Contractor or Surety shall immediately pay the amount of insufficiency to GDPM.

10.3.7.9.1. This obligation for payment shall survive termination of the Contract.

10.3.7.10. If the Contractor's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of Contractor

In all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of GDPM to complete the Work.

10.4. If GDPM terminates the Contract, the termination shall not affect any rights or remedies of GDPM against the Contractor then existing or which may thereafter accrue.

10.5. GDPM's retention or payment of funds due to the Contractor shall not release the Contractor or the Contractor's Surety from liability for performance of the Work in accordance with the Contract Documents.

10.6. Contractor Insolvency

10.6.1. ***Bankruptcy of Contractor***: If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, the Contractor as the debtor-in- possession, or the trustee of the Contractor's bankruptcy estate shall notify GDPM in writing within 5 days of such filing and file a motion to assume

or reject the Contract within 20 days after the filing of the petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the petition.

- The failure to file and prosecute that motion Contractor shall constitute a material breach of the Contract as time is of the essence with respect to Contractor's performance of all terms of this Contract.
- The Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, to permit GDPM to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of termination of the Contract and to take any other action necessary to terminate the Contract.

10.6.2. ***Receivership or Assignment for the Benefit of Creditors***: If the Contractor makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of Contractor's business or property, GDPM shall serve written notice to the Contractor and Contractor's Surety stating that any failure of the Contractor to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause.

- Such termination of the Contract need not be evidenced by an order of any court

10.7. A Contractor's right to Proceed shall not be terminated for Cause or the Contractor charged with damages under this the Provisions for Termination for Cause/ Default as set forth above if:

10.7.1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

1. Acts of God, or of the public enemy;
2. Acts of GDPM or other governmental entity in either its sovereign or contractual capacity,
3. Acts of another contractor in the performance of contract with GDPM;
4. Fire;
5. Floods;
6. Epidemics/pandemics;
7. Quarantine restrictions;
8. Strikes;
9. Freight embargos;
10. Unusually severe weather; or
11. As determined by GDPM, delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or Subcontractors and suppliers.

10.7.2. The Contractor, within 10 days from the beginning of such delay as set forth in this Provision, unless otherwise extended by GDPM, shall notify GDPM in writing of the causes

of delay.

10.7.3. GDPM's Contracting Officer shall ascertain the facts and extent of the delay.

10.7.4. If in the judgment of GDPM's Contracting Officer, the findings of fact warrant such action, time for completing the Work shall be extended by written modification to the Contract. The findings of fact of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Article titled Dispute Resolution and Claim Procedure.

11 ARTICLE XI: CONSTRUCTION CLOSEOUT

11.1. Final Cleaning

11.1.1. Before requesting the Substantial Completion inspection of the Work, the Contractor shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to an acceptable condition so that upon Substantial Completion, the site is ready for occupancy by GDPM.

11.1.2. If the Contractor performs any Work after final cleaning, the Contractor shall clean the affected area as provided above so that upon Substantial Completion, the site is ready for occupancy by GDPM.

11.1.3. Final cleaning shall be done to the reasonable satisfaction of GDPM.

11.2 Inspection and Construction of the Work

11.2.1. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the Contract conforms to all Contract requirements.

11.2.2. All Work is subject to GDPM inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

11.2.3. GDPM inspections and tests are for the sole benefit of GDPM and shall not:

- Relieve the Contractor of responsibility for providing adequate quality control measures;
- Relieve the Contractor of responsibility for loss or damage of the material before acceptance;
- Constitute or imply acceptance; or
- Affect the continuing rights of GDPM after acceptance of the completed work.

11.1.2. The presence or absence of the GDPM inspector does not relieve the Contractor from any Contract requirement. And, the inspector is not authorized to change any term or condition of the specifications without the Contracting Officer's written authorization.

11.1.3. All instructions and approvals with respect to the work shall be given to the Contractor by GDPM and shall be in writing.

11.1.4. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and

material reasonably needed for performing such safe and convenient inspections and tests as may be required by GDPM.

11.1.5. GDPM may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary.

11.1.6. GDPM shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size and performance tests shall be performed as described in the Contract Documents.

11.2. Routine Inspections

11.2.1. At its discretion, GDPM may conduct routine inspections of the construction Site on a daily basis.

11.2.2. The Contractor shall, without charge, replace or correct Work found by GDPM not to conform to contract requirements, unless GDPM decides that it is in its interest to accept the Work with an appropriate adjustment in Contract Sum.

11.2.3. The Contractor shall promptly segregate and remove rejected material from the premises.

11.2.4. If the Contractor does not promptly replace or correct rejected Work, GDPM may:

11.3.4.1. By Contract or otherwise, replace or correct the Work and charge the cost to the Contractor; or

11.3.4.2. Terminate for default the Contractor's right to proceed.

11.2.5. If any work requiring inspection is covered up without approval of GDPM, it must, if requested by GDPM, be uncovered at the expense of the Contractor.

11.2.6. If at any time before final acceptance of the all Work, GDPM considers it necessary or advisable, to examine Work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material.

- If such Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction.
- If, however, such Work is found to meet the requirements of the Contract, GDPM shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

11.3. Substantial Completion

11.3.1. ***Contractor's Punch List***

1. When the Contractor considers the Work, or a designated portion thereof, Substantially Complete, the Contractor shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work ("Contractor's Punch List").
2. The Contractor shall list all items of Work not in compliance with the Contract Documents, including items the Contractor is requesting to be deferred.
3. The Contractor shall proceed to correct all items listed on the Contractor's Punch

List and certify that the incomplete items listed on the Contractor's Punch List are to its knowledge an accurate and complete list by signing the Contractor's Punch List.

4. The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.

5. The Contractor shall submit the signed Contractor's Punch List to GDPM together with a request for a Substantial Completion inspection of the Work.

11.3.2. ***Substantial Completion Inspection***

1. The Contractor shall notify GDPM, in writing, as to the date when, in its opinion, all or a designated portion of the Work will be substantially completed and ready for inspection.

2. If GDPM and/or the A/E determine that the state of preparedness is as represented, GDPM will promptly arrange for the inspection.

3. Unless otherwise specified in the Contract, GDPM shall accept, as soon as practicable after completion and inspection, all work required by the Contract or that portion of the Work that GDPM determines and designates can be accepted separately.

4. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or GDPM's right under any warranty or guarantee.

5. Within 3 business days after receipt of the request for the Substantial Completion inspection of the Work, GDPM shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.

6. Within 7 days after its acceptance of the Contractor's request, GDPM and/or the A/E shall conduct the Substantial Completion inspection to determine whether the Work, or designated portion, is in conformity with the Contract Documents and Substantially Complete.

7. If GDPM and/or the A/E determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, GDPM and/or the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("GDPM's Punch List").

8. GDPM's Punch List shall include:

    - The items on the Contractor's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection; and
    - Comments from GDPM.

11.3.3. GDPM shall submit the Certificate of Substantial Completion to the Contractor for their written acceptance.

11.3.4. Upon their acceptance and consent of the Contractor's Surety, and subject to GDPM's right to withhold payment, GDPM shall release retainage.

11.3.5. GDPM and/or the A/E's failure to include an item on GDPM's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract

Documents.

11.3.6. If GDPM subsequently determines that the Work is not substantially Complete, GDPM may request compensation for related expenses.

- GDPM may deduct the additional expenses from payments then or thereafter due the Contractor.
- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

11.3.7. ***Completion of Punch List Items***

1. The Contractor shall complete all items on GDPM's Punch List prior to date of Final Contract Completion.
2. After completing all items on GDPM's Punch List, the Contractor shall provide a written request for Final Inspection of the Work.
3. If Work on the Punch List cannot be timely completed, the Contractor shall submit a change order in accordance with the provisions of this Contract.
4. Within 3 business days after receipt of the request for the Final Inspection of the Work, GDPM and/or the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.
5. If multiple inspections of items on GDPM's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the A/E and GDPM resulting from any attendant delay.
6. GDPM may deduct those additional costs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

11.4. Demonstration and Training, Operating Appurtenances

11.4.1. The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall perform demonstration and training of GDPM's maintenance staff and other staff as requested by GDPM.

11.4.2. The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize and submit operating appurtenances and loose items related to operation and maintenance of the completed Project to GDPM, including, but not limited to:

- Keys to door and window hardware, panels, and other devices not directly provided to GDPM from the manufacturer;
- Operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and
- Extra materials (e.g., attic stock).

11.5. Acceptance of Defective Work

11.5.1. Defective Work may only be knowingly accepted by GDPM in writing instead of GDPM requiring its removal or correction, in which case the Contract Sum must be equitably reduced to account for the reduction in benefit of the Work received by GDPM on account of the Defective Work.

11.5.2. GDPM may only accept Defective Work though a deduct Change Order that makes explicit reference to Acceptance of Defective Work

11.5.3. None of the following will constitute acceptance of Defective Work, a release of the Contractor's obligation to perform the Work in accordance with the Contract, or a waiver of any rights set forth in the Contract or otherwise provided by Applicable Law:

1. Observations or inspections by GDPM or the A/E;
2. The making of any payment;
3. Substantial Completion or the issuance of a Certificate of Substantial Completion;
4. Partial Occupancy and GDPM's use or occupancy of the Work or any part of it;
5. Contract Completion or the issuance of a partial or final Certificate of Contract Completion;
6. Any review or approval of a submittal;
7. Any inspection, test, or approval by other Persons; or
8. Any correction of Defective Work by GDPM.

11.6. Building Commissioning

11.6.1. If the Project scope includes building commissioning, the Contractor shall participate in the Commissioning Process, as prescribed in the Contract Documents. Contractor shall be responsible for all resulting damages for lack of proper commissioning including, but not limited to, replacement costs.

11.6.2. The Contractor shall permit the A/E, GDPM, or a third-party Commissioning Agent ("CxA") if applicable, access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to Substantial Completion.

11.6.3. The A/E, GDPM, or CxA, if applicable, shall promptly notify, in writing, the Contractor of any deficiency identified during the Commissioning Process.

11.6.4. To facilitate the Commissioning Process, the Contractor shall submit 4 sets of Operation and Maintenance manuals for dynamic and engineered systems to GDPM and CxA, if applicable, for approval. This submission shall occur within 30 days of obtaining approval of all related Contractor submittals required by the Contract Documents.

11.7. Partial Contract Completion

11.7.1. When items of Work cannot be completed until a subsequent date, GDPM shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the Contractor will complete that Work.

11.7.2. GDPM shall submit the partial Certificate of Contract Completion to Contractor for their written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the Contractor's Surety, GDPM may release payment to the Contractor, as determined in the sole discretion of GDPM.

11.8. Final Contract Completion

11.8.1. When all items on GDPM's Punch List have been completed to the satisfaction of GDPM, all requirements of the Contract Documents have been completed, and the provisions have been fulfilled, GDPM shall prepare and recommend execution of final Contract payment.

11.8.2. The date that GDPM executes the final Contract payment is the date of Contract Completion.

11.8.3. Nothing in Contract Completion shall constitute a waiver of GDPM's ability to pursue damages as the result of any breach of the Contract by the Contractor or Liquidated Damages.

11.9. **Partial Occupancy**: if the building authority with jurisdiction over the project issues a partial certificate of occupancy, GDPM may occupy or use a portion of the Project prior to Contract Completion. The Contractor shall be relieved of the obligation to maintain the area accepted for partial Occupancy, but shall remain obligated to complete and correct the Work and to carry insurance as required by the Contract Documents during performance of any such Work.

12. Article XII: Warranty

12.1. **Warranty of Title:** Contractor warrants good title to all materials, supplies, and equipment incorporated in the Work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

12.2. Warranty of Construction

12.2.1. Contractor warrants to GDPM that all materials and equipment furnished under this Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents. In addition, Contractor warrants that work performed under this Contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by Contractor or any subcontractor or supplier at any tier.

a. This warranty shall continue for a period of one-year from the date of final acceptance of the Work.

b. If GDPM takes possession of any part of the Work prior to final acceptance, this warranty shall continue for a period of one year from the date GDPM takes possession.

c. Work not conforming to the requirements, including Substitutions not properly approved and authorized, may be considered Defective Work.

d. If Contractor or a Subcontractor recommends a particular product, material,

system, or item of equipment for incorporation into the Project and GDPM accepts that recommendation, the above warranty includes a warranty from Contractor to GDPM that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.

e. If required by GDPM, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

12.2.2. Contactor shall remedy, at Contractor's expense, any failure to conform, or any defect. Further, Contractor shall remedy, at Contractor's expense, any damage to GDPM-owned or controlled real or personal property when the damage is the result of: (1) Contractor's failure to conform to contract requirements; or (2) any defects of equipment, material, workmanship or design furnished by Contractor.

12.2.3. Contractor shall restore any work damaged in fulfilling the terms and conditions of Warranty of Construction. Contractor's warranty with respect to work repaired or replaced will run for not less than one year of repair or replacement.

12.2.4. GDPM shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, GDPM shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at Contractor's expense.

12.2.5. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, Contractor shall:

a. Obtain all warranties that would be given in normal commercial practice;

b. Require all warranties to be executed in writing, for the benefit of GDPM; and

c. Enforce all warranties for the benefit of GDPM.

12.2.6. In the event Contractor's warranty under this provision has expired, GDPM may bring suit to enforce a subcontractor's or manufacturer's or supplier's warranty.

12.2.7. Unless a defect is caused by the negligence of the Contractor or its subcontractor or supplier at any tier, Contractor shall not be liable for the repair or defect of material or design furnished by GDPM or for the repair of any damage that results from any defect in GDPM furnished material or design.

12.2.8. Notwithstanding any provisions herein to the contrary, the establishment of time periods in this Article relate only to the specific obligation of the Contractor to correct the work and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, or to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the work.

12.2.9. This Warranty shall not limit GDPM's rights under the Inspection and Acceptance of Construction related provisions within this Contract with respect to latent defects, gross negligence or fraud.

12.3. Warranty Walk-through Contractor: At GDPM's request, Contractor shall perform a walkthrough of the property no earlier than three months prior to the expiration of any Warranty. If Contractor is unavailable for the warranty walk-thru, the warranty shall be

extended until the time Contractor is available.

12.4. All warranties, including but not limited to, material, equipment and special warranties and warranties otherwise required by the Contract Documents shall be issued in the name of GDPM, or shall be transferrable to GDPM and shall commence, unless otherwise indicated in the Contract Documents, upon issuance of certification of substantial completion.

13 Article XII: Bonds and Insurance

13.1. Bid Bond/Guaranty

13.1.1. The Contractor shall provide to GDPM a bid guaranty in the form of either: (1) a bond for 10% of the bid; or (2) a certified check, cashier's check or letter of credit revocable only at the option of GDPM and shall be in the amount of 10% of the bid.

13.1.2. The bid guaranty shall be conditioned to provide that Contractor will, after award, enter into a contract with GDPM in accordance with the bid, plans, details, and specifications.

13.1.3. If the bidder fails to enter into the Contract and GDPM awards Contract to next lowest bidder, the bidder and the surety on the bidder's bid are liable to GDPM for the lessor of either:

- The difference between the bid and that of the next lowest bidder; or
- For a penal sum in the amount of 10% of the bid.

13.1.4. If GDPM does not award the Contract to the next lowest bidder but resubmits the Project for bidding, the bidder failing to enter into the Contract and the surety on the bidder's bond are liable to GDPM for a penal sum not to exceed 10% of the amount of the bid.

13.1.5. Where GDPM accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after Notice of Intent, the bidder and surety on any bond are liable for the amount of the difference between the bidder's bid and the next lowest bidder.

13.1.6. All bid guaranties shall be payable to GDPM, be for the benefit of GDPM and be deposited with GDPM.

13.2. Payment and Performance Bond

13.2.1. Contract Commencement does not occur until GDPM receives a Payment and Performance Bond

13.2.2. Contractor must, within 10 days of GDPM's delivery of signed Contract to Contractor, unless otherwise specified by GDPM in writing, deliver to GDPM a payment and performance bond with a penal sum in the amount of 100% of the Contract Sum (which includes all acceptable alternates).

13.2.3. The payment and performance bond must contain a condition that indemnifies GDPM against all damages suffered by Contractor's failure to perform the Contract according to the provisions and in accordance with the plans, details, and specifications and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor

performed or material furnished in carrying forward, performing or completing the Contract.

13.2.4. The bond shall be obtained from companies holding certificates of authority as acceptable sureties and shall be listed on the U.S. Treasury Circular 570 (T-List).

13.2.4.1. Each company shall be licensed to do business in Ohio and satisfactory to GDPM.

13.2.5. The Contractor shall submit with the executed Bond:

13.2.5.1. A certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety, and

13.2.5.2. A current signed Certificate of Compliance issued by the Ohio Department of Insurance demonstrating that Surety is licensed to do business in Ohio.

13.2.6. If the Contract Sum increases at any time such that it exceeds the sum of the Bond, the Contractor shall cause the penal sum of the Bond to be increased such that the sum equals one-hundred percent (100%) of the increased Contract Sum.

13.2.7. Any time Contractor increases the sum of the Bond, the Contractor shall deliver to GDPM written consent of the affected Surety confirming the increased sum. GDPM's receipt of that written consent is a condition precedent to GDPM's obligation to pay the Contractor for any portion of the Work associated with the increase.

13.2.8. If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the Contractor shall provide that notice.

13.3. **Form of Bond:** All bonds and guarantees must be provided for on a form deemed acceptable by GDPM and must be drafted and executed in accordance with all HUD and State of Ohio requirements. Unless otherwise so indicated, Contractor shall use GDPM's Bond Forms.

13.4. General Insurance Requirements

13.4.1. Prior to commencing Work, Contractor and each subcontractor shall furnish GDPM with certificates of insurance demonstrating coverage that meets the Minimum Contractor Coverage Requirements as outlined below is in full force and will insure all operations sunder the Contract.

13.4.2. Throughout the performance of the Work or longer as may be described below, Contractor and each Subcontractor shall obtain, pay for and keep in force, the minimum insurance coverage.

13.4.3. On a case-by-case basis, GDPM and Contractor may agree to adjust the below requirements for any particular subcontractor.

13.4.4. All insurance shall be carried with companies which are financially responsible and admitted to do business in the State of Ohio.

13.4.5. If any such insurance is due to expire during the construction period, Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to GDPM.

13.4.6. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to GDPM.

13.5. Minimum Contractor Coverage Requirements

13.5.1. ***Workers' Compensation:*** The amount of Workers' Compensation coverage shall be in accordance with the State of Ohio Workers' Compensation laws.

13.5.2. ***Commercial General Liability:*** With a combined single limit for bodily injury and property damage of not less than $1,000,000 per occurrence unless otherwise specified by GDPM in writing, to protect Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability.

13.5.2.1. If Contractor has a "claims made" policy, then the following additional requirements apply: (1) the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and (2) the extended reporting period may not be less than five years following the completion date of the Contract.

13.5.3. ***Employers Liability Coverage:*** Unless otherwise specified by GDPM in writing, Contractor shall maintain employer's liability coverage with:

13.5.3.1. An each accident limit of not less than $1,000,000;

13.5.3.2. A disease each-employee limit of not less than $1,000,000; and

13.5.3.3. A disease policy limit of not less than $1,000,000.

13.5.4. ***Automobile Liability:*** On owned and non -owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than $ 1,000,000 per occurrence.

13.5.5. ***Builder's Risk Insurance:*** Before commencing Work, Contractor shall furnish GDPM with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force.

13.5.5.1. The Builder's Risk Insurance shall be for the benefit of the Contractor and GDPM as their interests may appear and each shall be named in the policy or policies as an insured.

13.5.5.2. If installing equipment supplied by GDPM, Contractor shall carry insurance on such equipment from the time Contractor takes possession thereof until the Contract work is accepted by GDPM.

13.5.5.3. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. Builder's Risk coverage need not be carried on landscape work.

13.5.5.4. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by GDPM.

13.5.5.5. Contractor may terminate this insurance on buildings as of the date taken over for occupancy by GDPM.

13.5.5.6. The amount of Builder's Risk coverage shall not be less than the total completed value of the Project, including the value of permanent fixtures and

decorations, with a deductible of not more than $25,000 per occurrence. Any deductible over the amount specified in this provision shall be authorized in writing by GDPM.

13.5.5.7. Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property.

13.5.5.8. This shall include overtime wages and the extra costs of "express" or other means of expedited transportation and/or delivery of supplies necessary to the repair of replacement.

13.5.5.9. Coverage shall include "soft costs endorsement" including, but not limited to, the reasonable extra costs of the A/E and reasonable Contractor extension or acceleration costs.

13.5.5.10. Coverage shall include material in transit or stored in off-site and identified for the Project.

13.5.5.11. Coverage shall waive all rights between GDPM, Contractor, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.

13.5.5.12. Coverage shall include appropriate sub-limits for installation coverage.

13.5.5.13. Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.

13.5.5.14. Coverage shall include temporary structures and scaffolding, along with collapse coverage.

13.5.5.15. Coverage shall be primary to all other applicable insurance.

13.5.5.16. The builder's risk policy shall specifically permit partial occupancy by GDPM prior to Contract Completion and coverage shall remain in effect until all punch items are completed.

13.5.5.17. The Contractor's tools and equipment shall not be covered under the builder's risk policy. It is the Contractor's sole responsibility to maintain such coverage, which shall be included in its Overhead (a component of Contractor's Fee) and not included as a separate item in Contractor's Schedule of Values.

13.5.5.18. If Contractor is involved solely in the installation of material and equipment and not in new building construction, Contractor shall purchase and maintain a builder's risk, builder's risk-renovations, or installation floater insurance policy that complies with this Provision.

13.5.6. ***Umbrella/Excess Liability:*** Contractor may employ an umbrella/excess liability policy to achieve the above required minimum coverage. Unless otherwise specified by GDPM in writing, for Construction Contracts in excess $1,000,000, the Contractor shall maintain umbrella/excess liability coverage with a limit of not less than $2,000,000 (in addition to the above-required limits) if the Work (or Work to be performed by the Subcontractor) includes any of the following:

a. Brick/block masonry;

b. Exterior caulking/sealant;

c. Cast-in-place or precast concrete;

d. Damp proofing/waterproofing;

e. Electrical;

f. Elevator;

g. Exterior glass and/or glazing;

h. Exterior marble, granite, and/or other stonework;

i. Miscellaneous metals;

j. Plaster/stucco;

k. Plumbing;

l. HVAC;

m. Roofing and/or sheet metal;

n. Scaffolding;

o. Spray-on fireproofing;

p. Sprinkler and/or fire protection; or

q. Structural steel and/or metal deck.

13.5.7. Unless otherwise specified by GDPM in writing, Contractor shall maintain umbrella/excess liability coverage with a limit of not less than $5,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

a. Caissons and/or piles;

b. Major Demolition;

c. Excavation and/or utility work;

d. Sheeting, shoring, and/or underpinning;

e. Window washing equipment; or

f. Wrecking.

13.5.8. ***Professional Liability***: Unless otherwise specified by GDPM in writing, Contractor shall maintain professional liability insurance (including without limitation for sprinkler and/or fire protection and other design-build work included in the Work) without design-build exclusions with a limit not-less than $1,000,000 each claim and an annual-aggregate limit of not less than $2,000,000.

13.5.8.1. The professional liability policy shall have an effective date on or before the date that Contractor first started to provide any Project-related services.

13.5.8.2. Upon submission of the associated certificate of insurance and at each policy renewal, the Contractor shall advise GDPM in writing of any actual or alleged claims that may erode the professional liability limits.

13.5.8.3. Contractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

13.5.9. ***Additional Property Insurance:*** 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 the limit as specified in the applicable provisions of this Article.

13.5.10. ***Equipment Coverage:***

13.5.10.1. GDPM will not insure or be liable for damage to any Contractor or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles.

13.5.10.2. Contractor and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

13.5.11. ***Pollution Coverage:*** Contractor shall maintain Pollution Liability Insurance, including Asbestos Liability Insurance, covering liability for bodily injury, property damage, and environmental damage resulting from "sudden accidental" or "gradual" pollution and related cleanup costs incurred by the Contractor, all arising out of the Work to be performed under this contract. Combined single limit per occurrence shall not be less than $500,000, or the equivalent. Annual aggregate limit shall not be less than $1,000,000.

13.6. Waivers of Subrogation

13.6.1. To the fullest extent permitted by Applicable Law, Contractor waives all rights against GDPM and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance.

13.6.2. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

13.6.3. GDPM and Contractor waive all rights against each other for damages caused by fire or other perils to the extent actual recovery of any insurance proceeds under any property insurance or builder's risk insurance applicable to the Work.

14. Article XIV: Indemnification

14.1. To the fullest extent permitted by federal and State Law, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project.

14.2. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall hold and save GDPM, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

14.3. Contractor's indemnification obligations under this Article exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused by a party indemnified pursuant to this Article.

14.4. Nothing in this Article obligates Contractor to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence.

14.5. Contractor's obligations under this Article shall not extend to the liability of the A/E, A/E's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and other responsibility of the A/E, except to the extent covered by Contractor's insurance.

14.6. In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the Contractor or a person or entity for whom the Contractor may be liable, the indemnification obligations under this Article will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefits acts.

14.7. Contractor's indemnification obligation under this Article will survive termination of the Contract and Contract Completion.

14.8. GDPM may deduct, from the Contract Sum, the claims, losses, fines, penalties, and expenses for which Contractor is liable under this Article.

14.9. If those claims, damages, losses, fines, penalties and expenses exceed the unpaid balance of the Contract Sum, Contractor shall immediately pay the difference to GDPM.

15. Article XV: Damages

15.1. Liquidated Damages

15.1.1. If Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to GDPM as liquidated damages in accordance with the table below.

15.1.1.1. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed.

15.1.1.2. To the extent that Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due GDPM.

15.1.1.3. Contractor remains liable for damages caused other than by delay.

15.1.2. If GDPM terminates Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned GDPM in completing the work.

15.1.3. If GDPM does not terminate Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

15.1.4. If Contractor fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine GDPM's resulting damages.

15.1.5. Therefore, if the Contractor fails to achieve a Milestone within the associated Contract Time, the Contractor shall (at GDPM's option) pay to or credit GDPM the Liquidated Damages per day sum determined according to the following schedule for each day that the Contractor fails to achieve a Milestone within the associated Contract Time.

Total Contract Sum	*Daily Liquidated Damages*
Less than $150,000	$200
$150,000-$500,000	$400
$500,000.01 - $1,000,000	$500
$1,000,000.01 - $2,000,000	$1,000
More than $2,000,000	$2,000

15.1.6. If Contractor simultaneously fails to achieve two or more Milestones, GDPM shall be entitled to recover the sum of the associated Liquidated Damages per day rates.

15.1.7. The Liquidated Damages described are only intended to compensate GDPM for the direct damages it incurs as a result of Contractor's failure to achieve the Milestones within their associated Contract Times.

15.1.8. The Liquidated Damages described are not intended to compensate GDPM for any damages GDPM incurs on account of:

15.1.8.1. Any claims attributable to Contractor that are brought by others including Separate Consultants and Separate Contractors; or

15.1.8.2. Any failure of Contractor to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.

15.1.9. The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties, and they each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums.

15.1.9.1. Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per day sums or their application are void and unenforceable, GDPM shall be entitled to recover the actual damages that it incurs on account of the Contractor's failure to achieve one or more of the Milestones within the Contract Times.

15.1.10. In addition to other rights that GDPM may have relative to the Liquidated Damages, GDPM may deduct the Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, Contractor shall immediately pay the amount of the insufficiency to

GDPM.

15.2. Waiver of Consequential Damages

15.2.1. Except for the Liquidated Damages provided for above, Contractor waives against GDPM all Claims for consequential damages that may arise out of or relate to this Contract.

15.2.1.1. The Contractor's waiver includes:

15.2.1.1.1. Claims for unabsorbed home-office overhead;

15.2.1.1.2. Any other form of overhead in excess of that specifically provided for;

15.2.1.2.3. Delay damages except as otherwise specifically provided for; **15.2.1.2.4.** Increased cost of funds for the Project; **15.2.1.2.5.** Lost opportunity to work on other projects;

15.2.1.2.6. Losses of financing, business, and reputation;

15.2.1.2.7. Loss of profit except anticipated profit, arising directly from properly performed Work;

15.2.1.2.8. Loss of bonding capacity; and

15.2.1.2.9. Consequential damages arising from termination of the Contract or related to insolvency.

15.2.2. Notwithstanding Section 15.2.1, this Section 15.2:

15.2.2.1. Does not apply to any damages that would be covered by insurance provided in connection with the Project if the Contract did not include Section 15.2.1;

15.2.2.2. Does not apply to Contractor's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that Section 15.2.1 would otherwise preclude;

15.2.2.3. Does not preclude GDPM's recovery of Liquidated Damages; and

15.2.2.4. Does not apply to Claims for damages arising from GDPM's or Contractor's gross negligence or willful misconduct.

15.3. This Article 15 shall survive termination of the Contract.

16 Article XVI: Labor Standards Davis-Bacon and Related Acts

16.1.1. All rulings and interpretations of the Davis Bacon and Related Acts contained in 29 CFR Part 3 are herein incorporated by reference in this Contract.

16.2. Minimum Wages

16.2.1. All laborers and mechanics employed under this Contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which shall be attached to the Contract Documents and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

16.2.2. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the

regular weekly period, are deemed to be constructively made or incurred during such weekly period.

16.2.3. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).

16.2.4. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

16.2.5. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5 and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

16.2.6. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.

16.2.7. HUD shall approve any additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

16.2.7.1. The work to be performed by the classification requested is not performed by a classification in the wage determination;

16.2.7.2. The classification is utilized in the area by the construction industry; and

16.2.7.3. The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

16.2.8. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210.

16.2.9. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

16.2.10. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where

appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination.

16.2.11. The Administrator or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its

designee within the 30 day period that additional time was necessary.

16.2.12. The wage rate (including fringe benefits where appropriate) shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

16.2.13. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

16.2.14. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met.

16.2.15. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

16.3. Withholding of Funds

16.3.1. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract.

16.3.2. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the Project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

16.3.3. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

16.4. Payrolls and Basic Records

16.4.1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the Project. Such records shall contain:

16.4.1.1. The name, address, and social security number of each such worker;

16.4.1.2. His or her correct classification

16.4.1.3. Hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in the

Davis-Bacon Act;

16.4.1.4. Daily and weekly number of hours worked;

16.4.1.5. Deductions made; and

16.4.1.6. Actual wages paid.

16.4.2. Whenever the Secretary of Labor has found, under 29 CFR 5.5, that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

16.4.3. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

16.4.4. The Contractor shall submit for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee.

16.4.5. The payrolls submitted shall set out accurately and completely all of the information required to be maintained.

16.4.6. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents,

U.S. Government Printing Office, Washington, D.C. 20402.

16.4.7. The Contractor is responsible for the submission of copies of payrolls by all subcontractors (Approved by the Office of Management and Budget under OMB Control Number 1214-0149).

16.4.8. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

16.4.8.1. That the payroll for the payroll period contains the information required to be maintained and that such information is correct and complete;

16.4.8.2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

16.4.8.3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

16.4.9. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance".

- The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Title 18 and Title 31 of the United States Code.

16.5. Records

16.5.1. The Contractor or subcontractor shall make the records available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job.

16.5.2. If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

16.5.3. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

16.6. Apprentices & Trainees

16.6.1. Apprentices will be permitted to work at less than predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

16.6.2. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

16.6.3. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed , shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

16.6.4. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

16.6.5. Where a Contractor is performing construction on a project in a locality other than that in which registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed.

16.6.6. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman

hourly rate specified in the applicable wage determination.

16.6.7. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

16.6.8. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

16.6.9. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

16.6.10. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable pre-determined rate for the work performed until an acceptable program is approved.

16.7. Trainees

16.7.1. Except as provided for in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

16.7.2. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

16.7.3. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

16.7.4. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

16.7.5. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices.

16.7.6. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed.

16.7.7. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

16.7.8. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work until an acceptable program is approved.

16.8. **Equal Employment Opportunity**: The utilization of apprentices, trainees, and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

16.9. **Compliance with Copeland Act requirements:** Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Contract

16.10. **Contract Termination; Debarment:** A breach of this Article may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor.

16.11. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of Disputes Concerning Labor Standards shall not be subject to ARTICLE 9 DISPUTE RESOLUTION/CLAIM PROCEDURE of this contract. Such disputes shall be resolved in accordance

with the procedures of the Department of Labor. Disputes within the meaning of Disputes Concerning Labor Standards include disputes between the Contractor (or any of its subcontractors) and GDPM, HUD, the U.S. Department of Labor, or the employees or their representatives.

16.12. **Certification of Eligibility:** By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by virtue of the Davis-Bacon Act or 29 CFR 5.12.

16.12.1. No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of the Davis-Bacon Act or 29 CFR 5.12.

16.12.2. The penalty for making false statements is prescribed in the U. S. Criminal Code 18

U.S.C. 1001.

16.13. **Contract Work Hours and Safety Standards Act:** As used in this provision - Contract Work Hours and Safety Standards Act, the terms "laborers" and "mechanics" include watchmen and guards.

16.13.1. *Overtime Requirements*

16.14. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one half pay for all hours worked in excess of 40 hours in such workweek.

16.15. *Violation; liability for unpaid wages; Liquidated Damages*

16.15.1. In the event of any violation, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages.

16.15.2. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

16.15.3. CWHSSA Liquidated Damages. Such liquidated damages shall be computed with

respect to each individual laborer or mechanic (including watchmen and guards) employed in violation, in the amount established and adjusted from time to time by the U.S. Department of Labor pursuant to 29 CFR § 5.8 and the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note), for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708). As of the effective date of this Contract, that rate is $33 per day per affected worker, as published at 90 FR 1859 (January 10, 2025). The then-current rate at the time of any violation shall govern. Contractors and subcontractors may verify the current rate at www.dol.gov/agencies/whd.

16.16. *Withholding for unpaid wages and liquidated damages*

16.16.1. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages.

16.17. ***Subcontracts***

16.17.1. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in subcontracts, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts.

16.17.2. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

16.18. Non-Federal Prevailing Wage Rates

16.18.1. Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under this Contract, is inapplicable to this Contract and shall not be enforced against the Contractor or any subcontractor with respect to employees engaged under this Contract whenever such non-federal prevailing wage rate exceeds:

- The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.) to be prevailing in the locality with respect to such trade;
- The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.) to be prevailing in the locality with respect to such trade;
- An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or
- An applicable trainee wage rate based thereon specified in a DOL-certified trainee

program.

16.19. **Anti-Retaliation:** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- Notifying any contractor, subcontractor, or GDPM of any conduct which the worker or applicant reasonably believes constitutes a violation of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act, or this Article XVI;
- Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert any right or protection under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act, applicable regulations, or this Contract;
- Cooperating in any investigation, inspection, audit, or other proceeding relating to labor standards under this Contract; or
- Informing any other worker or person about their rights under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Copeland Anti-Kickback Act, or this Article XVI.
- Any Contractor or subcontractor found to have violated this Section 16.19 shall be subject to all available remedies under applicable federal law, including debarment and contract termination, and shall indemnify GDPM for any costs, penalties, damages, or attorneys' fees GDPM incurs arising from such violation.
- The Contractor shall include the terms of this Section 16.19 in every subcontract subject to this Article, and shall be responsible for its subcontractors' compliance with this Section.

17 ARTICLE XVII: SECTION 3

17.1. In order to promote Employment, Training, and Contracting Opportunities for Low-Income Persons, the Contractor shall participate in GDPM's Section 3 Program.

17.1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

17.2. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

17.3. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3.

17.4. As evidence by the execution of the Contract, the parties to this Contract certify that they are under no contractual or other impediments that would prevent them from complying with the Part 75 regulations.

17.5. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if

any, a narrative advising the labor organization or workers' representative of the Contractor's commitments, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.

17.6. The notice shall describe the preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

17.7. The Contractor agrees to include this Article - SECTION 3 in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Article upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75

17.8. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

17.9. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 75.

17.10. Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

17.11. Section 3 Reporting Requirements:

- Contractor must acknowledge and abide by any request for Section 3 documentation made by GDPM. In addition, contractor must follow any specific Section 3 reporting requirements required by GDPMs procurement department.

18 ARTICLE XVIII: Equal Opportunity Prohibition against Discrimination

18.1. During the performance of this contract, the Contractor agrees as follows:

18.1.1. **Nondiscrimination**: The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, disability, familial status, or any other characteristic protected by applicable federal, state, or local law, including but not limited to the Civil Rights Act of 1964, Executive Order 11246 (as amended), the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, and the Fair Housing Act (42 U.S.C. § 3604).

18.1.2. **Affirmative Action.** The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), national origin, age, or disability. Such affirmative action shall include, but is not limited to, the following employment practices: (1) Employment; (2) Upgrading; (3) Demotion; (4) Transfer;

(5) Recruitment or recruitment advertising; (6) Layoff or termination; (7) Rates of pay or other forms of compensation; and (8) Selection for training, including apprenticeship.

18.1.3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by GDPM that explain this Article.

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

18.1.5. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be

provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this Article, and post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

18.1.7. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, pursuant thereto.

18.1.8. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

18.1.9. In the event of a determination that the Contractor is not in compliance with this Article or any rules, regulations, or order of the Secretary of Labor, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government Contracts, or Federally assisted construction contracts under the procedures authorized, in Executive Order 11246, as amended.

18.1.10. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law, including the following as provided by ORC:

- In the event Contractor fails to comply with these nondiscrimination provisions, GDPM shall deduct from the amount payable to the Contractor a forfeiture of the statutory penalty pursuant to ORC for each person who is discriminated against or intimidated.
- The Contract may be terminated or suspended in whole or in part by GDPM and all money due hereunder may be forfeited in the event of a subsequent violation of the foregoing nondiscrimination provisions.

18.1.11. The Contractor shall include the terms and conditions of this Article in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

18.1.12. The Contractor shall take such action with respect to any subcontract or

purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigations to protect the interests of the United States.

18.1.13. Compliance with the requirements of this Article shall be to the maximum extent consistent with, but not in derogation of compliance with the Indian Self-Determination and Education Assistance Act and the Indians Preference Clause of this Contract.

18.2. The Contractor shall cooperate fully with the States Equal Opportunity Coordinator (EOC), with any other official or agency of the state of federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

19 ARTICLE XIX: HEALTH, SAFETY, AND ACCIDENT PREVENTION

19.1. ***Contractor*** **Obligations.** In performing this contract, the Contractor shall:

19.1.1. Take reasonable precautions to ensure safety of individuals on the Project;

19.1.2. Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

19.1.3. Protect the lives, health, and safety of other persons;

19.1.4. Prevent damage to property, materials, supplies, and equipment;

19.1.5. Avoid work interruptions;

19.2. For these purposes, the Contractor shall:

19.2.1. Comply with regulations and standards issued by the Secretary of Labor (failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act);

19.2.2. Include the terms of this Article in every subcontract that such terms will be binding on each subcontractor. The Contractor shall be responsible for its subcontractors' compliance with the provisions of this Article;

19.2.2.1. The Contractor shall take such action with respect to any subcontract as GDPM, the Secretary of Housing or Secretary of Labor shall direct as a means of enforcing such provisions.

19.2.3. Maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational diseases or damages to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by applicable law;

19.2.4. Pay any fine or cost incurred because of Contractor's violation, or alleged violation,

of any Applicable Law.

19.3. Notification of Non-Compliance Procedure

19.3.1. GDPM shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required.

19.3.2. After receiving the notice, the Contractor shall immediately take corrective action.

19.3.3. If the Contractor fails or refuses to take corrective action promptly, GDPM may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

19.3.4. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

19.4. Safety Plan

19.4.1. The Contractor is responsible for designing and implementing its own site-specific safety

plan, including compliance with OSHA regulations and such plan shall meet or exceed GDPM's site-specific safety plan (if any).

19.4.2. Before starting any Work, the Contractor shall submit to GDPM a copy of the Contractor's site- specific safety plan and safety manuals.

19.5. Safety Data Sheets

19.5.1. The Contractor shall identify any material it uses at the Site with a Safety Data Sheet ("SDS") meeting the requirements of OSHA's Hazardous Communication Standard.

19.5.2. The Contractor shall maintain a notebook containing all of its applicable SDSs.

19.5.3. This notebook shall be kept at the Site for the duration of the Project.

19.6. Hazardous Materials

19.6.1. *Prohibition against Hazardous Materials:* The Contractor shall not introduce Hazardous Materials to the Project.

19.6.2. *Work Stoppage Due to Hazardous Materials:*

a. If the Contractor encounters material the Contractor reasonably believes to be, or contain, a Hazardous Material that has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and verbally report the condition to GDPM, and within 1 business day deliver written notice of the condition to GDPM.

b. GDPM will promptly determine the necessity of GDPM retaining a qualified environmental consultant to evaluate the suspected Hazardous Material and to issue a related written report.

c. Where appropriate, GDPM will engage a licensed abatement contractor to

remove the material or render it harmless as directed.

d. The Contractor shall resume Work in the affected area upon written notice from GDPM that: (1) The suspect material was evaluated and found not to be or contain a Hazardous Material; or (2)The suspect material has been removed or rendered harmless.

e. If the Contractor knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the Contractor shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performing the Work in the affected area.

f. The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

19.7. Fires or Hot-Work

19.7.1. Contractor shall not burn any fires on the Site(s).

19.7.1.1. The Contractor shall notify the Project Manager 24 hours before the start of non-routine or non-recurring hot-work.

a. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum.

b. At the beginning of the Project, the Contractor shall inform the Project Manager of its intent to use blowtorches, welding apparatus or similar exposed flame

and sparking devices.

c. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.

19.7.2. The Contractor shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the Contractor's operations.

19.8. Explosives and Blasting

19.8.1. The Contractor shall not conduct blasting on, or bring explosives to the Work Site without written approval of GDPM and other authorities with jurisdiction.

19.8.2. The Contractor shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

19.8.3. The Contractor shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations.

19.8.3.1. Immediately upon request, the Contractor shall deliver evidence of that insurance to GDPM.

20 ARTICLE XX: CONTRACT DOCUMENTS AND CONTRACT

RECORDS

20.1. Examination and Retention of Contractor's Records

20.1.1. GDPM, HUD, or the Comptroller of the United States, or any of their duly authorized representatives shall, until 6 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

20.1.2. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as 20.1.1. "Subcontract," as used in Examination and Retention of Contractor's Records, excludes purchase orders not exceeding $10,000.

20.1.3. The periods of access and examination for records relating to (1) appeals under the DISPUTE RESOLUTION/CLAIM PROCEDURE Article of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which GDPM, HUD, or Comptroller General or any of their duly authorized representatives has taken exception, shall continue until disposition of such appeals, litigation, claims, or exceptions.

20.1.4. If a dispute arises with any other Person about whether that Person should be given access to the documents, the Contractor or Subcontractor as applicable, shall indemnify GDPM against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

20.1.5. The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

20.1.6. If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to GDPM for a period of 6 years from the date of any applicable final settlement or payment, as applicable.

20.2. Examination and Audit of Contractor's Records

20.1.7. GDPM may examine all books, records, documents and other data of the Contractor and its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any Contractor Payment Request, Proposal, Modification, or Claim.

20.1.8. The above referenced materials shall be made available at the office of the Contractor or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Substantial Completion of all Work.

20.1.8.1. The Contractor shall maintain, and require its Subcontractors to maintain complete and accurate business records at its principal place of business.

20.1.8.1.1. If the principal place of business is greater than 50 miles from the Site, the Contractor shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of GDPM upon request for the records.

20.1.8.2. To the extent that the Contractor or Subcontractor, as applicable, informs GDPM in writing that any documents provided to GDPM are trade secrets, GDPM shall treat these documents, to the extent permitted by law, as trade secrets of the Contractor or Subcontractor, as applicable.

20.1.8.2.1. If a dispute arises with any other Person about whether that Person should be given access to the documents, the Contractor or Subcontractor as applicable, shall indemnify GDPM against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

20.1.9. The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

20.1.10. If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to GDPM for a period of 6 years from the date of any applicable final settlement or payment, as applicable.

20.1.11. Records that relate to disputes, litigation, or settlement of Claims arising out of the performance of the Work shall be made available until the dispute, litigation or Claims have been finally decided or settled.

20.3. Ownership of Contract Documents

20.1.12. GDPM shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda, drawings or letters concerning the research and reporting tasks of this Contract.

20.1.13. For data other than computer software, the Contractor grants to GDPM and others acting on its behalf, a paid-up, nonexclusive, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of GDPM.

20.1.14. GDPM alone owns the Contractor's Documents and the Contract Documents and

every right, title, and interest therein.

20.1.15. The Contractor must execute and deliver and cause its agents and subcontractors to execute and deliver, to GDPM any transfers, assignments, documents or other instruments necessary to vest in GDPM the complete right, title, interest in and ownership of the Contractor's Documents.

20.1.16. The Contractor may retain copies of the Contractor's Documents and the Contract Documents for information, reference, and performance of the Work.

20.1.17. The submission or distribution of the Contractor's Documents or the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of GDPM's reserved rights in the Contractor's Documents.

20.1.18. Any unauthorized use of the Contractor's Documents or the Contract

Documents shall be at the sole risk of the entity making the unauthorized use.

20.4. Intent of Contract Documents

20.1.19. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of Work by the Contractor.

20.1.20. The Contract Documents are complementary, and what is required by one is binding as if required by all.

20.1.21. The Contractor shall provide all labor materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.

20.1.22. The Drawings govern dimensions, details, and location of the Work.

20.1.23. The Specifications govern the quality of materials and workmanship.

20.1.24. The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

20.1.25. Unless otherwise defined in the Contract Documents, words that have well known technical or construction industry meanings are used within those recognized meanings.

20.5. Use of Electronic Files

20.1.26. GDPM and Contractor reasonably expect that they will provide electronic files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.

20.1.27. GDPM and Contractor acknowledge that the use of electronic files involves risks not generally associated with the use of paper documents. Those risks may include, but not be limited to, alteration (inadvertent or intentional) and deterioration, both of which may not be apparent through casual observation.

20.1.28. In the event of a discrepancy between information contained in a paper version of a document and the electronic file of that document, the paper will govern.

20.1.29. Use of electronic files does not relieve the Contractor of its responsibility for the preparation, completeness, or accuracy of the Contractor's Documents.

20.6. Order of Precedence

20.1.30. In the event of any inconsistency or conflict within any of the Contract Documents, the Contractor shall provide the better quality of Work and comply with the stricter requirement.

20.1.31. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation applies to GDPM and does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order.

20.1.31.1. In the event of such a conflict, applicable federal law, regulation, and Executive

Order shall prevail.

21 ARTICLE XXI: MISCELLANEOUS

21.1. ***Assignment:*** The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from GDPM under the contract may be assigned to a bank, trust company, or other financial institution.

21.1.1. Such assignments of claims shall only be made with the written concurrence of GDPM.

21.1.2. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by GDPM.

21.1.3. *Assignment of Anti-trust Claims:* By signing the Agreement, the Contractor assigns, conveys and transfers to GDPM any right, title, and interest to any claims or causes of action it may have or acquire under state or federal antitrust laws relating to any goods, products, or services purchased, procured, or rendered to GDPM pursuant to the Contract.

21.1.4. GDPM and Contractor each bind themselves, their successors, assigns and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to the Contract.

21.2. ***Contractor Performance Evaluation:*** GDPM may evaluate the Contractor's Performance at any time including without limitation during the progress of the Work, at the completion of a phase of the Project, and/or completion of the Project.

21.2.1. GDPM shall retain the evaluation.

21.2.2. The Contractor may request a copy of the completed evaluation(s).

21.2.3. If the Contractor wishes to comment or take exception to any rating or remark, the Contractor must send a response in writing to GDPM within 30 days of Contract Completion and/or Termination.

21.2.4. GDPM may use the evaluation(s) in determining the responsibility of the Contractor for award of future contracts.

21.2.5. Poor evaluations may lead to a determination that Contractor is not responsible and therefore ineligible for award of future contracts for a period of not less than one year.

21.2.6. GDPM may request information from the Contractor for use in evaluating the A/E's performance. If information is requested, the Contractor shall comply in a timely and responsive manner.

21.2.7. If a breach of the Contract is committed by the Contractor or is attributable to a Subcontractor, that breach will be used in the responsibility analysis of the Contractor and Subcontractor (where applicable) for future contracts or subcontracts for a period of 5 years

after the date of the breach unless said breach results in Contractor being placed on debarment list, then for the period provided therein.

21.3. ***Prohibition against Liens:*** The Contractor is prohibited from placing a lien on GDPM's property. This prohibition shall apply to all subcontractors at any tier and all material suppliers.

21.4. ***Conflict of Interest***

21.4.1. Interest of Members of Congress: No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

21.4.2. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees: No member, officer, or employee of GDPM, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which GDPM was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

21.5. Limitation on Payments Made to Influence Certain Federal Financial Transactions

21.5.1. The Contractor agrees to comply with Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions:

21.5.1.1. The awarding of any Federal contract;

21.5.1.2. The making of any Federal grant;

21.5.1.3. The making of any Federal loan;

21.5.1.4. The entering into of any cooperative agreement; or

21.5.1.5. The modification of any Federal Contract, grant, loan, or cooperative agreement.

21.5.2. The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

21.6. ***Procurement of Recovered Materials:*** In accordance with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) 40 CFR that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

21.6.1. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

21.6.2. This provision *Procurement of Recovered Materials* shall apply to items purchased under this contract where:

21.6.2.1. The Contractor purchases in excess of $10,000 of the item under this contract; or

21.6.2.2. During the preceding: (1) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (2) purchased a total of in excess of $10,000 of the item both under and outside that contract.

21.7. ***Royalties and Patents:*** The Contractor shall pay all royalties and license fees and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any design, inventions, process, product, or device that is the subject of patent rights or copyrights held by others.

21.7.1. Contractor shall defend all suits or claims for infringement of any patent rights or copyrights and shall save GDPM harmless from loss on account thereof; except that GDPM shall be responsible for any such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement.

21.7.2. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent or copyright, the Contractor shall promptly notify the Contracting Officer.

21.7.2.1. Failure to give such notice shall make the Contractor responsible for resultant loss.

21.8. ***Contract Period:*** The Contractor shall complete all Work required within the required number of days of the effective date of the contract as set forth in the solicitation, supplemental terms, or within the time schedule established in the notice to proceed issued by GDPM.

21.9. ***Other Contracts:*** GDPM may undertake or award other contracts for additional work at or near the site of the work under this contract.

21.9.1. The Contractor shall fully cooperate with the other contractors and with GDPM employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by GDPM.

21.9.2. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by GDPM employees.

21.10. ***Drug-Free Workplace:*** Each contractor shall be enrolled in and in good standing and shall require all subcontractors with whom the Contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in the Revised Code prior to a subcontractor providing labor at the project site of the public improvement.

21.11. ***Energy Efficiency and Sustainability Requirements:*** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act for the State in which the work under the contract is performed.

21.11.1. If the Project is designed and constructed under the Leadership in Energy and Environmental Design ("LEED") Rating System developed by the U.S. Green Building

Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable designed rating system criteria for verification by the Green Building Certification Institute or other third party in accordance with the Contract Documents.

21.12. ***Clean Air and Water:*** The contactor shall comply with the Clean Air Act, as amended 42 USC, the Federal Water Pollution Control Water Act, as amended 33 U.S.C., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

21.13. ***Public Relations:*** Public relations or publicity about the Project shall be solely within the control of and consent of GDPM.

21.13.1. Contractor shall submit to GDPM all advertising and publicity related material relating to this Contract, including without limitation, information provided in social media, wherein GDPM's name is mentioned or language used from which the connection of GDPM's name may, in GDPM's judgment, be inferred or implied.

21.13.2. Contractor shall not publish or use such advertising and publicity matters without prior express written consent of GDPM.

21.14. ***Governing Law:*** This Contract shall be governed and construed exclusively by its terms and by the laws of the State of Ohio and any suit filed to enforce any term of this Contract shall be filed only in a court of competent jurisdiction in Montgomery County, Ohio. The parties to this Contract shall comply with Applicable Law.

21.15. ***Written Notice:*** Notice under the Contract Documents shall be validly given if delivered personally to a member of the organization for whom the notice is intended.

21.16. ~~***Taxes:***~~ T 21.16. Owner Tax-Exempt Status: GDPM is exempt from Ohio sales and use tax, including pursuant to applicable provisions of the Ohio Revised Code and Ohio Administrative Code. The Contractor acknowledges receipt of a valid Ohio Construction Contract Exemption Certificate (“STEC CC”) and agrees to strictly comply with all requirements necessary to preserve the Owner’s exemption under Ohio law, including but not limited to Ohio Administrative Code 5703-9-14. Taxes: Parties acknowledge that GDPM is a tax exempt entity and Contractor must use tax exemption status for all purchases made for the Project in which tax exemption is permitted under law. The Contractor shall ensure that all materials incorporated into the Project are purchased using such exemption and that no sales or use tax is paid where a valid exemption applies.

21.16.1. Certificate Handling and Flow-Down. The Contractor shall:

21.16.1.1 Utilize the Owner-provided exemption certificate for all qualifying purchases;

21.16.1.2 Provide properly executed copies of such certificate to all subcontractors and suppliers; and

21.16.1.3 Ensure that each subcontractor and supplier complies with Ohio exemption certificate requirements;

21.17. 21.16.1.4. It is the sole responsibility of the Contractor to obtain and maintain evidence of GDPM’s tax exemption status.

21.18. Failure to properly utilize exemption certificates shall constitute a material breach of this Contract.

21.19. 21.16.2 No Owner Responsibility for Improper Tax Payments: The Contract Price shall exclude all sales and use taxes from which GDPM is exempt. GDPM shall have no obligation to pay, reimburse, or compensate the Contractor for any sales or use taxes incurred due to the Contractor's or its subcontractors' failure to properly apply the Owner's tax-exempt status under Ohio law.

21.20. 21.16.3 Refund and Credit Obligation: If sales or use taxes are paid in connection with the Work for which the GDPM is exempt, whether discovered before or after Substantial Completion or Final Payment, the Contractor shall:

21.21. 21.16.3.1. promptly pursue refunds or credits from the Ohio Department of Taxation, vendors, or other applicable parties;

21.22. 21.6.3.2. fully cooperate with GDPM in documenting and substantiating such claims; and

21.23. 21.6.3.3. remit all recovered amounts to the GDPM.

21.24. 21.16.3.4 If such refund or credit is not obtained within a reasonable time, as determined by GDPM, the Contractor shall reimburse GDPM directly for the full amount of such taxes.

21.25. 21.16.4 Post-Completion Enforcement: The Contractor's obligations under this Section shall survive Substantial Completion, Final Completion, and Final Payment. GDPM's failure to identify or object to the improper payment of taxes during the Project shall not constitute a waiver of GDPM's rights to recovery.

21.26. 21.16.5 Prime Contractor Responsibility: The Contractor shall be fully responsible for the compliance of all subcontractors and suppliers with the requirements of this Section. Any failure by a subcontractor or supplier to properly apply GDPM's tax-exempt status shall be deemed the failure of the Contractor.

21.27. 21.16.6 Tax Indemnity: To the fullest extent permitted by Ohio law, the Contractor shall indemnify, defend, and hold harmless GDPM from and against any and all losses, costs, damages, or expenses, including improperly paid sales or use taxes, arising out of or related to:

21.28. the Contractor's failure to comply with Ohio tax exemption requirements; or

21.29. the failure of any subcontractor or supplier to properly implement the GDPM's exemption.

21.30. 21.16.7 Records and Audit Cooperation: The Contractor shall maintain complete and accurate records of all purchases made under the GDPM's exemption, including copies of exemption certificates provided to vendors and subcontractors. Such records shall be made available to the GDPM upon request and shall be retained for a minimum of four (4) years or longer if required by Ohio law.

21.31. ***Computing Time:*** When the Contract Documents refer to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday or Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next business day.

21.31.1. Except as excluded, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays below.

21.31.2. The standard workdays for the Work are Monday through Friday, excluding legal holidays.

21.31.3. The Legal Holidays are as follows:

- New Year's Day
- Martin Luther King Jr. Day

- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Juneteenth
- Veterans Day
- Thanksgiving Day
- Christmas Day

21.32. ***Time is of the Essence:*** All time limits set forth in the Contract Documents are of the essence.

21.32.1. By signing this Contract, Contractor acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

21.32.2. By Signing the Construction Schedule, the Contractor acknowledges that the specified milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.

21.32.3. The Notice to Proceed Establishes the date for commencement of the Work.

21.32.4. The Contractor acknowledges that it may be subject to interference, disruption,

hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Time, unless otherwise required by law.

21.33. ***Extent of Contract:*** The Contract Documents represent the entire and integrated agreement between GDPM and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral. This Contract may be executed in any number of counterparts, each of which shall be regarded as original and all of which constitute but one and the same instrument. The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions or sections hereof.

21.34. ***Severability:*** If any provision of this Contract is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Contract will remain enforceable to the fullest extent permitted by law.

21.35. ***Electronic Signature:*** Any party hereto may deliver a copy of its counterpart signature page of any Contract Documents via email, fax, or web-based project management software. Each party shall be entitled to rely upon a scanned or facsimile signature of the other party in such a manner as if such a signature were an original.

21.36. ***No Third Party Interest:*** Except as expressly provided herein, no person or entity, other than GDPM and Contractor, will have any right or interest under the Contract, and the Contract does not create a contractual relationship of any kind between any persons or entities other than GDPM and the Contractor.

21.37. ***No Waiver:*** The failure of GDPM or Contractor to insist on any one or more instances

upon strict performance of any one or more of the provisions of the Contract or to exercise any rights under the Contract or provided by law will not be construed as a waiver or relinquishment of that provision or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

21.38. ***Survival of Obligations:*** All representations, indemnity obligations, warranties, guarantees, and other expressed continuing obligations under the Contract, will survive final payment, completion and acceptance of the Work, and termination or completion of the Contract.

21.39. ***Force Majeure:*** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, and/or insurrections, pandemics and/or epidemics.

21.40. ***Privacy:*** The Contractor agrees to Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act and any Personal information collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure that its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein.

21.40.1. Contractor agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without express written consent of GDPM or otherwise required by law.

21.40.2. Contractor agrees to indemnify and hold harmless GDPM for any damages related to Contractor's unauthorized use of personal information.

21.41. ***Contractor Status:*** It is understood that the Contractor is an independent contractor and is not to be considered an employee of GDPM, or assume any right, privilege or duties of an employee.

21.42. Tariffs, Duties, and Trade-Related Costs.

21.42.1. **Contractor Responsibility for Known and Foreseeable Tariff Costs.** The Contractor represents and warrants that it has reviewed, and has accounted for in its Contract Price, all tariffs, duties, customs, import restrictions, and trade-related costs that were in effect, publicly announced, or reasonably foreseeable as of the date of bid submission (the "**Bid Date**"). The Contractor assumes full responsibility for all such costs, and no change order, equitable adjustment, or increase in the Contract Price shall be available for any tariff or trade-related cost that was in effect or publicly announced on or before the Bid Date.

21.42.2. **Post-Bid Tariff Changes — General Rule.** Except as provided in Section 21.11.3, any increase in the cost of materials, equipment, or labor resulting from tariffs, duties, import restrictions, or other trade regulations enacted, modified, or newly enforced after the Bid Date shall not constitute grounds for a change order, equitable adjustment, or increase in the Contract Price, and all such cost increases shall be borne exclusively by the Contractor.

21.42.3. **Extraordinary Tariff Events.** Notwithstanding Section 21.11.2, the Contractor may seek a written equitable adjustment to the Contract Price in the event of an Extraordinary Tariff Event, subject to all of the following conditions:

- An "**Extraordinary Tariff Event**" means the enactment or enforcement of a new or

substantially modified tariff, duty, or import restriction by the U.S. federal government after the Bid Date that:

  - Was not publicly announced, proposed, or reasonably foreseeable to an experienced contractor as of the Bid Date; AND
  - Directly increases the Contractor's cost of materials, equipment, or fabricated items that are integral to the Work (not overhead or profit); AND
  - Results in a documented, verifiable increase in the cost of the affected materials or equipment that, in the aggregate, exceeds five percent (5%) of the original Contract Price.

- The Contractor must submit a written request for equitable adjustment to GDPM's Contracting Officer within thirty (30) calendar days of the date the Extraordinary Tariff Event first materially impacts the Contractor's costs, or such right is waived.
- Any equitable adjustment shall be limited to the Contractor's documented, actual, direct cost increase attributable to the Extraordinary Tariff Event, net of any offsets, savings, or mitigation measures the Contractor has taken or reasonably could have taken. No adjustment shall be made for home office overhead, profit, escalation, or consequential impacts.
- The Contractor shall make commercially reasonable efforts to mitigate the impact of any Extraordinary Tariff Event, including by sourcing alternative materials or suppliers, and shall document such efforts as part of any request for equitable adjustment.
- GDPM's determination of whether an event qualifies as an Extraordinary Tariff Event and the amount of any equitable adjustment, if granted, shall be final, subject only to the dispute resolution procedures of Article IX.
- In no event shall the aggregate equitable adjustment available to the Contractor under this Section 21.11.3 exceed ten percent (10%) of the original Contract Price.
- **No Adjustment for Tariff Reductions**. If tariff rates applicable to any materials or equipment used in the Work decrease after the Bid Date, GDPM shall be entitled to a corresponding reduction in the Contract Price to the extent such reduction reduces the Contractor's actual costs. The Contractor shall promptly notify GDPM in writing of any material tariff reductions affecting the Work.
- **Documentation**. In connection with any request for equitable adjustment under Section 21.11.3, the Contractor shall provide GDPM with: (a) written notice identifying the specific tariff action; (b) the U.S. Harmonized Tariff Schedule classification and applicable tariff rate before and after the triggering event; (c) certified invoices or quotes demonstrating the price impact; (d) evidence of mitigation efforts; and (e) a detailed calculation of the requested adjustment.

APPENDIX

The following supplemental forms, exhibits, and reference materials are incorporated into this Contract by reference. Where the content of an Appendix item conflicts with the General Terms and Conditions set forth above, the General Terms and Conditions shall control unless the Appendix item expressly states otherwise.

Appendix A: Schedule of Values Form

[Reserved. The Contractor's approved Schedule of Values, in the form required by GDPM, shall be attached here upon Notice of Award.]

Appendix B: Certificate of Insurance Requirements

[Reserved. The Contractor's Certificate of Insurance, naming GDPM as additional insured per Article XIII, shall be attached here.]

Appendix C: Performance and Payment Bond Forms

[Reserved. The Contractor's executed Performance Bond and Payment Bond, per Article XIII, shall be attached here.]

Appendix D: Davis-Bacon Wage Determination

[Reserved. The applicable Davis-Bacon Wage Determination for the locality and trade classifications of the Project, per Article XVI, shall be attached here.]

Appendix E: Section 3 Compliance Forms

[Reserved. Section 3 reporting forms required under Article XVII and 24 CFR Part 75 shall be attached here.]