



Memorandum

APRIL 4, 2024

CONTRACT NO. 1746

MELANCHTON PUMP STATION REPLACEMENT

ADDENDUM NO. 1

All bidders bidding **Contract No. 1746** shall read and take note of this **Addendum No. 1**. The Contract Documents for **Contract No. 1746 – MELANCHTON PUMP STATION REPLACEMENT** are hereby revised and/or clarified as stated below.

Acknowledgement of Contract No. 1746; Addendum No. 1

The Acknowledgement attached to **Addendum No. 1** is to be signed and returned immediately via email to **Kathleen Uniatowski** at contract.clerks@alcosan.org and acknowledged with Bidder's Proposal.

Michael Lichte, P.E.

Director - Regional Conveyance

**ACKNOWLEDGEMENT OF
CONTRACT NO. 1746
MELANCHTON PUMP STATION REPLACEMENT
ADDENDUM NUMBER 1**

FIRM NAME: _____

SIGNATURE: _____

TITLE: _____

DATE: _____

APRIL 4, 2024

CONTRACT NO. 1746

MELANCHTON PUMP STATION REPLACEMENT

ADDENDUM NO. 1

ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA

CONTRACT NO. 1746
MELANCHTON PUMP STATION REPLACEMENT
ADDENDUM 1
April 4, 2024

This Addendum 1 consists of the following attachments:
Attachment A – Revised Article 1 – Bidding Documents
Attachment B – Revised Article 2 – Information for Bidders
Attachment C – Revised Article 3 – General Conditions
Attachment D – Minutes including Attendance List.
Attachment E – Bypass Pumping Exhibit

ATTENTION BIDDERS

The following additions to and modifications of the Procurement Contract Documents will be included in and become part of the Contract for the Allegheny County Sanitary Authority (ALCOSAN) – **CONTRACT 1746 - MELANCHTON PUMP STATION REPLACEMENT**. Bidders are instructed to take the following into account in rendering any Bid for this work.

The Bidder is responsible for verifying that he/she has received and reviewed all of the pages of the Procurement Contract Documents as well as all of the pages and attachments of all addenda. The Bidder shall verify all pages with the table of contents in the Procurement Contract Documents and the first page of all Addenda. Receipt of this Addendum 1 must be noted on the Bid Form. These items modify the portions of the documents specifically noted; all other provisions of the Procurement Contract Documents shall remain in effect.

The question period has been extended to **2:00 PM** prevailing time, on **Thursday, April 18, 2024**. The Submission and Opening of Bid date has been extended to **11:00 AM** prevailing time, on **Friday, April 26, 2024**, as described in this Addendum 1 below and in the included documents.

THIS ADDENDUM 1 SHALL BE FASTENED TO THE PROCUREMENT CONTRACT DOCUMENTS AND SUBMITTED WITH THE BID FOR WORK INCLUDED UNDER THIS CONTRACT.

1. **CHANGES TO THE FRONT END SPECIFICATIONS**

1.1 In BID FORM, Article 1 TOTAL BASE BID, Page 1-3, **MODIFY** Bid Item 7 as such:

Item	Description	Quantity		Unit Price	Total Price
7	Railroad Permits, Reviews, Insurance and Flagging	1	LS	\$	\$

The revised Bid Form is located within replacement **Article 1** documents in **Attachment A** of this Addendum 1.

1.2 In DESCRIPTION OF BID ITEMS, Article 2, Section 2.04, **DELETE**

ITEM NO. 7 – RAILROAD PERMITS AND INSURANCE

Work under this item shall include the furnishing of all fees, labor, equipment and materials to provide for approved railroad permits and insurance required for site work and the design and construction of sheeting or shoring related to railroad requirements, as required by Carload Express, Inc. Guidelines included as **APPENDIX B** of these documents.

ADD

ITEM NO. 7 – RAILROAD PERMITS, REVIEWS, INSURANCE AND FLAGGING

Work under this item shall include the furnishing of all fees, labor, equipment and materials to provide for approved railroad permits, review and approval of shoring plans meeting railroad requirements, insurance and flagging for site work, as required by Carload Express, Inc.; documents and guidelines are included in **APPENDIX B** and other areas of these documents.

The revised Description of Bid Items is contained in replacement **Article 2** documents in **Attachment B** of this Addendum 1.

1.3 In SUBMISSION AND OPENING OF BIDS, Article 2, Section 2.07, **DELETE**

Bids will be received at the office of the Owner until **2:00 PM** prevailing time, on **Thursday, April 11, 2024** at which time said Bids will be publicly opened and read aloud via Microsoft Teams Meeting.

ADD

Bids will be received at the office of the Owner until 11:00 AM prevailing time, on Friday, April 26, 2024 at which time said Bids will be publicly opened and read aloud via Microsoft Teams Meeting.

The revised Submission and Opening of Bids is contained in replacement **Article 2** documents in **Attachment B** of this Addendum 1.

1.4 In Article 3, **DELETE**

Sections 3.38 FIELD SERVICES, FIELD INSPECTIONS AND START-UP TESTING, 3.39 FIELD SERVICE ASSISTANCE/OWNER-FURNISHED EQUIPMENT, 3.40 TRAINING SERVICES AND 3.41 TESTING in their entirety.

ADD

3.38 FIELD SERVICES, FIELD INSPECTIONS AND START-UP TESTING

A. General

As part of the Work of this Contract, the Contractor shall provide (as required) field services at the Owner's facility before, during and after Work construction and/or installation, to inspect and approve the construction and/or installation of the Contractor's Work; to conduct commissioning inspections and start-up operations; to conduct Performance and Acceptance Tests; and to train the Owner's personnel in the proper operation and maintenance of the Work provided under this Contract, as set forth herein. Specific time periods will not be less than that specified in the Contract Documents or recommended by each Component Manufacturer.

The Contractor shall cooperate fully with the Construction Manager and all others involved in the field construction so that it does not delay or interfere with their work.

Field Services, Field Inspections and Start-Up Testing may be more fully described in Article 6.

3.39 FIELD SERVICE ASSISTANCE/OWNER-FURNISHED EQUIPMENT

If the installation of Owner-Furnished Equipment (as further described in Section 3.42C below) is part of the Work of this Contract, it is to be tested, started up and serviced as part of the Work of this Contract.

For those services specified as the responsibility of Owner-Furnished Equipment suppliers in separate contracts with the Owner, the Contractor shall schedule field services in conjunction with the Construction Manager and notify the Owner at least 21 calendar days before the manufacturers' representatives are needed for field inspection and testing of each Owner-Furnished Equipment.

Where the manufacturer's representatives of Owner-Furnished Equipment Manufacturers will provide training, the Contractor shall schedule training sessions in conjunction with the Construction Manager, determine appropriate locations for training, and provide the Owner at least 21 calendar days' advance notice of the training schedule.

The Owner shall assure that Owner-Furnished Equipment suppliers have provided spare parts and special tools and approved operations and maintenance manuals to the site before any field services commence.

3.40 TRAINING SERVICES

The Contractor shall adequately instruct designated employees or representatives of the Owner in the operation, maintenance and care of all Work provided under this Contract. Such training shall be coordinated and administered through the Construction Manager.

During the Acceptance Tests, the Owner's operating personnel will assist in the operation of the item of Work being tested, performing operating adjustments under the direction of the representatives of the Contractor. To that extent, the Owner's personnel will take an active role in the operation of the item of Work being tested, as a part of their training, under the direct supervision of the Contractor's representatives.

A. Responsibility During Tests

The Contractor shall be fully responsible for the operation of the respective Work provided under this Contract during all periods of testing and instruction and will neither have nor make any claim for damage to any item of Work prior to its Final Acceptance.

Training Services may be more fully described in Article 6.

3.41 TESTING

Three (3) types of testing are required for certain equipment and components covered under this Contract: Shop Tests; Acceptance Tests; and Performance Tests. All Tests shall be conducted so that they may be witnessed by representatives of the Owner. It shall be the responsibility of the Contractor to assure that such tests are performed and shall submit the written test reports and certificates to the Owner summarizing the results of all tests and indicating satisfactory completion of all required tests. The reports and certificates for Shop Tests shall be submitted to the Owner as soon as possible after shipment of the equipment and components to the Owner's facility, unless they can be submitted prior to shipment. In all cases such reports and certificates shall be submitted prior to Acceptance Testing on site.

The various tests and obligations of the Contractor during testing are more specifically described in Article 6.

The Contractor shall note that the design requirements provided in the Contract Documents including the Specifications for each component of work as well as overall performance are considered essential to meeting the minimum requirements of this Contract.

The revised General Conditions are contained in replacement **Article 3** documents in **Attachment C** of this Addendum 1.

2. **PRE-BID MEETING MINUTES AND ATTENDANCE LIST**

- 2.1 The Pre-bid meeting agenda has been updated to reflect actual content from the meeting. It includes questions asked during the meeting with responses and the Attendance List from the meeting.

This document is contained in **Attachment D** of this Addendum 1.

3. **QUESTIONS RECEIVED AND RESPONSES**

1. Question: In regard to the bypass pumping, the specs give specifications on the flow capacity, distance, and also note in the drawings that the pumping is to be discharged to a "sanitary discharge manhole", however the location of the bypass pumping system and sanitary discharge manhole is not depicted on the drawings. Can you please confirm the upstream and downstream locations (where we will be plugging, discharging, etc.) for the bypass pumping system?

Answer: Suggested means and methods of temporary bypass:

1. *It is recommended to make modifications to the existing former ejector station first. While modifications are made to the existing former ejector station, Isolate flow immediately downstream of manholes at locations A & B. Provide pump suction within the manholes as locations A & B. Submersible pumps capable of specified flow, passage of 3” solids, intended for wastewater, and can be run dry for long periods of time with backup generators may be used in place of diesel pumping units as described within the specification.*
2. *Discharge bypassed flow to the existing discharge manhole immediately downstream of the ejector station shown as “DISCHARGE LOCATION” on Figure 1.*
3. *After modifications have been made to the existing former ejector station, it is recommended that temporary bypass pumping draw suction from Location C. This will allow for high stormwater combined flows to be conveyed to existing 18” overflow.*

Figure 1, depicting suction and discharge points described above is contained in Attachment E of this Addendum 1.

**ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA**

**CONTRACT NO. 1746
SEWER IMPROVEMENT CONTRACT 2024**

**ADDENDUM 1
April 4, 2024**

Attachment A – Revised Article 1 – Bidding Documents

**ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA**

**CONTRACT NO. 1746
SEWER IMPROVEMENT CONTRACT 2024**

**ADDENDUM 1
April 4, 2024**

Attachment B – Revised Article 2 – Information for Bidders

ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA

CONTRACT NO. 1746
SEWER IMPROVEMENT CONTRACT 2024

ADDENDUM 1
April 4, 2024

Attachment C – Revised Article 3 – General Conditions

**ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA**

**CONTRACT NO. 1746
SEWER IMPROVEMENT CONTRACT 2024**

**ADDENDUM 1
April 4, 2024**

Attachment D – Pre-Bid Meeting Minutes and Attendance List

**ALLEGHENY COUNTY SANITARY AUTHORITY
PITTSBURGH, PENNSYLVANIA**

**CONTRACT NO. 1746
SEWER IMPROVEMENT CONTRACT 2024**

**ADDENDUM 1
April 4, 2024**

Attachment E – Bypass Pumping Exhibit

ARTICLE 1
BIDDING DOCUMENTS

**BIDDING DOCUMENTS
ARTICLE 1**

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BID FORM

This Bid is submitted to the Allegheny County Sanitary Authority, herein called the Owner or the Authority, acting through its Chairman, which advertised for sealed bids for **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT** by:

Bidder's Name and Address: _____

Attn.: _____

Telephone Number: _____ Facsimile Number: _____

The undersigned as Bidder, hereinafter referred to as the Contractor or Bidder, declares that the only parties interested in this Bid as Principals are named herein; that this Bid is made without collusion with any other person, firm or corporation; that no officer or agent of the Authority is directly or indirectly interested in this Bid; that it has carefully examined the annexed form on the Contract Agreement and all accompanying Contract Documents and it proposes and agrees that, if its Bid is accepted, it shall contract with the Authority in the language of the Contract Agreement to supply the necessary materials and equipment and to perform the necessary work for **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT** within **ninety (90) calendar days** after receiving from the Authority the Notice of Award of the Contract, and the Notice to Proceed, and that they shall complete the work required by the Contract Documents including the Reference Drawings, and Specifications, in its entirety in the manner and under the conditions required at the prices listed as follows:

NOTE: Prices shall be either in ink or typewritten in both figures and words. In case of a discrepancy between the price written in words and the price written in figures, the price written in words will govern.

Bidder agrees to accept as full payment for the Work proposed based upon the undersigned's own estimate of quantities and costs and including sales, consumer, use and other taxes, except as provided below, and overhead and profit for **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT** Price as shown below.

CONTRACT NO. 1746
MELANCHTON PUMP STATION REPLACEMENT
In Accordance with the Contract Documents
BID ITEMS

ITEM	DESCRIPTION	QUANTITY		UNIT PRICE	TOTAL PRICE
1	Mobilization/Demobilization, Permits Bonds and Insurance (not to exceed 5% of total bid proposal)	1	LS		
2	Demolition of Existing Ejector Station Facilities and Site, Complete	1	LS		
3	Furnish/Install Pump Station Facilities, Complete	1	LS		
4	Furnish/Install Electrical Equipment and Appurtenances, Complete	1	LS		
5	Furnish/Install Site Improvements, Complete	1	LS		
6	Bypass Pumping	1	LS		
7	Railroad Permits, Reviews, Insurance and Flagging	1	LS		
8	Clearing and Grubbing	450	SY		
9	Excavated Soil and Demolition Material Testing, Handling, Storage and Disposal at an Approved Disposal Site	400	TON		
CONTINGENT ITEMS					
C-10	Miscellaneous Work for a Full Time Crew	100	CREW HR		
C-11	Exploratory Excavation and Backfill	25	CY		
C-12	Concrete for Mud Mat as Needed	10	CY		
C-13	Existing Pavement Demolition, Removal and Disposal	100	CY		
C-14	Permanent Bituminous Pavement Replacement (All Types)	40	TON		

TOTAL BASE BID

_____ dollars/cents (words)

\$ _____ figures)

The Authority is exempt from the payment of Commonwealth of Pennsylvania Selective Sales and Use Tax. The Bidder should disregard such tax in calculating its Bid.

It is understood that the Authority reserves the right to waive any informality in or reject any or all Bids and to withhold the awarding of the Contract for **sixty (60) calendar days** after the date set for the opening of the Bids.

If this Bid is accepted by the Authority, and the undersigned shall fail to enter into a formal Contract as aforesaid, within **ten (10) calendar days** (not including Sunday or a legal holiday) from the date of receipt of notice from the Authority to the undersigned, at the address given herewith, that the Contract is ready for signature, then the Authority may procure the required **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT** from others.

The undersigned Bidder agrees that the Contract, if awarded to the Bidder, shall be entered into, under and pursuant to the laws of the Commonwealth of Pennsylvania and shall in all respects be construed in accordance with the laws of said Commonwealth.

Should the Bidder change the wording of the language employed in the Contract Documents including the Bid so as to alter, modify or change the Contract Documents in any degree or manner the Authority may at its discretion reject the Bid or accept it with the changes. The same applies to any letter, printed form or other document inserted in the Contract Documents accompanying the Bid. The successful Bidder shall be legally bound to comply strictly with the provisions of the Authority's Contract Documents exactly as accepted by the Authority.

CORPORATION COMPLETE THIS PAGE

_____ is a corporation organized and existing under the laws of _____ with principal place of business at _____

(Street Address)

(City, State and Zip Code)

and, if a non-Pennsylvania corporation [has] / [has not] been granted a certificate of authority to do business in Pennsylvania, as required by the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, as amended, 15 Pa. C.S.A. " 4101 et seq.

ATTEST:

(Name of Corporation)

(Signature of Certifying Officer)

(Signature of Authorized Officer)

Date: _____, 20__

(Typed name of Authorized Officer)

(AFFIX CORPORATE SEAL)

(The corporation shall make certain that the secretary or assistant secretary certifies the official character and authority of the person or persons executing this Bid for the Contractor according to the form attached hereto. In lieu of such certificate, attach to the Bid copies of the records of the corporation that show the official character and authority of the officer signing. The records shall be duly certified to be true copies by the secretary or assistant secretary under corporate seal.)

**CORPORATION COMPLETE THIS PAGE
CERTIFICATE AS TO CORPORATE OFFICER**

I, _____, certify that I am [secretary] /
[assistant secretary] of the corporation executing the within Bid; that

_____ who signed the said Bid; on behalf of the corporation
was then _____ of said corporation; that I know his
signature and his signature thereto is genuine; and that said Bid was duly signed, sealed and
attested for and in behalf of said corporation by authority of its governing body.

Dated: _____, 20__

(Signature of secretary (or assistant secretary))

(AFFIX CORPORATE SEAL)

PARTNERSHIP COMPLETE THIS PAGE

_____ is a partnership trading under a fictitious or assumed name and [has] / [has not] registered under the Fictitious Names Act of Pennsylvania, namely, the Act of December 16, 1982, P.L. 1309, as amended, 54 Pa. C.S.A. " 301 et seq.

(Fictitious or assumed name)

*(SEAL)
(Partner trading as above)

WITNESS:

*(SEAL)
(Partner trading as above)

(Street Address)

Date: _____, 20__

(City, State and Zip Code)

- * If the executing party is a partnership, the document must be signed in the name of the partnership by at least two general partners, and the names and addresses of all the partners must be listed on the attached Certificate. The partnership must also attach Certificate of registration under the provisions of the Fictitious Names Act.

**PARTNERSHIP COMPLETE THIS PAGE
CERTIFICATE AS TO PARTNERSHIP**

I, a partner of _____, the partnership named as Contractor in the within Bid, certify that the following are the names and addresses of all the partners of said partnership:

(Name)

(Name)

(Address)

(Address)

(City, State and Zip Code)

(City, State and Zip Code)

(Name)

(Name)

(Address)

(Address)

(City, State and Zip Code)

(City, State and Zip Code)

Date: _____, 20__

(Signature of Certifying Partner)

**INDIVIDUAL COMPLETE THIS PAGE
(WHEN THE PRINCIPAL IS AN INDIVIDUAL DOING BUSINESS UNDER
A FIRM NAME)**

_____ is an individual trading under a fictitious or assumed name and [has] / [has not] registered under the Fictitious Names Act of Pennsylvania, namely, the Act of December 16, 1982, P.L. 1309, as amended, 54 Pa. C.S.A. " 301 et seq.

WITNESS:

Date: _____, 20__

(Fictitious or assumed name)

*(SEAL)
(Partner trading as above)

(Street Address)

(City, State and Zip Code)

**(WHEN THE PARTY IS AN INDIVIDUAL DOING BUSINESS IN
HIS/HER INDIVIDUAL NAME)**

WITNESS:

Date: _____, 20__

(Fictitious or assumed name)

*(SEAL)
(Partner trading as above)

(Street Address)

(City, State and Zip Code)

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____
 _____,
 _____, as Principal, and _____, a corporation
 duly organized under the laws of the State of _____, as Surety, are held and firmly
 bound unto the Allegheny County Sanitary Authority, herein called the "Authority", its attorneys,
 successors or assigns in the sum of _____ Dollars
 (\$ _____) lawful money of the United States of America, for payment of which sum
 well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and
 assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted the accompanying Bid for **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT.**

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that **(1)** if the Principal shall not withdraw said Bid within the period specified in the Information for Bidders, and shall within the period therein specified therefor [or, if no time is specified, within **ten (10) calendar days** (not including Sundays or Legal Holidays) after the prescribed forms are presented to it for execution] enter into a written Contract with the Authority in accordance with the Bid as required, for the faithful performance of such Contract and for the payment of labor and materials and execute and deliver to the Authority all bonds and other instruments required to be executed and delivered by the Principal in accordance with the Contract Documents, or **(2)** in the event of the unauthorized withdrawal of said Bid, or the failure to enter into such Contract and give such bonds within the time specified and execute and deliver to the Authority all bonds and other instruments required to be executed and delivered by the Principal in accordance with the Contract Documents, if the Principal shall pay the Authority the difference between the amount specified in said Bid and the amount for which the Authority may procure the required work or supplies or both, if the latter amount be in excess of former together with all other loss, damage or expense suffered by the Authority thereby, then, in either such case, the above obligation shall become void and of no effect; otherwise it shall remain in full force and effect.

Said Surety, for value received, hereby stipulates and agrees that the obligation of said Surety under this Bond shall in no way be impaired or affected by an extension of the time within which said Bid may be accepted and said Surety does hereby waive notice of any such extension.

Said Surety agrees that its liability hereunder shall be absolute regardless of any liability of the Principal hereunder whether by reason of any irregular or unauthorized execution of or failure to execute this Bond or otherwise.

This Bond is entered into, under and pursuant to the laws of the Commonwealth of Pennsylvania and shall in all respects be construed in accordance with the laws of said Commonwealth.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals this _____ day of _____, 20___, the name and corporate seal of each corporate party being hereto affixed, and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

SURETY COMPLETE THIS PAGE

(Corporate Surety)

(Street Address)

ATTEST:

(City, State and Zip Code)

By: _____*
(Signature)

Date: _____, 20__

(Title)

(AFFIX CORPORATE SEAL)

- * The Surety should attach to the Bid Bond a currently certified Power of Attorney which should be dated, sealed and executed by a live (not facsimile) signature showing that the person signing the Bid Bond for the Surety has the current authority to do so.

CORPORATION COMPLETE THIS PAGE

_____ is a corporation organized and existing under the laws of _____ with principal place of business at _____

(Street Address)

(City, State and Zip Code)

and, if a non-Pennsylvania corporation [has] / [has not] been granted a certificate of authority to do business in Pennsylvania, as required by the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, as amended, 15 Pa. C.S.A. " 4101 et seq.

(Name of Corporation)

ATTEST:

(Signature of Authorized Officer)

(Signature of Certifying Officer)

(Typed name of Authorized Officer)

Date: _____, 20__

(AFFIX CORPORATE SEAL)

- * The corporation shall make certain that the secretary or assistant secretary certifies the official character and authority of the person or persons executing this Bid Bond for the Principal according to the form attached hereto. In lieu of such certificate, attach to the Bid Bond copies of the records of the corporation that show the official character and authority of the officer signing. The records shall be duly certified to be true copies by the secretary or assistant secretary under corporate seal.

**CORPORATION COMPLETE THIS PAGE
CERTIFICATE AS TO CORPORATE OFFICER**

I, _____, certify that I am [secretary]/[assistant secretary] of the corporation executing the within Bid Bond; that _____ who signed the said Bid Bond; on behalf of the corporation was then _____ of said corporation; that I know his signature and his signature thereto is genuine; and that said Bid Bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing body.

Dated: _____, 20__

Signature of secretary (or assistant secretary)

(AFFIX CORPORATE SEAL)

PARTNERSHIP COMPLETE THIS PAGE

_____ is a partnership trading under a fictitious or assumed name and [has] / [has not] registered under the Fictitious Names Act of Pennsylvania, namely, the Act of December 16, 1982, P.L. 1309, as amended, 54 Pa. C.S.A. " 301 et seq.

(Fictitious or assumed name)

*(SEAL)
(Partner trading as above)

WITNESS:

*(SEAL)
(Partner trading as above)

Date: _____, 20__

(Street Address)

(City, State and Zip Code)

- * If the executing party is a partnership, the document must be signed in the name of the partnership by at least two general partners, and the names and addresses of all the partners must be listed on the attached Certificate. Principal must also attach Certificate of registration under the provisions of the Fictitious Names Act.

**PARTNERSHIP COMPLETE THIS PAGE
CERTIFICATE AS TO PARTNERSHIP**

I, a partner of _____, the partnership named as Contractor in the within Bid Bond, certify that the following are the names and addresses of all the partners of said partnership:

(Name)

(Name)

(Address)

(Address)

(City, State and Zip Code)

(City, State and Zip Code)

(Name)

(Name)

(Address)

(Address)

(City, State and Zip Code)

(City, State and Zip Code)

Date: _____, 20__

(Signature of Certifying Partner)

**INDIVIDUAL COMPLETE THIS PAGE
(WHEN THE PRINCIPAL IS AN INDIVIDUAL DOING BUSINESS UNDER
A FIRM NAME)**

_____ is an individual trading under a fictitious or assumed name and [has] / [has not] registered under the Fictitious Names Act of Pennsylvania, namely, the Act of December 16, 1982, P.L. 1309, as amended, 54 Pa. C.S.A " 301 et seq.

(Fictitious or assumed name)

WITNESS:

By: _____ (SEAL)
(Individual doing business as above)

(Street Address)

Date: _____, 20__

(City, State and Zip Code)

**(WHEN THE PARTY IS AN INDIVIDUAL DOING BUSINESS IN
HIS/HER INDIVIDUAL NAME)**

(Individual Name)

WITNESS:

By: _____ (SEAL)
(Individual)

(Street Address)

Date: _____, 20__

(City, State and Zip Code)

**CERTIFICATE OF MINORITY AND
WOMEN’S BUSINESS ENTERPRISE PARTICIPATION**

**CONTRACT NO. 1746
MELANCHTON PUMP STATION REPLACEMENT**

The undersigned Bidder certifies that they have read and understand the Information for Bidders Section entitled “Minority and Women’s Business Enterprise and Labor Surplus Area Policy”, and further understand and agree to the minority participation goal applicable to this Contract, and shall strive to expend from **ten to twenty-five percent (10-25%)** of the total cost of the Contract for minority and women’s business enterprise participation.

The Bidder further certifies that they understand that they are required to submit, as part of their Bid, a specific proposal indicating the manner in which it will attempt to comply with this requirement.

Failure of the Bidder to attempt to comply with these conditions or failure to submit with the Bid the proposal described above, or failure to sign and submit this Certificate with the Bid may disqualify the Bid as being non-responsive.

Name of Bidder _____

Signed _____

Title _____

Date _____

ALLEGHENY COUNTY SANITARY AUTHORITY

Failure to complete this form and submit it with bid will be sufficient cause for rejection of bid.

Note: Each sheet must be returned.

SOLICITATION AND COMMITMENT STATEMENT						
MINORITY (MBE) AND FEMALE (WBE) OWNED BUSINESS ENTERPRISES						
CONTRACT NO.	NAME OF BIDDER	ADDRESS		PHONE		
1746						
List below all MBE/WBE's that were solicited - whether or not a commitment was obtained -- Copy this form as necessary						
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	TYPE OF SUBCONTRACT WORK OR MATERIALS	DATE SOLICITED BY PHONE BY MAIL		COMMITMENT MADE YES (IF YES, GIVE DATE) NO	GIVE REASON(S) IF NO COMMITMENT MADE
COMPANY NAME						
ADDRESS			QUOTE RECEIVED YES NO		AMOUNT COMMITTED DOLLAR AMOUNT \$	
CONTACT PERSON PHONE					PERCENT OF TOTAL BID %	
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	TYPE OF SUBCONTRACT WORK OR MATERIALS	DATE SOLICITED BY PHONE BY MAIL		COMMITMENT MADE YES (IF YES, GIVE DATE) NO	GIVE REASON(S) IF NO COMMITMENT MADE
COMPANY NAME						
ADDRESS			QUOTE RECEIVED YES NO		AMOUNT COMMITTED DOLLAR AMOUNT \$	
CONTACT PERSON PHONE					PERCENT OF TOTAL BID %	
<input type="checkbox"/> MBE	<input type="checkbox"/> WBE	TYPE OF SUBCONTRACT WORK OR MATERIALS	DATE SOLICITED BY PHONE BY MAIL		COMMITMENT MADE YES (IF YES, GIVE DATE) NO	GIVE REASON(S) IF NO COMMITMENT MADE
COMPANY NAME						
ADDRESS			QUOTE RECEIVED YES NO		AMOUNT COMMITTED DOLLAR AMOUNT \$	
CONTACT PERSON PHONE					PERCENT OF TOTAL BID %	

Prepared by: _____ Title: _____ Phone: _____

NOTE: It is recommended that Certification and letters of intent for each MBE/WBE commitment accompany this Solicitation and Commitment Statement.

MBE/WBE SOLICITATION AND COMMITMENT STATEMENT

BIDDER'S FIRM: _____

ADDRESS: _____

TELEPHONE: _____

CONTACT PERSON: _____

PROPOSAL AND BID FOR: _____

LIST BELOW ALL CONTRACTS WITH THE ALLEGHENY COUNTY SANITARY AUTHORITY DURING THE PAST THREE YEARS AND THE MBE AND WBE PARTICIPATION OBTAINED					
CONTRACT TITLE	CONTRACT DATE	AMOUNT	% PARTICIPATION		COMMENTS
			MBE	WBE	

Prepared by: _____

Title: _____

MBE/WBE SOLICITATION AND COMMITMENT STATEMENT

Additional Information

The bidder presents the following as additional and supplemental information to its MBE/WBE Solicitation and Commitment Statement

Prepared by: _____ Title: _____ Phone: _____

Websites that provide certified MBE/WBE companies:

www.dgs.state.pa.us

www.paucp.com

Suzanne Thomas
ALCOSAN DBE Coordinator

(412) 732-8020

NON-COLLUSION AFFIDAVIT

State of _____:

S.S.

County of _____:

I state that I am _____

of _____
(Title)

_____ and that
(Name of Firm)

I am authorized to make this Affidavit on behalf of my firm and its owners, directors and officers. I am the person responsible for the price(s) and the amount of this Bid.

I further state that:

- (1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
- (2) Neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before the bid opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this Bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- (4) My firm's Bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.

(5) _____,
(Name of Firm)

its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows (Either provide an explanation or type N/A if not applicable):

I state that

(Name of Firm)

understands and acknowledges that the above representations are material and important, and will be relied on by:

THE ALLEGHENY COUNTY SANITARY AUTHORITY

in awarding the Contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from:

THE ALLEGHENY COUNTY SANITARY AUTHORITY

of the true facts relating to the submission of bids for this contract.

(Name and Company Position)

SWORN TO AND SUBSCRIBED BEFORE ME

THIS _____ DAY of _____, 20__

(Notary Public)

(My Commission Expires)

**CERTIFICATE OF COMPLIANCE WITH THE
PENNSYLVANIA STEEL PRODUCTS PROCUREMENT ACT**

This Certificate is supplied by _____
("Contractor") to the Allegheny County Sanitary Authority ("ALCOSAN") this __ day of,
_____ 20__.

W I T N E S S E T H :

WHEREAS, Contractor wishes to contract with ALCOSAN relative to **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT** (the "Contract"); and

WHEREAS, The Pennsylvania Steel Products Procurement Act, 72 P.S. ' 1881 et. seq. ("Steel Procurement Act") requires that if a product contains foreign and United States steel, such product shall be determined to be a United States steel product only if at least **75%** of the cost of the articles, materials, and supplies have been mined, produced or manufactured, as the case may be, in the United States; and

WHEREAS, Contractor has represented to ALCOSAN that any and all products Contractor will supply to ALCOSAN pursuant to the Contract will be United States steel products as defined in Steel Procurement Act and Contractor does and will in all fashion and manner comply with the Steel Procurement Act and the Contract in performance of the Contract.

NOW, THEREFORE, INTENDING TO BE LEGALLY BOUND HEREBY, Contractor does represent and promise to ALCOSAN as follows:

1. The above recitals are binding between the parties and are legally enforceable as if set forth in their entirety herein.
2. Contractor will, pursuant to the Contract, meet the definition of United States steel products as set forth in the Steel Procurement Act and will in all manner and fashion otherwise comply with the Steel Procurement Act and the Contract.
3. Contractor acknowledges that its representations and promises are a material consideration to ALCOSAN with regard to considering Contractor for and possibly awarding the Contract to Contractor.

4. Contractor does hereby promise to indemnify and save harmless the Authority, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys fees resulting from the breach of any representation, covenant or promise contained in this Certificate.

Intending to be legally bound hereby Contractor does hereby supply this Certificate the _____ day of _____, 20__.

ATTEST:

By: _____

Title: _____

Date: _____

CONTRACTOR'S QUALIFICATIONS STATEMENT

Submitted by: _____ (A Corporation)
(A Co-partnership)
(An Individual)
Principal Office: _____

The signatory of this Qualifications Statement guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years has your organization been in business under your present business name?

2. How many years' experience does your organization have in this type of business?

3. On a separate sheet, attached to this document, list the categories of work, by CSI Division Number and Title that your organization will perform on this contract.

4. On a separate sheet, attached to this document, list the categories of work, by CSI Division Number and Title that your organization will sub-contract out on this contract.

5. On a separate sheet, attached to this document, list major construction projects similar in nature to this project that your organization has in progress giving the name of project, owner, architect/engineer, contract amount, percent complete, scheduled completion date, and the percentage of the total cost of the work that your organization is performing.

6. On a separate sheet, attached to this document, list major construction projects similar in nature to this project that your organization has completed in the past five (5) years, giving the name of project, owner, architect/engineer, contract amount, percent complete, scheduled completion date, and the percentage of the total cost of the work that your organization is performing.

7. On a separate sheet, attached to this document, list the construction experience and current commitments of the key individuals of your organization.

8. On a separate sheet, attached to this document, describe any equipment that your firm has to perform manhole and sewer work.

9. If the answer is "yes" to any of the following three questions, please attach details.

a. Has your organization ever failed to complete any work awarded to it? _____

- b. Are there any judgements, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers? _____
 - c. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last **five (5) years**? _____
10. Attach a financial statement, preferably audited, including your organization’s latest balance sheet and income statement showing the following items:
- Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses)
 - Net Fixed Assets
 - Other Assets
 - Current liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries, and accrued payroll taxes)
 - Other liabilities (e.g., capital, capital stock, authorized and outstanding shares par values, earned surplus, and retained earnings)
 - Name and address of firm preparing attached financial statement and date thereof.
11. Is the attached financial statement for the identical organization named on page one? _____. If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary)

Dated: _____

Name of Organization: _____

By: _____

Title: _____

_____ being duly sworn deposes and says that the information herein is true and sufficiently complete so as not to be misleading.

Subscribed and sworn before me this date: _____

Notary Public: _____

My Commission Expires: _____

ARTICLE 2
INFORMATION FOR BIDDERS

**ARTICLE 2
INFORMATION FOR BIDDERS**

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2.01 DEFINED TERMS

The terms used in this Information for Bidders have the meanings assigned to them in **Article 3**, General Contract Conditions (the "General Conditions").

Certain additional terms used in the Bidding Documents have the meanings indicated below which are applicable to both the singular and plural thereof.

- A. APPARENT LOW BIDDER is the responsible, responsive bidder whose bid as offered in the bid form represents the lowest total as determined by the Base Bid.
- B. BASE BID is the total of the Bid for the Lump Sum Work, plus the amount for any Unit Price Work if applicable. No consideration will be given to additive or deductive alternates or other credits in determining the Base Bid.
- C. BID refers to all materials, items and documents included in the Bidder's response to the Owner submitted pursuant to the Contract Documents.
- D. BIDDER is one who submits a Bid to the Owner as distinct from a sub-bidder, who submits a Bid to a Bidder.
- E. CONSENT DECREE is the legal Consent Decree as approved by ALCOSAN, United States Environmental Protection Agency (EPA), Commonwealth of Pennsylvania Department of Environmental Protection (PaDEP), and the Allegheny County Health Department and entered on January 23, 2008.
- F. SUCCESSFUL BIDDER is the lowest, responsible and responsive Bidder to whom the Owner (on the basis of the Owner's evaluation as hereinafter provided) makes an award.

2.02 GENERAL

The information contained in this **Article 2** of the Contract Documents describes the proper form and method for submitting Bids and the accompanying security to the Allegheny County Sanitary Authority (hereinafter referred to as the "Owner") and provides certain general information regarding the award of the Contract.

Certain provisions throughout this Article may reference certain consultants retained by the Owner such as the Construction Manager, the Consulting Engineer or Final Design Consultant and the Engineering Program Manager and to certain of their duties and responsibilities. If any or all of the above-mentioned consultants are not retained for this Project, their duties and responsibilities shall, unless otherwise specified, be retained by the Director of Regional Conveyance ("Engineer") or the Engineer's written designee.

It is a condition to the Owner's evaluation of the Bid and possible award of the Contract that the Bidder carefully examines all of the Contract Documents and completely satisfies itself as to the nature and location of the Work and all Job Site

conditions that may affect performance of the Work. Submission of the Bid by the Bidder is a representation by the Bidder that it has satisfied itself with respect to the foregoing.

Unless all Bids are rejected, and except as otherwise provided by law, award will be made to the lowest responsive and responsible Bidder. The Owner reserves the right to award by item or on a total Lump Sum Price basis, whichever is deemed most advantageous to the Owner. In cases of discrepancies in prices, the unit price will be binding. In any discrepancy between words and figures, the words will take precedence. For Lump Sum Bids which include an itemized breakdown, the low Bid will be based on the stated Lump Sum Price and the Owner is not required to consider the total value of the itemized breakdown.

The Contract Documents shall be interpreted, construed and enforced in accordance with all applicable laws and regulations of the Commonwealth of Pennsylvania.

2.03 LOCATION AND DESCRIPTION OF WORK

The Work to be done as specified here in **CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT**, (referred to as the "Work") occurs at the Melanchton Ejector Station, and the work is more fully described in the Contract Documents. The work specifically includes mobilization/demobilization, bypass pumping, demolishing of existing ejector station facilities, installation of new pump station facilities, meter vault, permanent site access, fencing and gating, new connections and site restoration.

2.04 DESCRIPTION OF BID ITEMS

The following is a general description of the tasks to be completed under this Contract.

All perspective bidders are advised to make any investigation necessary to be thoroughly satisfied of the existing conditions. The Contractor is advised that access conditions are challenging, and that he/she needs to be prepared for weather and other operational impacts when conducting this work. The Contractor should fully evaluate the information in the appendices, and conduct site visits, to be satisfied with the existing site conditions and challenges.

Furthermore, the successful bidder will be responsible for providing the means necessary to access the sites to accommodate the ALCOSAN operations and other representatives at no additional cost to the Owner.

ITEM NO. 1 – MOBILIZATION/DEMobilIZATION, PERMITS, BONDS AND INSURANCE

Work under this item shall include all labor, materials, equipment, permits, bonds, and insurance necessary to mobilize/demobilize. No additional payment under this item will be made for any short-term mobilizing-demobilizing of equipment and materials.

No additional payment will be made if the CONTRACTOR, for whatever reason, mobilizes/demobilizes more than once.

Payment will be pro-rated according to percentage of contract completed (not to exceed **five percent (5%)** of the total bid proposal).

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 2 – DEMOLITION OF EXISTING EJECTOR STATION FACILITIES AND SITE, COMPLETE

Work under this item shall include the furnishing of all labor, equipment and materials to conduct demolition of the existing ejector station piping, valves, structures, fencing, existing electrical service and equipment, etc. as depicted on the design drawings. This item shall include removing debris necessary to facilitate proposed work, and transportation and disposal at an approved site for demolished materials.

Demolition shall include, but not limited to, removal of buried structures, piping, and conduit requiring removal for the installation of the replacement pump station. All excavation, sheeting, shoring, and bracing required for the completion of this project is included in this item. Items that require removal and are not depicted on the Contract Drawings shall be incidental to this item.

The contractor may elect to remove portions of the existing fence along the west side of the site to facilitate proposed work. The removal of fencing will be incidental to this item.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 3 – FURNISH/INSTALL PUMP STATION FACILITIES, COMPLETE

Work under this item shall include the furnishing of all labor, equipment and materials to construct a duplex sewage pump station, meter vault and supporting non-electrical systems in accordance with the Drawings and Specifications.

Work under this item shall include, but not limited to, dewatering, approved aggregate backfill, underground vaults and wet well, underground piping including force main connection, process piping, valves, manhole and trash basket, pumping units, davit crane, wet well access, level control sensors, flow meter, measurement verification, testing, and start-up of all pumps and ancillary equipment required for a complete pump station installation in accordance with the Drawings and Specifications.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 4 – FURNISH/INSTALL ELECTRICAL EQUIPMENT AND APPURTENANCES, COMPLETE

Work under this item shall include the furnishing of all labor, equipment and materials to construct Electrical Equipment and Appurtenances in accordance with the Drawings and Specifications.

Work under this item shall include, but not limited to, service connection from meter, underground conduit and cable, automatic transfer switch, disconnect switches, permanent emergency backup generator, panel boards, lighting, control panels, concrete pads supporting electrical equipment, shelter above electrical panels, etc. accordance with the Drawings and Specifications.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 5 – FURNISH/INSTALL SITE IMPROVEMENTS, COMPLETE

Work under this item shall include the furnishing of all labor, equipment and materials to construct Site Improvements in accordance with the Drawings and Specifications.

Work under this item shall include, but not limited to, erosion and sediment control measures, new fencing, modifications to existing fencing and gate, bollards, gravel access road, restoration to any construction related disturbed areas, etc. accordance with the Drawings and Specifications.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 6 – BYPASS PUMPING

Work under this item shall include the furnishing of all labor, equipment and materials to perform continuous bypass pumping to divert sewage flow around the project site during demolition and construction activities. These flows must be conveyed to the ALCOSAN Interceptor System.

Work under this item shall include, but not limited to, the development of a bypass pumping plan for the project, submission of the plan to ALCOSAN for approval, supplying all required temporary bypass piping, pumps (including one fully operational back up pump on site at all times), temporary connections, and any other necessary components required to complete bypass pumping operations at the project site for completion of the project. Bypass pumping shall remain on-site and functional in accordance with the approved bypass pumping plan until

such time as the proposed pump station work is completed, accepted, and placed into use. Following acceptance of the pump station work, the Contractor shall remove all materials and equipment used during bypass pumping operations and shall restore any disturbed surfaces to as good as or better than the condition that existed prior to commencing the bypass pumping.

The contractor should anticipate pumping of up to 120 gpm at 50 feet of TDH.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 7 – RAILROAD PERMITS, REVIEWS, INSURANCE AND FLAGGING

Work under this item shall include the furnishing of all fees, labor, equipment and materials to provide for approved railroad permits, review and approval of shoring plans meeting railroad requirements, insurance and flagging for site work, as required by Carload Express, Inc.; documents and guidelines are included in **APPENDIX B** and other areas of these documents.

Payment of this item shall be **LUMP SUM** and shall be based on the cumulative percentage of work completed.

ITEM NO. 8 – CLEARING AND GRUBBING

Work under this item shall include furnishing all labor, materials and equipment for clearing and grubbing consisting of the removal of all saplings, brush, trees, stumps, tree roots, ground cover, and old structures or obstructions from the site of the work, which will be required to be removed for access to the planned construction site.

The extents of clearing shall be limited to only what is absolutely necessary to complete the work. The Contractor shall coordinate with the City of Pittsburgh Department of Forestry for tree and shrub removal and replacement as required. All costs for coordinating and obtaining permits to facilitate this work shall be included in this item.

Measurement shall be based on the field dimensions of the cleared/grubbed area, in square yards. Method of payment shall be at the unit price bid **PER SQUARE YARD**.

ITEM NO. 9 – EXCAVATED SOIL AND DEMOLITION MATERIAL TESTING, HANDLING, STORAGE AND DISPOSAL AT AN APPROVED DISPOSAL SITE

Work under this item shall include furnishing all labor, materials, and equipment for collecting required samples, testing excavated soil and other materials, handling, storage and disposal at an approved landfill in accordance with PA

DEP regulations. The Contractor shall be responsible for excavating, stockpiling, sampling, testing, handling, hauling and disposal costs.

Payment shall be at the unit price bid **PER TON**. Measurement will be based on the measurement of material by disposal records.

ITEM NO. C-10 – MISCELLANEOUS WORK FOR A FULL TIME CREW

This item shall cover all expenses involved in having a crew of workers and equipment at a site performing miscellaneous work, not specified by other unit priced items, and as directed by the Owner.

If this item is used for time spent waiting by a crew as a result of actions by and directed by the Owner, the item shall cover all expenses involved in having a crew of workers and equipment at a site prepared to conduct work but unable to work due to circumstances outside of their control. Delays which are usual and a customary part of manhole, pipe and pump station installation will not be paid for under this item and are considered incidental to the work of installing the Work. Measurement for payment shall be based on the actual number of hours defined in this paragraph.

Payment shall be **PER CREW HOUR** for a full crew(s); labor and equipment cost for work and/or time spent onsite which is not defined by any other contract unit prices. A full crew is defined to consist of: foreman, dump truck with operator, excavator with operator, two laborers, plus support work truck and hand tools.

ITEM NO. C-11 – EXPLORATORY EXCAVATION AND BACKFILL

Work under this item shall include furnishing all labor, materials and equipment to perform exploratory excavation and backfill required at preliminary test pit locations and any other locations directed in the field by the DIRECTOR, including existing utilities in need of relocation by others. This shall include all sheeting, bracing and shoring, unclassified excavation, disposal of excavated material, dewatering, erosion and sedimentation controls, dye testing, temporary sewer repair, aggregate backfill material, removal of shoring and placement and compaction of approved earth or aggregate backfill material as directed.

Assume all excavated material that requires disposal to be disposed as residual fill.

Payment shall be at the unit price bid **PER CUBIC YARD**. Measurement shall be based on the field dimensions of excavated test pit areas.

ITEM NO. C-12 – CONCRETE FOR MUD MAT AS NEEDED

This item shall include all labor, equipment and materials to place a Concrete Mud Mat, as needed under new structures at depth due to ground and water conditions. This work includes all excavation, reinforcing steel, concrete placing and forming, providing, placing and compacting aggregate, satisfactory disposal of unsuitable material, dewatering and other incidental items required to complete this item of work.

Payment shall be **PER CUBIC YARD**. Measurement is based on the actual volume of width by length by depth placed below the design depth shown on plans.

ITEM NO. C-13 – EXISTING PAVEMENT DEMOLITION, REMOVAL AND DISPOSAL

Work under this item shall include furnishing all labor, equipment, and material necessary to sawcut, mill and/or demolish, clean milled/demolished pavement section and dispose of paved areas waste material as directed. This item applies to streets, driveways, parking areas, sidewalks and curbs, and is to extend through the full depth (up to 18 inches) of the paving section to include the base material.

Work shall also include installing and maintaining traffic worthy temporary plating and asphalt paving, plus replacement or repair of damaged curb, covers, grates, frames, and boxes as directed.

Measurement shall be based on the square yards of paving area removed. Payment shall be based on the unit price bid **PER SQUARE YARD**.

ITEM NO. C-14 – PERMANENT BITUMINOUS PAVEMENT REPLACEMENT (ALL TYPES)

Work under this item shall include providing and installing Approved Permanent Asphalt Courses (Base course, leveling, binder, wearing, Superpave) as required by the applicable municipality or PENNDOT to match the existing pavement when required to restore pavement areas. All permanent bituminous material shall be supplied by the Contractor any supplier shall be an approved supplier to the municipality or PENNDOT.

Work under this item shall also include tack coat and sealing materials. Work also includes maintenance of permanent paving for **30 calendar days** after restoration takes place. The Contractor shall furnish his own equipment and labor to haul and place all materials. Duplicate load slips of bituminous material must be provided for each truck load and submitted to the Owner's field representative.

Measurement for payment of this item shall be in tons based on the unit weight of asphaltic material, the length and width of the pavement replaced, and the

existing pavement thickness. The work shall include matching all pavement replacement to existing grade. Joint material and traffic zone paint to match existing are incidental to this item.

Payment shall be based on the unit price bid **PER TON**.

2.05 BYPASS PUMPING

The CONTRACTOR will be required to bypass pump during the entire duration of the project.

- A. The contractor shall supply the pumps, conduits, and other equipment necessary to divert the flow of sewage around the pump station in which work is to be performed. The bypass system shall be of sufficient capacity to be able to handle the full capacity of the pump station. The contractor will be responsible for furnishing all necessary labor and supervision to set up and operate the bypassing system 24 hours a day, 7 days a week during the contract until the pump station is fully operational. A bypass pumping plan will be required as a submittal.

When flow in a sewer line is bypass pumped, sufficient precautions shall be taken by the contractor to protect the sewer lines from damage that might result from sewer surcharging. Further, precautions must be taken to ensure that flow control operations do not cause flooding or damage to public or private property being served by the sewers involved. In no case shall bypass pumping result in either a direct or indirect discharge from the sewer.

2.06 DEBRIS DISPOSAL

Grit, sludge, or other sewer debris from the work shall be disposed of at the following locations, or other locations approved by Owner:

- A. Republic Services (formerly Allied Waste), Route 980, 11 Boggs Road, Imperial PA 15126. Contact for the Imperial Landfill is Ms. Bernie Wilson at 724-695-4422. ALCOSAN's grit profile number is 5083Y24767.
- B. Waste Management Landfills. Contact is Scott Dellinger at 412-475-2808 or sdellinge@wm.com
 - 1. Monroeville Landfill, 600 Thomas Street, Monroeville PA 15146. ALCOSAN's sludge/grit profile number is 1.
 - 2. Kelly Run Landfill, 1500 Hayden Blvd., Elizabeth, PA 15037. ALCOSAN's sludge/grit profile number is 1013.
 - 3. Arden Landfill, Arden Station Road, Washington PA 15301. ALCOSAN's sludge/grit profile number is 30.

4. South Hills Landfill, 3100 Hill Road, Library, PA 15129. ALCOSAN's sludge/grit profile number is 5939.
5. Valley Landfill, Pleasant Valley Road, Irwin, PA 15642. ALCOSAN's sludge/grit profile number is 6336.

Contractors are responsible to set up a separate account for billing, confirm landfill hours of operation, capacity limitations, acceptance of materials to be disposed as well as obtain appropriate waste manifests for hauling with ALCOSAN specific profile numbers listed, as appropriate. It is the Contractor's responsibility to verify landfill sites will accept materials to be disposed, and all testing requirements have been met for disposal prior to hauling. ALCOSAN or its designated agent will sign the contractor's waste manifests. The contractor will forward all paperwork related to disposal to ALCOSAN's designated representative.

2.07

SUBMISSION AND OPENING OF BIDS

Bids shall be submitted on the Bid Form which is attached hereto and shall state the proposed price of the Work (typewritten or in ink), both in words and in figures. Bids must be signed in ink. Bids that are not so priced and signed may be rejected.

The Bid must be submitted intact, sealed and delivered in the envelope which accompanied these Contract Documents, addressed to the Allegheny County Sanitary Authority, Director of Regional Conveyance, 3300 Preble Avenue, Pittsburgh, PA 15233. The Bidder's name and address shall be marked in the upper left-hand corner and the words "**SEALED BID FOR CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT,**" shall be clearly marked in the lower left-hand corner of the sealed envelope. Hand delivered Bids shall be delivered to the Contract Clerks at the Owner's Engineering Department. The envelope shall also bear notation to clearly indicate all Addenda received by its identifying numbers and dates received. It is the responsibility of each Bidder to make sure that its Bid is received by the Owner prior to the date and time set for opening of the Bids. Upon Bidder's failure to comply with the foregoing, the Owner may treat the Bid as "nonresponsive" and return it to the Bidder unopened. Bids will be received at the office of the Owner until **11:00 AM** prevailing time, on **Friday, April 26, 2024** at which time said Bids will be publicly opened and read aloud via Microsoft Teams Meeting.

Bids must be firm. **If a Bid is submitted with conditions or exceptions or not in conformance with the terms and conditions of the Contract Documents, it may be rejected.** The Bid may also be rejected if the product or Work offered by the Bidder is determined by the Owner not to be in substantial conformance with the Contract Documents including the Specifications.

Bidder shall not detach and submit Bid pages separately but shall submit their Bids bound with the complete volume of Contract Documents, including all pages correctly assembled.

The Bid should be properly executed and accompanied by all Bonds, Certificates, Questionnaire Forms and other supporting information and documents, as described in the Bid Form.

2.08

SUPPLEMENTARY INFORMATION PACKAGE

- A. After the Bid opening, upon request of the Owner, the Apparent Low Bidder shall be required to submit, prior to the award of the contract, quadruplicate copies of a Supplementary Information Package as described in this Section. The request shall be made solely for the purposes of the Owner's evaluation and review of all proposed materials, equipment, and items of work and determination of conformance with the Contract Documents.
- B. The Supplementary Information Package shall include all such documentation as may be required elsewhere in the Contract Documents and all data and information deemed appropriate by the Bidder to completely describe its respective offering including but not necessarily limited to the following items:
1. The information requested in the Information for Bidders **Section 2.27** entitled "Qualifications and Experience of Bidders."
 2. List of all Subcontractors, with information also demonstrating compliance with **Section 2.27** and this **Section 2.8**, as applicable.
 3. Qualifications and Licensures of the Engineering Professional conducting design and permitting services.
 4. Letter of Acknowledgement of Responsibility (see **Section 2.27**)
 5. Site Specific Health & Safety Plan
 6. Bypass Pumping:
 - a. All information listed in the specifications specifying the product or system and not listed below.
 - b. Complete description of the equipment, system, process, or function including a list of system components, features, dimensional and weight data on separate components and assemblies, drawings, catalog information and cuts, manufacturer's specifications, including materials.
 - c. Performance data and pump curves.
 - d. Horsepower of all motors supplied.
 - e. Utility requirements for each component such as water, power, fuel, air, etc.

- f. List of parameters monitored, controlled, and alarmed.
 - g. Addresses and phone numbers of nearest service centers and a listing of the manufacturer's or manufacturer's representative service available at these locations.
 - h. Any additional space requirements necessary to provide the minimum clear space around the product or system as shown.
7. A list of all products or equipment that will be supplied by or through the Contractor and incorporated into the Work for which the Owner supplied no specifications, and which have a value or combined value in excess of **Ten Thousand Dollars (\$10,000)** or **Ten percent (10%)** of the Lump Sum Price, whichever is less, shall be included as "Non-Specified Products." This list will include: manufacturer's name; equipment name and model number; and the manufacturer's technical literature, brochures and catalog cuts describing the equipment.
- 8 Any and all other information that may be requested in the Bid Form or under **Article 6**.
- 9 If the Bidder intends to offer an "or equal" product as described below in **Section 2.12** or an "Alternate" as described below in **Section 2.13**, the Bidder must submit two sets of information as specified below for each proposed "or equal" product or Alternate. This information shall be clearly identified by specification section and product or system. Failure to submit the requested information, or any ambiguities found, may be considered appropriate cause for rejection of any proposed "or equal" or Alternate.
- a. All information listed in the specifications specifying the product or system and not listed below.
 - b. Complete description of the equipment, system, process, or function including a list of system components, features, dimensional and weight data on separate components and assemblies, drawings, catalog information and cuts, manufacturer's specifications, including materials.
 - c. All differences between the Specifications relating to the specified product or system and the proposed "or equal" or Alternate shall be clearly stated in writing. The proposed "or equal" or Alternate supplier shall perform a paragraph-by-paragraph comparison between the "or equal" or Alternate and the Specifications. The proposed "or equal" supplier

shall perform a detailed review of the Contract Drawings associated with the proposed "or equal" or Alternate offering. Any difference with respect to any of the Contract Documents shall be clearly identified and completely described. These differences shall be appropriately indexed by Specification Section paragraph/subparagraph and/or Drawing number including applicable pan, section, and/or detail designation.

- d. Performance data and pump curves.
- e. Horsepower of all motors supplied.
- f. Utility requirements for each component such as water, power, fuel, air, etc.
- g. Functional description of any internal instrumentation and control supplied.
- h. List of parameters monitored, controlled, and alarmed.
- i. Addresses and phone numbers of nearest service centers and a listing of the manufacturer or manufacturer's representative service available at these locations.
- j. Addresses and phone numbers for the nearest parts warehouses capable of providing full parts replacement and/or repair services.
- k. A list of three recent installations where a similar product is currently in service; include contact name, telephone number, mailing address, and the names of the engineer, owner, and installation contractor. If three installations do not exist, the list shall include all that do exist.
- l. Detailed information on structural, electrical, mechanical and all other changes or modifications necessary to adapt the product or system to the arrangement shown and/or functions described on the Drawings and in the Specifications.
- m. Any additional space requirements necessary to provide the minimum clear space around the product or system as shown.

Impact on the construction schedule if the "or equal" or

Alternate is accepted.

- C. After receiving all proposed "or equal" submittals, the Owner will review and notify the Apparent Low Bidder as to preliminary approval, or rejection, of any proposed "or equal". Preliminary approval of an "or equal" by the Owner shall not be construed to indicate final approval by the Owner or relieve the Successful Bidder from providing post contract award submittal information.
- D. Upon failure to provide all the supplemental information requested in the Contract Documents, the Owner may (at its discretion) treat the Bid as nonresponsive and the Bid may be rejected for this reason alone.

2.09 SPARE PARTS AND SPECIAL TOOLS

- A. The Owner may purchase spare parts and special tools for the Work furnished under this Contract, sufficient to ensure Work reliability and to expedite repairs when necessary. Price quotations for Bidder or manufacturer recommended spare parts and special tools items shall be submitted as part of the Supplementary Information Package; however, unless required to be included in the **Lump Sum Price** on the Bid Form, the costs for spare parts and special tools shall not be included in the Bid's Lump Sum Price.
- B. Price quotations so submitted for each spare part item and all special tools must be guaranteed and fixed for either one year after the Effective Date of the Contract or until the Contract is complete, whichever occurs later.

2.10 AWARD, CONTRACT EXECUTION AND NOTICE TO PROCEED

The Owner may reject all Bids. The Owner may, solely in its own discretion, award the Contract to the lowest responsive and responsible Bidder within **sixty (60) calendar days** from the date of Bid opening. A time extension may be made by the written mutual consent of the Owner and the Apparent Low Bidder.

All Bids will remain open for acceptance by Owner for **sixty (60) days** after the Bid opening.

In the event a Bidder fails, refuses, or neglects to provide any requested information or documents within the time stated in the Contract Documents, the Owner will have the right to reject its Bid as nonresponsive.

The Notice to Proceed will be made by registered letter mailed to the Awarded Bidder and shall be effective the date of receipt of the mailing. The Owner will endeavor to issue the Notice to Proceed within **ninety (90) calendar days** of the Bid opening and **thirty (30) calendar days** after the Contract is awarded. Any delays caused by the Awarded Bidder's failure to provide any required documents

within the specified time may, at the Owner's option, cause an equivalent number of days to be added to these timeframes. The Awarded Bidder will commence performance immediately upon receipt of the Notice to Proceed. The Awarded Bidder should not order any materials or equipment or make any financial commitments concerning this Contract until receiving the Notice to Proceed. Awarded Bidders that do Work or prepare to do Work prior to receiving the Owner's Notice to Proceed are proceeding at their own risk.

2.11 CONTRACT DOCUMENTS

Contract Documents may be obtained at the office of the Allegheny County Sanitary Authority, 3300 Preble Avenue, Pittsburgh, PA 15233. A fee of **\$100** (delivered by check or money order, no cash will be accepted) shall be required for each set of Contract Documents obtained. If the Owner is requested to mail the Contract Documents, the above fee as well as a check or money order or the like (no cash will be accepted) must be submitted to the Owner in advance to cover delivery charges ("Cost Advance"). In such case, delivery instructions must be included in the request and only the amount received in excess of the **\$100** fee will be applied to delivery charges. If the Cost Advance is insufficient, the Bidder should anticipate that the Owner will not transmit the Contract Documents. No part of the Cost Advance will be refunded.

Submission of a Bid constitutes a representation by the Bidder to the Owner that the Bidder has reviewed the Contract Documents in their entirety and has analyzed all applicable provisions, terms, conditions and sections and related information in preparation of its Bid. This representation is a material inducement for the Owner's consideration of the Bidder for this Contract.

2.12 "OR-EQUAL" ITEMS

Whenever a product is defined in the Contract documents by trade name and catalogue number of a manufacturer or vendor, the term "or-equal," if not inserted therewith, shall be implied. Any reference to a particular manufacturer's product either by trade name or by limited description is solely for the purpose of more clearly indicating the minimum standard of quality desired, except where a "no substitute" is requested. When a "no substitute" is requested, the Owner will consider Bids for the referenced product only. The term "or-equal" is defined as meaning any other make which, in the sole opinion of the Owner, is of such character, quality and performance equivalence as to meet the standard of quality and performance of the products specified and is such that offering the "or-equal" will not, in the Owner's opinion, constitute a change of the Project.

2.13 ALTERNATE ITEMS

Alternates are optional and are not in lieu of furnishing a Base Bid for the actual Work specified. During the Bid review procedure, the Alternate will not be considered in determining the low responsive, responsible Bidder. The review of

the Bids will be based upon the specified Work. The Owner may, but need not, analyze the Alternate for acceptability until after the award of the Contract. The decision of the Owner with regard to the acceptability is final.

2.14

QUESTIONS REGARDING CONTRACT DOCUMENTS/ERRORS

In general, no answer will be given to prospective Bidders in reply to an oral question if the question involves an interpretation of the intent or meaning of the Contract Documents, or the equality or use of products other than those designated or described in the Contract Documents. Any information received by Bidders other than by means of the Contract Documents or by Addenda, as described herein, is given informally, for the information and convenience of the Bidder only and is not guaranteed, is without legal effect and may not be used to bind or otherwise obligate the Owner. The Bidder agrees that such information shall not be used as a basis of, nor will the giving of any such information entitle the Bidder to assert, any claim or demand against the Owner.

To receive consideration, any question, inquiry or request for interpretation or clarification shall be submitted to the Construction Manager in writing, at least **ten (10) calendar days** prior to the advertised date for receipt of Bids. The Owner will review all such questions or requests and may issue Addenda, which will become a part of the Contract Documents, to provide interpretation, clarification or to answer issues or questions so raised which, in the opinion of the Owner, require formal responses. Copies of all Addenda will be delivered or sent, prior to the advertised date for receipt of Bids, to all prospective Bidders known to have received the Contract Documents. Addenda will be delivered by messenger or sent by certified mail, return receipt requested, to prospective Bidders or their designated agents, at the addresses given by them. At its option, the Owner may transmit Addenda by facsimile.

If any alleged errors are noted in the Contract Documents, Bidder should immediately notify, in writing, the Construction Manager and, if confirmed, Addenda will be sent to all prospective Bidders known to have received the Contract Documents.

2.15

REFERENCE INFORMATION

All information given in the Reference Information or in the Contract Documents relating to existing conditions is from the sources presently available to the Owner. All such information is furnished for the information and convenience of Bidders and is not guaranteed. All prospective Bidders agree that as a condition for Owner's review of its Bid that said information shall not be used as a basis for asserting any claims or demands against the Owner. It is understood by all prospective Bidders that they shall be responsible for determining the exact conditions prior to bidding and that they shall not be compensated for what they may feel is extra work because of their failure to discover conditions they could have discovered upon investigation.

2.16 BIDDERS TO INVESTIGATE

Bidders are required to submit their Bids upon the following express conditions which will apply to and be deemed a part of every Bid received:

- A. Bidders must satisfy themselves, by personal examination of the Job Site and by such other means as may be necessary or helpful as to the actual and exact conditions existing, the character and requirements of the Work and the difficulties attendant upon its execution and analyze all laws and regulations which may affect the Work. On written advance request, the Construction Manager will provide each Bidder reasonable access to the Job Site to conduct such explorations and tests (at Bidder's own expense) for submission of a Bid. Bidder shall fill all holes and clean up and restore the Job Site to its former condition upon completion of such explorations.
- B. If any discrepancies should be found between existing conditions and the Contract Documents, prospective Bidders shall report these discrepancies to the Construction Manager for clarification prior to submitting a Bid. Failure of the Bidder to recognize Job Site conditions that affect the Work shall not be considered sufficient cause for an increase in the Contract Price.
- C. The submission of a Bid will constitute an incontrovertible representation of Bidder that Bidder has and will comply with every term, condition and requirement of the Contract Documents and that the Contract Documents are sufficient in scope to convey all terms, conditions and requirements for performance and furnishing of the Work.

2.17 APPROXIMATE ESTIMATE OF QUANTITIES

Any estimate of quantities of Work to be done and Materials to be furnished in these Contract Documents is an approximation and is given only as a basis of calculation upon which to determine the lowest Bidder. The Owner does not assume any responsibility for the quantities. The Bidder specifically agrees not to plead misunderstanding or deception because of such estimates, or of the character of Work or location, or other condition pertaining thereto.

By executing this contract, Contractor agrees that:

- A. Quantities. The quantities given on the contract plans or in the supplemental specifications for the various items of Work are estimates of the amount required to complete this contract, with the exception of certain items designated as contingent items on the contract plans or supplemental specifications for which the extent and location could not be approximately ascertained prior to the commencement and actual progress of the Work and for which nominal quantities are given in unit prices under which Contractor shall do the Work to the extent and in the location ordered, subject to the limitations stipulated in this Section.

- B. Estimates. Contractor is satisfied with the estimates given on the contract plans or on supplemental specifications for determining the prices for which it agrees to do the Work required by this contract. Contractor will not at any time dispute or complain of such estimates nor assert that there was any misunderstanding in regard to the nature of the Work. Contractor further agrees that the extent and location indicated on the contract plans for the several items of the Work are approximate only with the exception of contingent items which are nominal and that it will do the Work under the several items included in this contract in conformity with orders given by the Owner regardless of changes in extent or location, subject however to the limitations and qualifications hereinafter in paragraphs (c) and (d) of this section and that payment made at respective unit prices bid for work performed in conformity therewith shall be full compensation.
- C. Quantity of Contingent Items. Contingent items of Work shall be done when ordered by the Engineer and shall be paid for at the contract unit bid price. The purpose of the contracts items designated in the bid form as “C” is to establish unit prices for work not included in other bid items. The Engineer has the right to order that contingent work be provided in smaller or larger quantities than the estimated quantity indicated in the Bid Form. The Contractor shall not have any right to demand payment for, and will not be paid for, any costs associated with the item, including, but not limited to overhead and profit, due to the fact that the item was not used in the work or was used in smaller or larger quantities than those indicated in the bid form. The Contract Sum shall be subject to adjustment according to final measured quantities and the unit prices in the bid will apply to such final quantities.
- D. Diminished, Extra Work and Omissions. The Owner shall have the right to order extra Work and alterations including but not limited to, alterations in alignment, grade, arrangement, plans, details, quantity and quality of the Work or materials as required by the Contract Documents or to omit any part thereof. All such alterations, extra Work or omissions shall be ordered in writing by the Owner. The Owner, however, need not issue a written order to partially or entirely eliminate contingent items of work.

2.18 HAZARDOUS AND OTHER EXCAVATED MATERIALS

To the best of the Owner’s knowledge, there are no known instances where the work will require contact with any hazardous materials. Should such materials be discovered and tested during the course of work, its removal will be undertaken in accordance with the Change Order provisions in the General Conditions. All other materials will be handled as residual waste.

2.19 ACKNOWLEDGMENT OF ADDENDA

Bidders shall acknowledge receipt of all Addenda and signify same by attaching signed copies of each Addendum to the Contract Documents submitted along with their Bid, and by noting each Addendum received, by its identifying number and date received, on the face of its sealed Bid envelope.

2.20 RISK OF LOSS/BID PRICES

All prices quoted shall include material delivered or obtained by the Bidder to or for the Owner F.O.B. at the Job Site. All transportation charges shall be prepaid, and the risk of injury, damage or loss in transit shall be borne by the Successful Bidder.

Such injury, damage or loss shall not release the Successful Bidder from any contractual obligations imposed in the Contract Documents. For Owner-Furnished Equipment to be installed under this Contract, prices quoted shall include materials, equipment and labor to load, transport and unload such items from the Owner's storage area to the Job Site, including all risks for damage of this equipment from the time these items are turned over to the Successful Awarded Bidder until the completion of the Contract.

2.21 TAX EXEMPTIONS

The Bidders shall take notice of and shall be responsible for any local or State taxes levied and applicable, and the costs for the same shall be included as part of this Bid. Sales to the Owner may be exempt from Pennsylvania Selective Sales and Use Taxes. Certain of the Bidder's tax obligations are described in more detail in **Section 3.20** of the General Conditions entitled, "Sales and Use Tax."

2.22 BID SECURITY/CONTRACT EXECUTION

Bids shall be accompanied by a Certified Check or properly executed Bid Bond on the form included herein, with corporate surety approved to do business in the Commonwealth of Pennsylvania and satisfactory to the Owner and with valid Power of Attorney attached, in the amount of not less than **Ten percent (10%)** of the total Lump Sum Price quoted under the Bid, payable to the Allegheny County Sanitary Authority, as security that the Bidder, if awarded the Contract, shall enter into a written Contract with the Owner, on the form included herein, and supply to the Owner all required Bonds and all other documents, materials or items required to be executed, delivered or supplied by it.

Upon failure on the part of such Bidder to enter into a written Contract with the Owner (and return all required documents to the Owner, including Performance and Payment Bonds and Insurance Certificates, etc., after proper execution) within **ten (10) calendar days** (not including Sundays or Legal Holidays) from the date of mailing of such Contract to it at the address given in its Bid, such defaulting

Bidder and its Surety shall be liable to the Owner for the damages sustained by the Owner by reason of such default. In such event, the Bidder's liability shall not be limited to the amount of the Bid security which accompanied its Bid. If the Bid security were a certified check, such check shall be cashed by the Owner and deposited forthwith to the Owner's account. If the Owner's actual damages are less than the amount deposited, the excess shall be returned to the defaulting Bidder. No allowance for interest or the like shall be paid or payable by the Owner on any Bid security.

The Bid security of any Bidder that the Owner believes may receive the award may be retained by the Owner until the earlier of the tenth calendar day after the Effective Date of the Contract or the sixty-first calendar day after the Bid opening.

2.23

WITHDRAWAL OR MODIFICATION OF BIDS

The attention of Bidders is directed to the fact that, in submitting its Bid, the Bidder agrees that it will not withdraw it within **sixty (60) calendar days** after the actual date of opening of Bids or for **one hundred twenty (120) calendar days** if so permitted under applicable law, or for such longer period as may be agreed to by the Bidder. Upon submission of a proper request to the Owner, in writing, and identification of the one making the request, a Bid may be withdrawn, at any time prior to the designated time for the opening of Bids. Certain Bids may be withdrawn after the Bid opening if in compliance with the Act of January 23, 1974, P.L. 9 No. 4 §1 et seq. 73 P.S. §1601 et seq. entitled, "Public Contracts - Withdrawal of Bids" (for purposes of this Section, the "Act") subject to the limitations and conditions contained therein. Included in the provisions of the Act is a requirement that the Bidder present credible evidence to the Owner **within two (2) working days** after opening the Bids of a clerical mistake, as opposed to a judgment mistake, that was actually due to an unintentional and substantial arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the Bid.

Unless a Bid has been formally withdrawn as provided above, it shall be deemed open for acceptance until the Contract Agreement has been executed by both the Bidder and the Owner or until the Owner manifests that it does not intend to accept the Bid. Notice of acceptance of any one Bid shall not constitute rejection of any other Bid or a manifestation that Owner does not intend to accept any other Bid.

Any Bidder may modify its Bid by telegraphic or facsimile communication at any time prior to the scheduled closing time for receipt of Bids, provided that such telegraphic or facsimile communication is received by the Owner prior to such closing time and, further, provided that a written confirmation of the telegraphic or facsimile communication, over the signature of the Bidder, was postmarked prior to such closing time. Telegraphic or facsimile modifications shall not reveal the Bid price but shall provide the amount(s) to be added to, subtracted from, or other modifications necessary to be made to the prices or terms of the Bid, so that the final prices or terms will not be known to the Owner until the sealed Bid is opened. If the required written confirmation is not received by the Owner within

two (2) calendar days (excluding Sundays or Legal Holidays) from the closing time, the Owner may, at its option, refuse to consider or give legal effect to such telegraphic or facsimile communication.

2.24 MORE THAN ONE BID

If more than one Bid is offered by any one Bidder in its own name or in the name of his agent, partner, or other person, then all but the lowest of such Bids will be rejected.

2.25 ALTERATION OF BIDS AND DOCUMENTS

No alteration, erasure, addition or omission of required information, or any change of the Contract Documents is permitted, except in accordance with the provisions of **Section 2.14** hereof entitled, "Questions Regarding Contract Documents/Errors."

2.26 RIGHT TO REJECT OR ACCEPT BIDS

The Owner reserves the right, which is understood and agreed to by all Bidders, to reject any or all Bids; to waive any informality, nonmaterial change or clarification in any part or provision of the submitted Contract Documents; or to accept any Bid, should the Owner determine that it is in its best interest to do so. The Owner's decision on the qualification of any Bidder or the adequacy, responsiveness, propriety or timeliness of the Bid and/or its decision to reject any or all Bids or to accept any Bid shall be final, binding and uncontestable as to the Bidder.

Any part of the Bid submitted by the Bidder which is unintelligible, or which exhibits any erasure or other manipulation, or is not properly signed or otherwise made up, will, at the discretion of the Owner, be considered nonresponsive and may be rejected for that reason alone.

The Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for those portions of the Work as for which the identity of subcontractors, suppliers, and other persons and organizations is requested in the Contract Documents or made by the Bidder.

2.27 QUALIFICATIONS AND EXPERIENCE OF BIDDERS

Each Bidder must be regularly engaged in, and have at least **ten (10) years** of experience in, the installation of the submersible pump stations and working within railroad right-of-ways. The Contractor shall supply a complete record of experience for the following:

1. Foreman Qualifications – Foreman of the crew shall have at least **five (5) years** of experience in the installation of submersible pump stations and shall be a millwright or other suitably qualified craftsman.

2. Company Qualifications – The Company performing the work must certify that he/she has **not less than ten (10) years** of experience in the installation of submersible pump stations and working within railroad right-of-ways. **The Contractor shall submit a detailed record of experience to the Director within ten days of the bid opening date.**

No award will be made to any Bidder who cannot warrant, and upon request cannot demonstrate, that it possesses the knowledge, experience, skill, capital, financial capacity, charters, licenses, permits, patents and personnel necessary to satisfactorily enable it to prosecute and complete the Work successfully and perform the Work within the Time for Completion as set forth in the Contract Provisions. The Owner's decision or judgment on these matters will be final, conclusive and binding. The Owner may make such investigations as it deems necessary and the Bidder shall furnish to the Owner, under oath if so required, all such information and data for this purpose as the Owner may request.

2.28 MINORITY AND WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA POLICY

It is the policy of the Owner to award a fair share of contracts to minority and women's businesses. The goal of the Authority is that **10 to 25 percent** of all dollars relating to its contracts be awarded to minority or women's business enterprises. The Owner will make every effort to meet that goal in its contracts as well as encourage that goal among its contractors, suppliers and their subcontractors.

The Owner uses affirmative steps to assure that minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services. The Owner encourages its contractors and suppliers to take the same measures when recruiting Subcontractors. Affirmative steps include the following:

- A. Including minority and women's businesses on solicitation lists and contacting them whenever they are potential sources.
- B. Use of area newspapers that serve minority or women's groups for advertising for contracts when work permits. A statement of this policy will be included in the ad text.
- C. Use of minority or women's business associations to contact businesses of this type. A list of these organizations is maintained at the Authority.
- D. Dividing total requirements when economically feasible into small tasks or quantities to permit maximum participation of minority and women's businesses.
- E. Establishing delivery schedules when the requirements of the Work permit that will allow these businesses to participate.

- F. Requiring each party to a sub-agreement to take the affirmative steps listed above.
- G. Procuring goods and services from labor surplus area firms.

Further information concerning this matter may be obtained from the Owner.

2.29 FICTITIOUS NAME REGISTRATION

Where the Bid is made by an individual or individuals doing business under a fictitious name, there shall be attached to the Bid, Certificates from the Office of the Secretary of the Commonwealth and from the Prothonotary's Office showing that each individual or individuals are fully registered under the Fictitious Names Act of the Commonwealth of Pennsylvania 1982, Dec. 16, P.L. 1309, No. 295 § 2, 54 Pa. C.S.A. § 301, et. seq. Additional Certificates, in as many copies as may be required shall be furnished to the Owner by the successful Bidder prior to the execution of the Contract.

2.30 NON-PENNSYLVANIA CORPORATIONS

Attention is directed to the fact that if the Bidder is a non-Pennsylvania corporation, it shall obtain a Certificate of Authority to do business in Pennsylvania, as required by the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177 § 103 amended, 1990, Dec. 19, P.L. 834, No. 198, § 102, 15 Pa. C.S.A. § 4121.

2.31 PRE-BID CONFERENCE

A virtual **Pre-Bid Conference** will be held via **Microsoft Teams Meeting** at **11:00 AM** prevailing time, on **Thursday, March 21, 2024.**

2.32 PATENTS AND PROPRIETARY RIGHTS

Prior to bidding, the Bidder shall acquire through assignment, purchase, license, or other means, all rights required to fully utilize all technology, know-how, trade secrets, inventions, processes, articles, procedures, equipment, apparatus, devices, or any part thereof, and any and all things or matters that are to be used in pursuance of its performance under the terms and conditions of this Contract. Under no circumstances may the Bidder infringe on any patent or any other proprietary rights of third parties in its performance under the terms and conditions of this Contract.

In the event that the Owner shall have any reason to believe that any Bid or performance of this Contract will in any way infringe on any patent or proprietary rights of third parties, the Owner may, at its sole discretion, reject any such Bid or take such other measures that it deems to be in its best interest (including requiring the Bidder to post security). The Bidder will defend, indemnify and save harmless Owner, and all persons acting for or on behalf of Owner, from all claims and liability of any nature or kind, including costs and expenses, arising from or

occasioned by any infringement or alleged infringement of patent or proprietary rights on any technology, know-how, trade secret, invention, process, article, procedure, equipment, apparatus, device, or any part thereof, to be furnished, utilized or installed by said Bidder, or arising from or occasioned by the use or manufacture thereof, including their use by the Owner. Patents and Proprietary Rights are discussed in more detail in the Contract Provisions.

2.33 MATERIALS

Submittals of a Bidder constitutes a representation by the Bidder that all specified materials and equipment will be available in time for the timely completion of this Contract. The Awarded Bidder is responsible for making sure that the progress of the Work is orderly and timely. The Awarded Bidder's duties and responsibilities are discussed in more detail in the General Contract Conditions.

2.34 LIST OF MAJOR SUBCONTRACTORS/SUPPLIERS

The Bidder shall submit for approval a list of all subcontractors employed on the Work, whose work to be performed is anticipated to be in excess of **One Hundred Thousand Dollars (\$100,000.00)**, or **five percent (5%)** of the Lump Sum Price, whichever is greater, with a list of Work they are to perform. Bidders are advised that they must submit a complete list of subcontractors, as requested. Failure to provide this information will, at the Owner's election, make the Bid nonresponsive or constitute a breach of the awarded Contract. The Bidder is also cautioned that should the Contract be awarded to it, it must use the subcontractor named in its list of subcontractors for each of the items listed, unless otherwise directed in writing by the Owner.

2.35 NEW OR REMANUFACTURED EQUIPMENT

Unless otherwise specified in the Contract Documents, all products offered by the Bidder must be new. A “new” product is one which will be used first by the Owner after it is manufactured or produced.

2.36 ALCOSAN CONSENT DECREE

Bidders are advised that **Contract No. 1746** is being completed in accordance with all terms and conditions of the legal Consent Decree as approved by Allegheny County Sanitary Authority (ALCOSAN), United States Environmental Protection Agency (EPA), Commonwealth of Pennsylvania Department of Environmental Protection (PaDEP) and the Allegheny County Health Department. The Bidder, if awarded the Contract, will be acting as an Agent of ALCOSAN and as such will be legally bound to the terms, conditions and provisions as set forth in the Consent Decree.

2.37 SAFETY: OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) STANDARDS

IN THE EXECUTION OF THIS CONTRACT, ALL CONTRACTORS AND SUBCONTRACTORS SHALL COMPLY WITH FEDERAL OCCUPATIONAL SAFETY AND HEALTH STANDARDS AS SET FORTH BY THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (PL 91-596) AND UNDER SECTION 107 OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (PL 91-54).

The Authority will not be liable for any citations received by the Contractor from OSHA. It is the sole responsibility of the Contractor to comply with OSHA Standards.

2.38 CONFINED SPACE ENTRY REQUIREMENTS

Any work within existing manholes, diversion structures, and access shafts will be classified as "Confined Space" and will require complete compliance with current OSHA and ALCOSAN Standards.

2.39 ACCESS TO WORK AREAS

The Contractor is responsible for obtaining all necessary permits and the corresponding fees needed for the Work and the transporting of any equipment or material over private property and public streets. It is further the Contractor's responsibility to obtain the necessary permits and/or permission from the various municipalities, Commonwealth of Pennsylvania, and/or owners of private properties. The cost of construction or improvement of any access route to the project site(s) shall be the responsibility of the Contractor.

At the conclusion of the Work, at the Contractor's expense, the Contractor shall restore all access routes and all other areas disturbed due to the Work, to their original state prior to the Work.

2.40 SPECIAL NOTICE REGARDING MAINTENANCE AND PROTECTION OF TRAFFIC

Streets shall not be unnecessarily obstructed, and the Contractor shall take such measures as may be necessary to keep the street or road open and safe for traffic. The Contractor shall be responsible for obtaining all necessary permits and the fees associated with these permits.

2.41 COMPLIANCE WITH LAWS

The Contractor shall comply with the regulations of all regulatory agencies having jurisdiction including, but not limited to, EPA, OSHA regulations, US Army Corps of Engineers regulations, and the Allegheny County Soil Conservation District regulations. Also, from time to time, the Contractor may be requested to, and shall, provide the Owner with verifications and/or other documents which relate to the Work and/or to attest to and/or verify the accuracy and/or completeness of the Work or documents or submittals provided in regard to the Work.

2.42 ACCESS TO MANHOLES AND DIVERSION STRUCTURES

Where access to the various manholes and diversion structures must be cleared of heavy vegetation, the Contractor shall perform the clearing of pathways to facilitate mobilization of his equipment. Any vegetation or other debris cleared by the Contractor shall be removed and disposed of properly by the Contractor.

2.43 PROPERTY CLEANING

Immediately upon completion of any work, it shall be the Contractor's responsibility to clean the entire area of all debris. All debris is to be disposed of properly.

2.44 CONTRACTOR NOT TO OPERATE EXISTING VALVES AND/OR OTHER EXISTING SYSTEM APPURTENANCES

The Contractor shall schedule, maintain, and coordinate all activities and shall cooperate with the Owner's personnel so that a minimum of interruption results. The Contractor shall not operate existing system valves, sluice gates, controls, or other appurtenances at any time, but when the same is needed to facilitate and accommodate activities, he shall request such operation from the Owner. The Contractor shall provide the Owner with reasonable advance notice for such assistance.

2.45 SPECIAL NOTICE REGARDING WATER USE

All bidders attention is drawn to the fact that the Contractor shall be responsible for all use and obtainment and payment for all permits and payments required for such use in order to acquire water for cleaning and construction purposes on this project. Owner makes no representations regarding the availability of source water or any other utilities required for this project.

2.46 PROJECT LABOR AGREEMENT AND LETTER OF ASSENT

A Project Labor Agreement, which includes a letter of Assent, is included herein.

The Bidder shall, when executing the Contract Agreement, acknowledge that it will abide by the Project Labor Agreement by signing and submitting a Letter of Assent in the format given in Attachment A.

The Contractor shall also require each Subcontractor to execute a copy of the Letter of Assent. The Contractor must be sure that each of its Subcontractors has furnished an executed copy of the Letter of Assent to the CM before the Subcontractor starts work on the Project. The Contractor shall abide by and ensure that each Subcontractor abides by the terms of the Project Labor Agreement.

ARTICLE 3
GENERAL CONTRACT CONDITION

GENERAL CONTRACT CONDITIONS
ARTICLE 3

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3.1 DESCRIPTION OF WORK

A. THE PROJECT

This Article 3, General Contract Conditions ("Contract Provisions") is a part of that certain Contract Agreement (together with these General Conditions and the other Contract Documents, as defined herein, collectively referred to as the "Contract") awarded by the Allegheny County Sanitary Authority (the "Owner") to the Successful Bidder (hereinafter referred to as the "Contractor") for the construction of the Melanchton Pump Station (the "Facility").

B. THE WORK UNDER THIS CONTRACT

The intent and meaning of the Contract Documents is that the Contractor, in order to fulfill its obligations under the Contract, shall provide any and all labor, supervision, materials, supplies, services (including detailed engineering), equipment, tools, transportation, facilities and appurtenances thereto, whether temporary or permanent, and such other items as indicated, required or implied by the Contract Documents and as necessary for a complete, functional and operational grit removal facility located in Rankin Borough, Allegheny County, Pennsylvania (the "Work").

C. SEPARATE CONTRACTS

The Contractor acknowledges that the Owner may bid and award to other contractors (together with the subcontractors of such other contractors collectively referred to hereinafter as "Other Contractors") separate contracts, to provide certain general, civil, mechanical, electrical, instrumentation, controls, heating, ventilating and other construction items, facilities, equipment and/or services in connection with the Project and related to the Work. The Contractor shall cooperate fully with the Owner in providing any and all design and construction information and details relative to the Work, in a timely manner, as necessary for the Owner to prepare the plans and specifications for such separate contracts, if any, or to enable the Owner's Other Contractors to complete the related work required there under (the Contractor and Other Contractors, not including their subcontractors, are sometimes collectively referred to hereinafter as the "Prime Contractors").

D. CONSULTANTS

Certain provisions throughout this document may refer to certain consultants retained by the Owner, including, without limitation, the Construction Manager and the Consulting Engineer(s). If any or all of the above-mentioned consultants are not retained for this Project, their duties and responsibilities shall, unless otherwise specified, remain in the Owner's Director of Regional Conveyance ("Director") or the Director's written designee.

3.2 CONTRACT DOCUMENTS

A. DEFINITION

The term "CONTRACT DOCUMENTS" means the full and collective set of documents which form the Contract, including: Legal Notice; **Article 1**, Bid Form;

Bid Bond; Certificate of M & WBE Participation; Non-Collusion Affidavit; Certificate of Compliance with the Pennsylvania Steel Products Procurement Act; Certification of Safety Procedures Compliance; Contractor's Qualifications Statement; **Article 2**, Information for Bidders, Labor Stabilization Agreement, Letter of Assent, ; **Article 3**, General Contract Conditions; **Article 4**, Contract Agreement; **Article 5**, Performance Bond, Labor and Material Payment Bond, Maintenance Bond, and associated Certificate of Satisfaction and Statements of Surety; **Article 6**, Technical Specifications; **Article 7**, Prevailing Wage Minimum Determination; Appendices, Reference Information, Drawings; all Addenda issued by the Owner prior to the time of opening of Bids, if any; any exceptions, changes, modifications and/or clarifications incorporated into or submitted by the Contractor along with its Bid, provided that each and every such exception, change, modification and/or clarification is specifically accepted by the Owner, in writing, as a part of the award of the Contract; and any duly executed changes, modifications and/or amendments to the Contract made and approved by the Owner's Board of Directors prior to Contract completion and any other form or document described as part of this Contract. The Contract Documents are all made a part of the Contract and supplement each other. It is the intent of the Contract Documents to describe the Work as a functionally complete system. Any work, materials or equipment that may be inferred reasonably from the Contract Documents as being required to produce the intended result, shall be supplied whether or not specifically called for.

B. MODIFICATIONS ONLY IN WRITING

The terms, conditions, drawings and specifications contained in the Contract Documents cannot be waived, altered or modified except by a written Change Order issued in accordance with **Section 3.32** of these General Conditions entitled, "Change Orders."

C. CLARIFICATIONS

If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Construction Manager in writing at once before proceeding with the work affected thereby, and, if appropriate, shall obtain a written interpretation or clarification from the Construction Manager in accordance with **Section 3.31** of these General Conditions entitled, "Requests for Information and Field Instructions."

D. ORDER OF PRECEDENCE

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based upon the following order of precedence, to be followed seriatim with item 1. being consulted first:

1. Change Orders with those of a later date having precedence over those of an earlier date.
2. Addenda, with those of a later date having precedence over those of an earlier date.
3. General Contract Conditions.

4. Remaining Contract Documents (except the Specifications and Drawings).
5. Specifications (specific instructions shall supersede general instructions).
6. Drawings (details supersede plans and elevations; schedules supersede general notes).

If the foregoing order of precedence fails to resolve the conflict or discrepancy, then the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation.

Except as otherwise specifically provided by the Owner in writing, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and **(a)** the provisions of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or **(b)** the provisions of any laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in a violation of any such law or regulation).

3.3 ADDITIONAL DEFINITIONS

Wherever the words defined in this Section, or pronouns used in their stead, occur in the Contract Documents, they shall have the meanings given as follows:

- A. AS-BUILT DRAWINGS refers to drawings that show how the constructed Work was installed or modified in size, arrangement, elevation, position, materials used, or other manner, from that shown on the Contract Documents.
- B. CONSTRUCTION MANAGER means the independent firm retained by the Owner to coordinate and direct activities between the Owner and the Contractor and to assist with the Contract administration and the completion of this Project.
- C. CONSULTING ENGINEER(S), also referred to herein as "Final Design Consultant(s)," means the independent consultant(s) retained by the Owner to participate in the design of the Project.
- D. CONTRACT SCHEDULE refers to a Critical Path Method (CPM) formatted schedule, prepared by the Contractor, coordinated by the Construction Manager and acceptable to the Owner, covering the entire performance of the Work and incorporating such milestone dates as are necessary and appropriate to demonstrate that the Work will be completed in sufficient time to allow the achievement of the milestones set forth in the Project Schedule.
- E. CONTRACT SUM means the total amount payable to the Contractor by the Owner upon satisfactory completion of the Work under this Contract, as the same may be adjusted from time to time pursuant to the Contract Documents.
- F. DEFECTIVE WORK refers to Work that, in the sole discretion of the Owner, is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Final

Acceptance of the Work (unless responsibility for the protection from damage thereof has been assumed in writing by the Owner).

- G. DIRECTOR OF ENGINEER AND CONSTRUCTION (the "Director") means that person holding the position of or acting in the capacity of Director of Engineering and Construction of the Allegheny County Sanitary Authority, acting directly or through agents properly authorized in a writing signed by the Director of Engineering and Construction, such agents acting within the scope of their authorized duties.
- H. DIRECTOR or EXECUTIVE DIRECTOR means that person holding the position of or acting in the capacity of Executive Director of the Allegheny County Sanitary Authority, acting directly or through the Director of Engineering and Construction or through agents properly authorized in a writing signed by the Executive Director or the Director of Engineering and Construction, such agents acting within the scope of their authorized duties.
- I. DRAWINGS means the drawings which give guidance in illustrating the character and scope of the Work to be performed and which have been prepared or approved by the Consulting Engineer and are referred to in the full Contract Documents.
- J. FIELD INSTRUCTION refers to a writing issued by the Engineer through the Construction Manager which is necessary or appropriate to interpret or to resolve any ambiguity or error in the Specifications or Drawings or to make any minor change to the Specifications or Drawings that does not result in a net change in the Contract Sum or Contract Time or the quality of materials or workmanship. Field Instructions may not change or alter the terms and conditions of the Contract.
- K. INSPECTOR means that person of the Allegheny County Sanitary Authority responsible for observing the quality of the work to ensure that it meets the requirements of the Contract Documents.
- L. JOB SITE means the location of the existing Melanchton ejector station at approximately 351 Melanchton Street in the Hazelwood Section of the City of Pittsburgh in an area between Melanchton Street and property owned by the Carload Express Railroad.
- M. PROJECT MANAGER means that person of the Allegheny County Sanitary Authority, named in a writing signed by the Director of Regional Conveyance, holding or acting in the capacity of Project Manager within the scope of particular duties entrusted to such person in writing.
- N. PROJECT SCHEDULE refers to an integrated overall CPM formatted schedule, coordinated by the Construction Manager, which incorporates each Contractor's Contract Schedule.
- O. RECORD DRAWINGS refers to drawings that show how the equipment supplied under this Contract was manufactured. Record Drawings delivered to the Owner shall be certified as Record Drawings by the supplier and signed and, as appropriate under any applicable law and regulation, signed and sealed by a Licensed Professional Engineer.

- P. SCHEDULE OF VALUES refers to the listing of the installed value of the component parts of the Work in sufficient detail to serve as a basis for computing amounts of progress payments during construction.
- Q. SEVERE WEATHER means adverse weather conditions not reasonably anticipated (based on the last five years on a monthly average) which impact the Job Site in such a way as to prevent the performance of any work scheduled or any other work available to be performed in a safe and efficient manner.
- R. SHOP DRAWINGS refers to all drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information submitted by the Contractor to illustrate materials or equipment for all portions of the Work.
- S. SPECIFICATIONS, or Technical Specifications, refers to those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain details thereof. The Specifications are found in **Article 6**.
- T. SUBSTANTIAL COMPLETION means the entire Work has progressed to the point where, in the opinion of the Engineer (as certified in writing by issuance of a Certificate of Substantial Completion), it is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended. In no event shall the Work be certified as substantially complete until at least **ninety percent (90%)** of the Work is completed. The procedure for Certification of Substantial Completion is described in **Section 3.50** hereof entitled "Certification of Substantial Completion." Substantial Completion of this Contract shall be interpreted pursuant to the state law entitled, "Award and Execution of Public Contracts," 73 P.S. 1621 *et seq.*
- U. SUPERINTENDENT refers to the authorized agent appointed by the Contractor on a full-time basis to supervise and coordinate all Job Site activities performed by the Contractor or any subcontractor or supplier employed directly or indirectly by the Contractor.

Any pronouns used in relation to, or in place of, any of the words or combinations of words, herein defined, shall have the same meaning as the words or combinations of words themselves.

Wherever the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used in the Contract Documents, it shall be understood that the directions, requirements, permission, orders, designation or prescription of the Engineer are intended. Similarly, the words "approved," "acceptable," "suitable," "satisfactory," or words of like import shall mean approved by, acceptable to, suitable to, or satisfactory to the Engineer in each case.

3.4 TITLES NOT TO LIMIT TEXT

The titles or headings of the various divisions, sections, parts, paragraphs, or subparagraphs of the Contract Documents are for convenience of reference only and are not intended to

limit, and shall not be construed as in any way limiting, the application of the text.

RIGHTS AND DUTIES OF THE CONTRACTOR

3.5 MEANS AND METHODS/QUALITY OF MATERIALS

The Contractor shall complete the Work to the reasonable satisfaction of the Owner and in accordance with the Contract Documents. The Contractor shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

If requested by the Engineer or Consulting Engineer, through the Construction Manager, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment used in the Work. All materials and equipment shall be of first quality and applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable manufacturer, except as otherwise provided in the Contract Documents.

3.6 RESPONSIBILITY FOR THE WORK

The Contractor represents and warrants by submission of its Bid that it has thoroughly examined and has become familiar with the Contract Documents and determined the nature and location of the Work, the general and local conditions, the availability of labor, materials, supplies, and equipment and all other matters which can in any way affect the Work under this Contract. Failure to make any examination necessary for this determination shall not release the Contractor from the obligations of this Contract or be grounds for any claim based on unforeseen conditions.

The Contractor shall take all responsibility for the Work performed under this Contract. It shall in no way be relieved of its responsibility by any right of the Executive Director, Engineer, the Owner's employees or agents to give permission or orders, or by failure of such to give permission or to issue orders. The Contractor shall be responsible for all loss and damage incurred in transporting the equipment, materials or Work while under the direction or control of the Contractor, to, from or on the Job Site and for all loss and damage to the equipment, materials and/or Work or any part thereof caused by the Contractor, its agents, representatives or employees, any subcontractor, or any person or organization directly or indirectly employed or engaged by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, occurring prior to the Owner's Final Acceptance thereof. Additionally, if the obligations set forth in the Contract and/or the Work, or any portion thereof, is not properly performed or not completed in a timely manner, ALCOSAN may incur various costs, damages, fines and/or penalties, including, but not limited to, costs, damages, fines, and penalties for or arising from the Consent Decree. Accordingly, notwithstanding any other provision in the Contract to the contrary, to the extent that Owner incurs any such costs, damages, fines and/or penalties, as a result of the improper and/or timely performance by the Contractor, the Contractor shall be responsible for and shall reimburse Owner for any such costs, damages, fines and/or penalties.

Owner is hereby authorized to, and may, deduct any monies, loss, costs, damages, fines and/or penalties which it incurs because of the actions, omissions, negligence and/or improper or untimely performance by the Contractor from any monies due or that become due to the Contractor under the Contract, or under any other contract with the Owner, or if such monies are insufficient, the Contractor shall pay to the Owner any deficiencies in such monies within **forty-five (45) days** of the receipt of written notice from the Owner requesting such payment by the Contractor.

3.7 COORDINATION

It shall be the Contractor's responsibility to coordinate all Work furnished under this Contract with the Construction Manager and with the Other Contractors to make sure that all Work performance guarantees are achieved and that the Work is properly constructed, assembled, installed and configured for reliable and continuous operation. The Contractor shall require its subcontractors to review the requirements set forth herein to ensure that the Work and equipment integrated therein will be compatible and properly integrated, constructed, assembled and installed.

The Owner shall allocate the Work and designate the sequence of construction in case of controversy between the Contractor and Other Contractors and/or suppliers. The Contractor shall, at all times, have on site a Superintendent who is fully authorized as its agent. The Superintendent shall be capable of reading and thoroughly understanding the Contract Documents and shall receive and fulfill instructions from the Owner or its authorized representatives.

3.8 COOPERATION BETWEEN CONTRACTORS/DISPUTES OR ACTIONS BETWEEN CONTRACTORS

In the event the Owner contracts with Other Contractors or third parties for work on the Project on or near the Work covered by this Contract, the Contractor shall conduct its work so as not to interfere with or hinder the progress or completion of the work being performed by such Other Contractors. The Contractor shall cooperate with the Other Contractors working on the Project and coordinate its work with that of the Other Contractors.

The Contractor shall be responsible under the Contract to include all considerations, financial and otherwise, resulting from the requirement herein to interface, coordinate, and cooperate with Other Contractors working on the Project, as well as with the Owner and its authorized representatives.

The Contractor shall afford each Other Contractor or third-party performing work on the Project and each utility owner (and the Owner, if the Owner is performing additional work with the Owner's employees) proper and safe access to the Job Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Unless otherwise provided in the Contract Documents, the Contractor shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate and connect with work performed by Other Contractors. The Contractor shall not endanger any work by Other Contractors by cutting, excavating or otherwise altering their work and will only cut or alter their work with the prior written consent, through the Construction Manager, of the Other Contractors whose work will be affected.

If any part of the Contractor's Work depends for proper execution or results upon the work of any Other Contractor, the Contractor shall within **48 hours** of its anticipated start of the Work in a particular area inspect the work of the Other Contractors and report in writing to the Construction Manager any apparent discrepancies, interferences, defects, or delays in such work that render it unsuitable for the proper execution and results of the Contractor's Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Other Contractor's work as fit and proper to receive the Contractor's Work, except as to defects which may develop in the Other Contractor's work after the execution of the Contractor's Work.

The Contractor agrees that all claims, disputes and other matters in question between the Contractor and Other Contractors, which arise out of or are related to this Contract or the breach thereof, shall be settled by agreement or, failing agreement, resolved through arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect, unless the parties to the dispute mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing Arbitration Law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any Court having jurisdiction thereof.

Notice of the demand for arbitration shall be submitted in writing to the Other Contractor(s) and filed with the Pittsburgh Regional Office of the American Arbitration Association, with a copy to the Owner and the Construction Manager. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. Under no circumstances shall the Owner, the Final Design Consultants, the Construction Manager or any of the Owner's other agents or employees be made a party to such claim, dispute or other matter in question.

It is agreed by the parties to this Contract (the Owner as promised and the Contractor as promisor) that the intent of this clause is to benefit the other as an indication of the mutual intent of the Owner and the Contractor that this clause raise such Other Contractors to the status of third-party beneficiaries only as to the terms and conditions of this Contract Section. The Contractor agrees that this Contract Section is provided as a benefit to the Contractor and that it specifically excludes claims against the Owner, the Final Design Consultants, and the Construction Manager for delay or other damages.

3.9 INSURANCE

The terms, conditions and provisions related to insurance and Special Provisions for Protection of Railway Interest are contained in **Exhibit "A"** attached hereto and made a part hereof. It shall be the responsibility of the Contractor to make certain that its subcontractors and suppliers comply with any such insurance requirements relating to them.

3.10 INDEMNIFICATION

The Contractor shall be liable for, and shall protect, indemnify and save harmless the Owner, the Consulting Engineer(s), the Construction Manager, and their officers, members, employees, agents and invitees (hereinafter, the "Indemnified Parties") against and from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by or asserted or imposed against the Indemnified Parties,

or any of them, by reason of any accident, injury (including death) or damage to any person or property, or loss of use, however caused resulting from any act of commission or omission of the Contractor, any subcontractor of the Contractor of any tier, or any person or organization directly or indirectly employed or engaged by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, whether or not caused in part by the active or passive negligence or other fault of any of the Indemnified Parties; provided, however, that the foregoing obligations shall not arise if such liabilities, suits, actions claims, losses, expenses and costs are caused by the sole negligence of any of the Indemnified Parties. Furthermore, the foregoing obligations shall survive the completion of the Work and/or termination of the Contract.

In any and all claims against Indemnified Parties by any employee of the Contractor, any subcontractor, any person or organization directly or indirectly employed or engaged by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the above defense, indemnification and hold harmless obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any such subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, nor shall this defense, indemnification and hold harmless obligation be limited in any way by the amount or type of insurance coverage held by the Owner, the Consulting Engineer, the Construction Manager, or any of their subcontractors.

The Contractor and its subcontractors shall require their insurance carriers, with respect to all insurance policies, to waive all rights of subrogation against the Indemnified Parties; provided, however, that such waiver shall not extend to the Consulting Engineer, the or the Construction Manager, their agents or employees, for liability arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications or (2) the giving of, or the failure to give, directions or instructions by the Consulting Engineer, the or the Construction Manager, their agents or employees provided that any such act or omission is the sole cause of the loss or damage claimed.

3.11 PERMITS

Unless otherwise provided in the Contract Documents or unless otherwise provided by the Engineer in writing, the Contractor shall, prior to beginning Work at the Job Site, obtain and pay for all permits and licenses necessary to complete the Work and shall provide a copy of such to the Construction Manager prior to beginning Work at the Job Site. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Contract.

3.12 NON-DISCLOSURE OF OWNER RELATED INFORMATION

During all times that the Contractor is engaged on behalf of the Owner and at all times subsequent to the date of this Agreement, Contractor acknowledges and agrees that Contractor is prohibited, without prior written consent from the Owner, from displaying or utilizing Owner Related Information on Contractor's public website, in Contractor's marketing materials or in any other form of communication intended for dissemination to third parties. Owner Related Information shall include, but is not limited to, 1)

photographs, drawings or maps of the Owner's facility or the work Contractor performs for the Owner, **2)** documents obtained from or prepared by the Owner or associated in any way with the Contractor's work for the Owner, **3)** photographs or images of the Owner's employees or attendees at Owner's meetings, and/or **4)** written descriptions of the Owner's facility or Contractor's work for the Owner.

3.13 DOCUMENTS, RECORDS AND PAYROLLS

A. Documents

The Contractor shall keep at the Job Site for inspection by the Owner all Contract Documents that reflect changes made during the performance of the Contract. If there is more than one Job Site, the Contractor shall keep complete sets of such Contract Documents at each Job Site.

The Contractor shall prepare and/or maintain all documents required by this Contract in accordance with the Contract Documents and shall deliver such documents to the Construction Manager in the specified form and quantity before final payment is made.

The Contractor shall not be compensated for performing Work or ordering materials shown on construction, shop, and detailed drawings which have been prepared under its Contract until such drawings have been reviewed and accepted in accordance with the procedure established in the Contract Documents.

B. Records

The Owner or any duly authorized representative may inspect and copy the Contractor's records, pertinent books, documents and papers relating to the Project at any time up to **four (4) years** after the day final payment is made. In the event of arbitration, litigation or the settlement of claims arising out of the performance of this Contract or any contracts with vendors, the time period provided in this paragraph shall be extended until any appeal, arbitration, litigation or claim shall have been finally disposed of.

The Contractor shall check all materials, equipment, and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for verification of progress payment requests and other invoices issued by the Contractor under this Contract.

C. Payrolls

The Contractor shall furnish the Owner immediately after each pay period, **two (2) copies** of each certified payroll for its Work and the Work of its subcontractors, prepared on forms furnished by the Owner, or in a form approved by the Pennsylvania Department of Labor, and executed and sworn to by the Contractor's and subcontractors' respective payroll supervisor.

The Contractor shall keep and make sure that subcontractors keep for **four (4) years** from the date of payment a record showing the name, craft, and hourly wage paid to each employee working on the Project.

Whenever the first payroll is filed with the Owner, or whenever a new payroll supervisor is employed, the Contractor shall file an affidavit, executed by the employer (or the employer's agent duly authorized by a written Power of Attorney or otherwise legally capable of binding the employer) setting forth the name of the payroll supervisor and that the payroll supervisor has full knowledge of the facts sworn in the payroll statement.

3.14 PATENTS AND PROPRIETARY RIGHTS

The Contractor shall acquire (in a form acceptable to legal counsel of the Owner), through assignment, purchase, license, or other means, all rights required to fully utilize all technology, know-how, trade secrets, inventions, processes, articles, procedures, equipment, apparatus, devices, or any part thereof, and any and all things or matters that are to be used in pursuance of performance of the Work under the terms and conditions of this Contract.

In case a temporary, preliminary or permanent injunction is secured because of an alleged patent or proprietary rights infringement which prevents the Owner from using the process, materials or equipment furnished, utilized or installed, the Contractor, at its option and expense, shall within **thirty (30) calendar days** following notification either: **(1)** procure the right for the Owner to continue using the same process, materials or equipment; **(2)** modify the process, materials or equipment; **(3)** provide a replacement process, materials or equipment which is non-infringing, it being understood that such modification must meet the approval of the Owner (which approval must be recorded in a writing signed by the Engineer); or, **(4)** take back the materials or equipment and refund the purchase price. The Contractor will also be subject to the Owner's damages caused by any violation or alleged violation of payment or proprietary rights of a third party. The obligations of the Contractor under this paragraph continue without time limit.

The Contractor agrees to defend, indemnify and hold harmless Indemnified Parties from and against, and to reimburse the foregoing for all loss, damage, cost and expense (including attorney's fees) arising from or resulting from the infringement, alleged infringement or violation of a patent, copyright or other intellectual property or proprietary right, or violation of a patent right, copyright or other intellectual property or proprietary right with respect to equipment, apparatus, materials, supplies, documents, data, manuals, lists, information, technology, know-how, trade secret, invention, process, procedure, device or article, or any part thereof, furnished, utilized or installed by the Contractor or arising from or occasioned by the use or manufacture thereof, including their use by the Owner or resulting in any way from the Contractor's performance of the Work. The Contractor shall pay any loss, damage, cost and expense in a suit so defended. The Owner and the Contractor further agree that the Contractor waives any and all claims, rights and causes of action it may have, now or in the future, against the Owner arising out of compliance with any specifications the Owner furnishes to the Contractor. To wit, the Contractor hereby waives and relinquishes any claim, right or cause of action it may have against the Owner deriving from the Owner's duty, under state law or otherwise, to hold the Contractor harmless against claims for infringement or the like which arises out of compliance with said specifications.

3.15 CONTRACTOR'S CERTIFICATE AND SURETY COMPANY STATEMENT

Before final payment is made by the Owner, the Contractor shall furnish to the Owner a Certificate of Satisfaction, on the form included in the Contract Documents, or, if not so included, on the form customarily used by the Owner, stating that all bills for labor and equipment and all outstanding claims and indebtedness of whatsoever nature arising out of the performance of this Contract, including payments to all subcontractors and suppliers, have been paid. The Contractor shall also furnish statements by each surety, on the form included in the Contract Documents, that the surety is satisfied that payment of all the above such bills, claims and indebtedness has been made.

3.16 NO LIEN AGREEMENT/RELEASE

Because the work being performed under this Contract is for a public purpose, pursuant to Pennsylvania law, the Contractor, on behalf of itself, its subcontractors and suppliers, hereby acknowledges that it has no right to file any mechanic's or other lien for work performed or materials furnished in or about the performance of this Contract, and it is hereby expressly agreed that no such claim or claims shall be filed by anyone or any entity and that the Contractor shall not file or permit any subcontractor, supplier, material man, mechanic or other person or entity to file any mechanic's or other lien for work performed or materials furnished in or about the performance of this Contract against the Owner, and/or the ground upon which the structure or work herein provided for is erected or performed, or against any structure thereon erected or to be erected, or against any structure or property of the Owner. If any such lien or claim for lien shall at any time be filed, Contractor shall promptly cause the lien to be removed, and/or shall reimburse Owner for all costs it incurs or may be compelled to pay in discharging any such lien or satisfying any such claim, including any and all legal fees.

3.17 PERMISSION TO SUBLET OR ASSIGN

The Contract Agreement may not be assigned by the Contractor nor may any obligation of the Contractor hereunder be assumed by any other person or third party without the prior written consent of the Owner and concurrence by the surety. The Contractor shall be required to present a request for such an assignment to the Owner, in writing, for consideration and approval, and the assignment shall be consummated only upon receipt of the written approval of the Owner. In the case of the Owner's approval, the Contractor shall file copies of all related legal documents with the Owner. The Contractor may perform portions of this Contract through any of its subsidiaries, affiliates, subcontractors, or licensees, however, the Owner will administer this Contract solely through the Contractor and will not deal directly with any subsidiary, affiliate, subcontractor or licensee.

3.18 ASSIGNMENT OF ANTITRUST CLAIMS

The Contractor and the Owner recognize that in actual economic practice, overcharges by Contractor's subcontractors and/or suppliers resulting from violations of state or federal antitrust laws are in fact borne by the Owner. As part of the consideration for the award of this Contract, and intending to be legally bound, the Contractor assigns to the Owner all right, title and interest in and to any claims the Contractor now has or may hereafter acquire

under state or federal antitrust laws relating to any products or the Work which is the subject of this Contract.

3.19 CONCERNING SUBCONTRACTORS AND OTHERS

The Contractor shall not employ any subcontractor, person or entity, including those initially acceptable to the Owner against whom the Owner may have a reasonable objection. In the event the Contractor fails or refuses to replace, within a reasonable time, any subcontractor, person or entity to which the Owner has taken reasonable objection, the Owner may stop the Contractor's performance until such time that a replacement is effectuated. The Contractor shall be liable for any and all damages related to any reasonable stoppage of the Contractor's performance under this Section. This Section shall not limit the Owner's right to recover for breach of contract or any other legally recognizable cause of action.

The Contractor shall establish the qualifications of subcontractors and will make sure that they comply with the insurance requirements of **Exhibit "A"**. In addition, the Contractor shall establish that subcontractors providing any professional services have adequate professional liability insurance. The Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Contract Documents) of any such subcontractor or other person or entity so identified may be revoked upon the Owner's written objection, in which case the Contractor shall submit a substitute acceptable to the Owner. No acceptance by the Owner of any such subcontractor or other person or entity shall constitute a waiver of any right of the Owner to reject Defective Work.

The Contractor shall be fully responsible to the Owner for all acts and omissions of its subcontractors and other persons and entities performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for its own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such subcontractor or other person or entity any contractual relationship between the Owner and any such subcontractor or other person or entity, nor shall it create any obligation on the part of the Owner to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or entity.

The Articles and Sections of the Contract Documents and the identifications of any Drawings shall not prohibit or restrict the Contractor in dividing the Work among subcontractors or delineating the Work to be performed by any specific trade.

All Work performed for the Contractor by a subcontractor will be pursuant to an appropriate agreement between the Contractor and the subcontractor which specifically binds the subcontractor to the terms, conditions, requirements and prohibitions of the Contract Documents for the benefit of the Owner except where Owner approves otherwise, in writing. Whenever any such agreement is with a subcontractor who is listed as an additional insured on the property insurance provided in Exhibit "A", the Contract Documents or in a writing signed by the Engineer, the agreement between the Contractor and the subcontractor will contain provisions whereby the subcontractor waives all rights against the Owner, the Contractor and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; provided, however, that

such waiver shall not extend to the Consulting Engineer, or the Construction Manager, their agents or employees, for liability arising out of (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications or (2) the giving of, or the failure to give, directions or instructions by the Consulting Engineer, or the Construction Manager, their agents or employees provided that such giving, or failure to give, is the sole cause of the loss or damage arising therefrom. If the insurers on any such policies require separate waiver forms to be signed by any subcontractor or any other entity engaged to do the Work, the Contractor will obtain the same.

With regard to any claim or dispute with respect to payment of a subcontractor of any tier, the Contractor expressly agrees to defend, indemnify and hold the Owner harmless in the event any suit is brought on account of a dispute between any of the parties including, but not limited to, subcontractors, suppliers and material men. The Contractor shall assume the defense affirmatively at its sole cost whenever such suit is brought in any jurisdiction and shall keep the Owner advised as to all important developments.

3.20 ETHICS IN PUBLIC CONTRACTING

The Contractor certifies that it has entered into the Contract without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other supplier, manufacturer or subcontractor in connection with the Contract; and that it has not conferred on any public employee having official responsibility for this construction transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.

3.21 INTOXICATING LIQUORS, CONTROLLED SUBSTANCES, OR SIMILAR ACTING DRUGS

The Contractor shall not sell or permit or suffer the introduction or use of intoxicating liquors, controlled substances (without benefit of prescription), or other similar-acting drugs on or about the Work.

The Contractor shall implement, maintain and document a controlled substance surveillance program for all on-site personnel. An outline of this program shall be submitted to the Construction Manager for record prior to the issuance of the Notice to Proceed.

3.22 SALES AND USE TAX

The Owner renders a public utility service, i.e., sewage treatment. Pennsylvania Department of Revenue Regulations provide, in part, that a contractor or subcontractor's purchase of "equipment, machinery or parts thereof" which are "used directly in the rendition of a public utility service upon installation" are exempt from Pennsylvania sales tax. See **Section 204(k)(8)(C)** of the Tax Reform Code of 1971, Act of March 4, 1971, P.L.6, as amended (the "Act") and Pennsylvania Department of Revenue Regulation 61 Pa. Code § 31.13(b). Accordingly, the Owner shall issue to Contractor one or more exemption certificates in the form attached hereto as Exhibit D so that Contractor may avail itself of the said sales and use tax exemption.

Notwithstanding the foregoing, the Owner makes no representation or warranty regarding the applicability of the exemption with respect to any particular purchase of property by Contractor in connection with the Work. The Contractor shall remain responsible for the full amount of sales and use tax, including interest and penalty, applicable to its Work under this Contract and required to be paid pursuant to **Section 204** of the Act and Pennsylvania and local law. The Contractor represents that it is familiar with the Pennsylvania and local sales and use tax law, regulations and rulings applicable to construction contracts including Pennsylvania Department of Revenue Regulations 61 Pa. Code §§ 31.11, Construction Contractors-Definitions, 31.12, Construction Contractor- Imposition of Tax, and 31.13, Construction Contractors-Claim for Exemptions.

The Contractors shall be responsible for determining which materials and equipment it believes are entitled to exemption from sales and use tax. The Owner shall not be obligated to issue any exemption certificate if it believes an exemption is not applicable. Such decision by the Owner shall not entitle the Contractor to a change in the Contract Sum.

Contractor shall indemnify, defend and hold harmless the Owner, and all other parties entitled to indemnification under this Contract, from the obligation to pay any Pennsylvania and local sales and use tax, interest and penalty which may become due under this Contract.

The Contractor hereby assigns to Owner the exclusive right to seek any and all refunds of Pennsylvania and local sales and use tax erroneously paid pursuant to this Contract. The Contractor shall cooperate fully with the Owner in developing information for the preparation of its refund claim including without limitation copies of purchase invoices and canceled checks. If Contractor concludes that use tax is due under this contract, it shall provide Owner with the basis for its determination at the time the use tax return is required to be made. The Contractor shall also provide Owner copies of its use tax returns and canceled checks for the payment of use tax. In any case where Owner files a refund claim, the Contract shall provide testimony and affidavits as necessary in support of Owner's claim.

RIGHTS AND DUTIES OF THE OWNER

3.23 AUTHORITY OF THE OWNER

The Owner, either directly or through its agents, shall be the sole judge of the intent and meaning of the Contract Documents and its decisions thereon and its interpretations thereof will be final, conclusive and binding on all parties.

The Engineer, through the Construction Manager, shall be the representative of the Owner during the life of the Contract and will observe the Work in progress on behalf of the Owner. The Engineer shall have the authority:

- A. To act on behalf of the Owner to the extent expressly provided in the Contract or otherwise in a writing signed by the Executive Director;
- B. To stop the Work whenever such stoppage may be necessary, in its sole discretion, to prevent improper execution of the Work, or otherwise to protect the Owner's interests;
- C. To approve and direct the sequence of execution and general conduct of the Work and to direct that changes be made in such sequence where, in its sole discretion,

public necessity or welfare, the interest of the Owner, or the progress of the Work will require; such approval or direction will, however, in no way relieve or diminish the responsibility of the Contractor for or in the performance of the Work;

- D. To determine the amount, quality, acceptability and fitness of all Work, materials and equipment required by the Contract; and,
- E. To decide all questions which arise in relation to the Work, the performance thereof, and the fulfillment of the Contract.

Any delay, failure or omission of the Owner to exercise any obligations or powers shall not impair any such obligations or powers, nor shall the same be construed to be a waiver thereof or any acquiescence therein, nor shall any such action or inaction by the Owner alter or impair the obligations of the Owner.

The Owner shall not, unless specifically required by the Contract Documents, supervise, direct or have control or authority over, or be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the furnishing or performance of the Work. The Owner shall not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3.24 ACCESS TO WORK

The Owner, and its officers, agents, servants and employees may, during the hours of **7:00 A.M. to 5:00 P.M.**, Monday through Friday or at such other times when the Work is being performed, enter upon the premises used by the Contractor, including the Contractor's offices and/or factory for the purpose of inspection of the Work, and the Contractor shall at all times provide safe and proper facilities thereof. This provision shall not be interpreted as limiting or restricting, to any degree, the Owner's right to free and unrestricted access to its own property and facilities or any portion of the Work therein.

3.25 EXAMINATION OF WORK

The Contractor shall furnish the Owner with a minimum of **seven (7) calendar days** notice of the Contractor's and/or any subcontractor's or supplier's intent to conduct shop tests, Performance and Acceptance Tests and any other tests, as described herein, to enable the Owner to witness such testing. The Contractor shall provide the Owner with full access to all construction, manufacturing or testing facilities for the purposes of examining and inspecting the Work; for witnessing of testing; and for ascertaining that the Work is being performed in accordance with the requirements and intent of the Contract Documents. The Contractor shall furnish the Owner with every reasonable facility necessary for the Owner to make such inspections or examinations.

3.26 RIGHT TO TEST OR INSPECT

The Owner reserves the right to conduct any test or inspection it may deem advisable to assure that construction, supplies and services conform to the provisions of the Contract Documents. If such tests reveal that material and/or work does not meet Contract requirements, the Contractor will be responsible for the costs related to this testing or retesting.

3.27 RIGHT TO MATERIALS/REUSE OF DOCUMENTS

Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials, equipment, apparatus and other items furnished after they have been installed or incorporated in or attached or affixed to the Work or the Job Site, but all such materials, equipment, apparatus and other items shall, upon being so installed, incorporated, attached or affixed, become the sole and exclusive property of the Owner.

The Specifications, Drawings, manufacturing data and other information transmitted from the Owner to the Contractor in connection with the Contract are the property of the Owner and are disclosed in confidence on the condition that they are not to be reproduced, copied or used for any purpose other than performance of the Contract.

The Contractor and any subcontractor or supplier or other person or organization performing or furnishing any of the Work I) shall not have or acquire any title or ownership rights in any of the drawings, specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the Engineer or the Consulting Engineer and (ii) shall not reuse any such drawings, specifications or other documents or copies related to the Project without the express written consent of the Owner.

PERFORMANCE OF CONTRACT

3.28 PROJECT COORDINATION – Refer to Specification Section 01040 – COORDINATION.

3.29 TIME FOR COMPLETION, MILESTONE DATES

- A. Contract Time– **Three Hundred Sixty (360) Calendar Days** upon acceptance of the written Notice to Proceed.

The Contractor shall commence the Work immediately upon receipt of the written Notice to Proceed and shall prosecute the Work diligently to completion within the number of calendar days specified in **Article 4 Paragraph 2** of the Contract Agreement (the "Contract Time"). Time is of the essence as regards Contractor's Work.

- B. Schedule

The Owner's operations, the scope of the Project and the Work to be furnished under this Contract require careful coordination by the Construction Manager and scheduling between the Contractor and all Other Contractors. Since it will be necessary for the Owner to maintain continuity of its current operations throughout the Contractor's performance, it will be necessary for the Work to be phased in such a manner that portions of the Work will be constructed, installed, started-up and completed in sequence with work performed by Other Contractors and suppliers. The Contract Schedule prepared by Contractor pursuant to Section Specification Section 01040 – Coordination must be based upon, and demonstrate the Contractor's ability to meet, the milestones established for the Project ("Project Milestones"). Where the achievement of a Project Milestone is dependent upon the Contractor's completion of all or any portion of the Work to be performed under this Contract, a "Construction Milestone" applicable to the Contractor's Work will be established by the Owner and incorporated by the Contractor into the Contract

Schedule.

C. Liquidated Damages

If the Work is not completed within the Contract Time for any Construction Milestone, damage will be sustained by the Owner. It is impracticable and extremely difficult to ascertain and determine actual damages which the Owner will sustain by reason of such delay. It is therefore agreed that the Contractor will be required to pay, as liquidated damages and not as penalty, for delay damages sustained solely by the Owner, the sum of money stipulated in **Paragraph 3** of the Contract Agreement for each and every calendar day delay in finishing the Work beyond the Contract Time prescribed for each Construction Milestone.

The Owner may, at its option, apply any liquidated damages as a credit against the Contract Sum by way of a change order or payment deduction. The remedies provided herein are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract and the Contractor remains liable for damages caused by reasons other than delay.

3.30 TEMPORARY SUSPENSION OF THE WORK

The Owner shall have the authority to suspend the Work wholly, or in part, for such period or periods as it may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for the prosecution of the Work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the Contractor for any other reason deemed necessary or appropriate by the Owner.

In the event that the Contractor is ordered by the Owner, in writing, to suspend the Work for some unforeseen cause not otherwise provided for in the Contract and over which the Contractor has no control and is not at fault, the Contractor may be reimbursed for actual out-of-pocket costs directly related to the suspension of the Work. No allowance will be made for loss profits or any incidental or consequential loss or damage. The period of shutdown shall be computed from the effective date of the Owner's order to suspend Work to the effective date of the Owner's order to resume the Work. Claims for additional compensation resulting from the shutdown shall be filed with the Owner within **ten (10) working days** of the Owner's order to resume Work unless otherwise stated in the Owner's order to resume Work. The Contractor shall, within **twenty (20) calendar days** or such other time as the Owner may specify, submit with its claim information substantiating the amount shown on the claim. The Owner will consider the Contractor's claim in accordance with the Contract Documents. No provision of this Section shall be construed as a waiver by the Owner of its right to subsequently terminate the Contract or as relieving the Contractor from its full responsibility for performance of its obligations under this Contract or as entitling the Contractor to compensation for delays due to: **(1)** the Contractor's failure to carry out orders given or to perform any or all provisions of the Contract; **(2)** suspensions made at the request of the Contractor; or **(3)** for any other delay provided for in the Contract Documents unless otherwise specified. Additionally, no provision of this section shall be construed as obligating the Owner to suspend Work for such reasons.

If it should become necessary to suspend Work for an indefinite period, the Contractor

shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. It shall take every precaution to prevent damage or deterioration of the Work performed and shall provide for proper drainage of the Work.

3.31 REQUESTS FOR INFORMATION AND FIELD INSTRUCTIONS

A. Requests for Information

Monitoring the "Request for Information" ("RFI") process is the responsibility of the Construction Manager. In general, the Contractor is responsible for initially issuing an RFI (pursuant to the form then currently utilized by the Owner) upon discovery of a problem or question. The Construction Manager may at times issue RFIs.

B. Procedure

1. The Contractor is responsible for being thoroughly familiar with the procedures, requirements and conditions of the Contract Documents which relate to the RFI.
2. If at any time after receiving the Notice to Proceed, the Contractor discovers conflicts, omissions, errors or ambiguity in the Contract Documents or between the Contract Documents and any provision of any law or regulation applicable to the performance of Work; or if it appears to the Contractor that the Work to be done or of any matter related thereto is not sufficiently detailed or explained in the Contract Documents; or if it appears to the Contractor that an order or direction of the Engineer, the Consulting Engineer or the Construction Manager is unclear, then, before proceeding with the Work affected, the Contractor shall notify the Construction Manager in writing and request information/clarification or additional detailed information concerning the Work on the RFI form.
3. If pursuant to the judgment of the Construction Manager, the RFI is an emergency, the resolution will be handled by telecopy or telephone.
4. If the answer to an RFI initiated by the Contractor is clearly contained in the Contract Documents, the Contractor shall be responsible and liable for any costs or delays associated with the review of the RFI.

C. Field Instructions

The Owner may issue Field Instructions, through the Construction Manager, from time to time as may be necessary or appropriate to interpret or to resolve any ambiguity or error in the Specifications or Drawings or to make any minor change to the Specifications or Drawings that does not result in a net change in the Contract Sum, the Contract Time or the quality of material or workmanship. Field Instructions shall be effective upon delivery to the Contractor. Field Instructions may not change or alter the General Conditions.

3.32 CHANGE ORDERS

A. Contract Changes

1. The Owner reserves and shall have the right to make such alterations in the Work, including changes to the Contract Sum and Contract Time, as may be necessary or desirable to complete the Work in an acceptable manner.
2. This Contract may be revised at any time by means of a written Change Order issued in accordance with this Section of the General Conditions signed by both the Owner and the Contractor. This provision cannot be waived, and no oral amendment of this Contract shall be effective.
3. A change in the Work, the Contract Sum or the Contract Time shall be accomplished only by Change Order. Direction to proceed with a change in the Work may be given by the Owner through a Proposed Change Order (PCO) fully executed by the Owner and the Contractor which directs the Contractor to proceed with the change in the Work. Subsequently, a Change Order shall formalize any changes in the Work, Contract Sum and Contract Time related to such PCO that direct the Contractor to proceed with a change.
4. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment shall be the basis of any claim to an increase in any amounts due under the contract Documents or a change in any time period provided for in the Contract Documents.
5. Until a written Change Order is approved in writing by the Owner, no money or time shall be expended by the Contractor on performing work that is the subject of a Change Order pending approval. If money or time is expended on such work, and the Change Order is not approved, none of such expended money and time will be reimbursed to the Contractor and the cost of all corrective work will be the responsibility of the Contractor.

B. General

1. The Construction Manager will have primary responsibility for the administration of Change Orders approved by the Owner.
2. Change Orders may be used to revise the Contract Documents, adjust the Contract Time or Contract Sum, increase or decrease the amount of any material to be used or the work to be performed, or eliminate any part of the Project.
3. Upon receipt of a Proposed Change Order (PCO) from the Owner through the Construction Manager, the Contractor shall, within **ten (10) working days**, submit a proposal for the work covered by the PCO, including any

requested adjustment in the Contract Sum or the Contract Time, properly itemized and supported by sufficient substantiating data to permit evaluation. Failure to request a modification of the Contract Time when submitting such proposal shall constitute a waiver of the Contractor's right to subsequently claim an adjustment of the Contract Time based upon such changed work.

4. The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:
 - a. At a Lump Sum Price agreed upon before the additional Work is commenced and stated in the Change Order for the Work;
 - b. On a unit price basis at the unit prices quoted in the Contractor's Bid or, if none are established, by unit prices inferred from the Contract and agreed to by the Owner and Contractor; or
 - c. On a time and material basis as provided in Section C below (the "Time and Material Method").
5. The Owner shall have no obligation to pay for profit or consequential loss claimed by the Contractor on Work eliminated by Change Order.
6. Notwithstanding any other provisions of the Contract, if the Owner and the Contractor are unable to agree upon an adjustment of the Contract Sum or the Contract Time connected with a change in the Work, the Owner reserves the right to make other arrangements for its completion.
7. Work in addition to that prescribed by the Contract Documents shall not be performed without a signed Change Order except under emergency circumstances which pose a clear and present danger to property or persons. Emergency changes shall be compensated using the Time and Material Method.
8. All Work performed pursuant to any Change Order will be performed under the applicable conditions and provisions of the Contract Documents (except as otherwise specifically provided). If notice of any change relating to the general scope of the Work or the provisions of the Contract Documents is required to be given to a surety, the giving of such notice will be the Contractor's responsibility, and the Contractor will make certain that the amount of each applicable Bond will be adjusted accordingly.
9. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time. In the event a Change Order increases the Contract Sum, Contractor shall include the work covered by such Change Order in Applications for Payment as if such Work were originally part of the Contract Documents.

C. Time and Material Method

1. In the event the Contractor and Construction Manager are unable to agree on the basis for compensating the Contractor for a change in the Work, the Contractor, provided he receives a written Change Order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit determined in accordance with **Paragraph D.** below. In such case, and also under Clauses B.4.b. and B.4.c. above, the Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order.
2. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums; rental value of equipment and machinery; and the additional cost of supervision and field office personnel directly attributable to the change.
3. Pending final determination of cost to the Owner, payments on account shall be made monthly in accordance with the payment and other applicable provisions set forth in the Contract Documents. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

D. Overhead and Profit

For any adjustments to the Contract Sum which are based on other than the unit prices method, the Contractor agrees to charge, and accept, as payment for overhead and profit, the following percentages of direct costs attributable to the change in the Work:

1. **Twenty percent (20%)** for work by the Contractor not involving subcontractors;
2. **Five percent (5%)** for work by subcontractors;
3. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;
4. For additional work ordered as described above which will be executed by subcontractors, it is agreed that subcontractors will be permitted to charge

fifteen percent (15%) for work not involving sub-subcontractors and **five percent (5%)** for work by sub-subcontractors. In no case will the cumulative total for overhead and profit exceed **thirty percent (30%)** of the direct cost of labor, materials and equipment, notwithstanding the number of contract tiers actually existing.

3.33 DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or by changes requested by the Owner in the Work, or by labor disputes, fire, unusual delay in transportation, severe weather, unavoidable casualties, or any other cause beyond the reasonable control of Contractor and all subcontractors and not otherwise attributable to any fault of Contractor or any subcontractor, any breach by Contractor or any subcontractor of its obligations under the Contract Documents or its subcontract, as the case may be, or by any other cause which, in the judgment of Owner, justifies the delay, then the Contract Time shall be extended commensurately by written Change Order as provided in **Section 3.32**.

Any request for a change in the Contract Time shall be made in writing to the Owner not more than five days after the commencement of the delay. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work, the Construction Milestones Schedule, and Substantial Completion Dates.

Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Paragraph A above, shall be the sole remedy of the Contractor for any **(1)** delay in the commencement, prosecution or completion of the Work, **(2)** hindrance, interference or obstruction in the performance of the Work, **(3)** loss of productivity, or **(4)** other similar claims (collectively referred to in this Paragraph as "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work or directing rescheduling or correction of the Work), regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

3.34 PROGRESS ESTIMATES AND APPLICATIONS FOR PAYMENT

The parties hereto agree that Act 142 of 1994, amending the Public Works Contract Regulation Law (73 P.S. Section 1621) shall not apply to any Contract terms between the Owner and the Contractor.

For the purposes of this Contract, the Owner intends to make progress payments to the Contractor based upon the extent of the Work completed. Determination of the amount of Work completed will be determined in accordance with this **Section 3.34**.

The Contractor shall submit a proposed Schedule of Values to the Construction Manager pursuant to the Contract requirements to enable the Construction Manager to prepare an estimate form or review a payment form for use in determining the amount of monies periodically due to the Contractor for completed Work. In order to make progress payments, it will be necessary for the Contractor to include values for each item of Work shown as an activity on the Contractor's Project Schedule. The Construction Manager will have the right to approve, modify or reject this price breakdown if, in its sole opinion, the amounts reflected are not appropriate to the Work elements involved; there are missing or incomplete items; or the unit prices listed thereon are unbalanced. The determination of the Construction Manager with regard to the price breakdown shall be final, binding and non-appealable.

The Owner, at its option, may make payments for materials and equipment stored at the Job Site or at a facility acceptable to the Construction Manager. If payment is requested on the basis of materials and equipment not incorporated in the Work, but deliberately and suitably stored at the Job Site or at another location agreed to in writing, any application for payment shall be accompanied by a bill of sale, paid invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens and encumbrances and evidence that the materials and equipment are covered by Contractor supplied property insurance and other arrangements to protect the Owner's interest therein, all of which will be satisfactory to the Owner. Payment shall only be requested for those stored materials and equipment not incorporated into the Work if their unit cost is greater than \$500 or their bundled value is greater than **\$1,000**. (Broken bundles or boxes will be discounted.)

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any progress payment, whether incorporated in the Project or not, will pass to the Owner no later than the time of application for payment, free and clear of all liens and encumbrances.

If there exists a good faith dispute over the amounts to be paid, the Owner shall pay the undisputed amount, but the disputed portion may be withheld from the Contractor until resolution of the matter, with that portion due **forty-five (45) calendar days** after said resolution. No request by the Contractor for an adjustment to the Contract Sum, regardless of the reason, shall be allowed if asserted after final payment under this Contract.

Any payment made pursuant to a progress estimate is not an acceptance by the Owner of any part of the Work, material or equipment covered by such progress estimate.

The Owner may refuse to make any partial payments under the Contract for Work performed after any applicable Milestone Date and shall be entitled to withhold payments as a result of the Contractor's failure to complete its Work in accordance with the specified Milestones.

Payments shall be subject to the retainage described in **Section 3.36** of the **General Conditions** entitled "Monies May Be Retained Or Withheld" and may also be reduced by the Owner for any credits due to the Owner including amounts owed for liquidated damages, amounts resulting from Defective Work, amounts resulting from claims made against the Owner on account of the Contractor's performance or furnishing of the Work or amounts resulting from other items entitling the Owner to a set-off.

A. Payments to Subcontractors:

In the absence of a good faith reason, within **fourteen (14) calendar days** of the receipt of payment by the Contractor or **fourteen (14) calendar days** after receipt of a subcontractor's or supplier's invoice, whichever is later, the Contractor shall pay the subcontractor or supplier, with whom it has contracted, the full or proportional amount received for each such subcontractor's or supplier's Work and materials. Should the Contractor fail to pay a subcontractor or supplier without a good faith reason, the Owner may, at its discretion, withhold future payments owed to the Contractor. No subcontractor or supplier shall become a third-party beneficiary of this provision and this provision shall not afford any subcontractor or supplier a cause of action against the Owner.

B. Procedure

1. General

During the Preconstruction Conference, the specific details for progress payments will be reviewed and sample forms distributed to the Contractor.

2. Schedule of Values

The Contractor shall provide a Schedule of Values outlining the values of each component of the Work as shown on its Project Schedule as an activity. The Schedule of Values will be computerized into a standard spreadsheet format established and acceptable to the Construction Manager.

3. Draft Application for Payment

The Contractor shall prepare a draft Application for Payment in the form provided through the Construction Manager for each pay period indicating the percentages of completion for each activity and properly stored materials and equipment for which payments are to be requested. This draft will be effective for the end of the month. A review will be performed by the Construction Manager to confirm that the amounts are acceptable. Any required adjustment will be discussed with the Contractor.

4. Formal Application for Payment

After agreement between the Contractor and the Construction Manager on quantities and their associated value, the Contractor shall submit an original Formal Application for Payment signed in blue ink, and three copies of the Formal Application for Payment for that pay period, and shall perform all extensions and arithmetic, and provide back-up documentation, etc., on the forms provided through the Construction Manager. The Formal Application for Payment shall be executed by an authorized officer of the Contractor's firm and submitted no later than **28 days** prior to the ALCOSAN Board meeting.

Upon receipt of each Formal Application for Payment, the Construction Manager staff will verify that any agreed-upon modifications have been made from the Draft Application for Payment, check all extension and

arithmetic and ensure that all the Contractor provisions pertaining to progress payments have been met and that all necessary substantiating documentation is included. After review and approval of the Formal Application for Payment by the Construction Manager, the Owner shall pay the Contractor within **sixty (60) calendar days** of submitting its Formal Application for Payment unless the Owner is withholding payment.

When Work nears completion, cost estimates of uncompleted Work will be made by the Construction Manager as a means of verifying percentages of completed Work.

5. Retainage

The Construction Manager will assure the retainage, as prescribed by **Section 3.36** of the General Conditions entitled "Monies may be Retained or Withheld", will be deducted from the payment request. The retained percentage will not be relied on to cover costs of correction of defects, omissions and the like; thus, additional sums may be withheld by the Owner to cover such items.

6. Miscellaneous

The Contractor will be advised by the Construction Manager in writing of reductions in the payment request for Work which has been performed but does not meet Contract Documents' requirements.

3.35 FINAL PAYMENT

Payment will be made by the Owner within **forty-five (45) calendar days** following submittal of the Contractor's Final Payment Application, less one and one half times any amount as is required to complete any then remaining uncompleted minor items as certified by the Engineer (and other adjustments and any liquidated damages as provided in the Contract Documents). The Owner's Certificate of Substantial Completion will include a punch list of uncompleted items (See Contract Provisions Section entitled "Certification of Substantial Completion"). Final payment of any amount withheld will be paid upon certification by the Engineer of Final Acceptance (See **Section 3.51** entitled "Final Acceptance").

3.36 MONIES MAY BE RETAINED OR WITHHELD

The Owner shall at any time retain from any monies which could otherwise be payable an amount not exceeding the amount of retainage outlined in Act 317 known as the Contractor's Act approved November 26, 1978, and amended by Act 200, approved November 23, 1982. If the Act does not apply to purchases under this Contract, the Owner may utilize retention provisions similar to those contained in the Contractor's Act. The Owner may apply any moneys retained hereunder to reimburse itself for any and all costs, expenses, losses, damage and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by the Owner and chargeable to the Contractor hereunder or as determined hereunder.

Whenever there is unacceptable or Defective Work, or there are outstanding or potential third party claims against the Owner arising from the Contractor's activities, or there is a

reasonable doubt on the part of the Owner that the Contractor will satisfactorily complete its Contract, or when liquidated damages may be owed to the Owner pursuant to the terms of this Contract, the Owner may withhold so much as is necessary, in the Owner's discretion, to reimburse the Owner for any costs or expenses that may accompany these conditions.

3.37 SUBMITTALS

To assure that the products furnished under this Contract conform to the intent of the Contract Documents and requirements under the specifications, the Contractor shall submit: testing data and/or reports; manufacturer's data and pertinent system design information; certifications; installation drawings and instructions; Shop Drawings; samples; requests for substitutions as required by and in strict conformance with the Contract Documents; and, additional information as may be requested by the Owner.

3.38 FIELD SERVICES, FIELD INSPECTIONS AND START-UP TESTING

A. General

As part of the Work of this Contract, the Contractor shall provide (as required) field services at the Owner's facility before, during and after Work construction and/or installation, to inspect and approve the construction and/or installation of the Contractor's Work; to conduct commissioning inspections and start-up operations; to conduct Performance and Acceptance Tests; and to train the Owner's personnel in the proper operation and maintenance of the Work provided under this Contract, as set forth herein. Specific time periods will not be less than that specified in the Contract Documents or recommended by each Component Manufacturer.

The Contractor shall cooperate fully with the Construction Manager and all others involved in the field construction so that it does not delay or interfere with their work.

Field Services, Field Inspections and Start-Up Testing may be more fully described in Article 6.

3.39 FIELD SERVICE ASSISTANCE/OWNER-FURNISHED EQUIPMENT

If the installation of Owner-Furnished Equipment (as further described in Section 3.42C below) is part of the Work of this Contract, it is to be tested, started up and serviced as part of the Work of this Contract.

For those services specified as the responsibility of Owner-Furnished Equipment suppliers in separate contracts with the Owner, the Contractor shall schedule field services in conjunction with the Construction Manager and notify the Owner at least 21 calendar days before the manufacturers' representatives are needed for field inspection and testing of each Owner-Furnished Equipment.

Where the manufacturer's representatives of Owner-Furnished Equipment Manufacturers will provide training, the Contractor shall schedule training sessions in conjunction with the Construction Manager, determine appropriate locations for training, and provide the Owner at least 21 calendar days' advance notice of the training schedule.

The Owner shall assure that Owner-Furnished Equipment suppliers have provided

spare parts and special tools and approved operations and maintenance manuals to the site before any field services commence.

3.40 TRAINING SERVICES

The Contractor shall adequately instruct designated employees or representatives of the Owner in the operation, maintenance and care of all Work provided under this Contract. Such training shall be coordinated and administered through the Construction Manager.

During the Acceptance Tests, the Owner's operating personnel will assist in the operation of the item of Work being tested, performing operating adjustments under the direction of the representatives of the Contractor. To that extent, the Owner's personnel will take an active role in the operation of the item of Work being tested, as a part of their training, under the direct supervision of the Contractor's representatives.

A. Responsibility During Tests

The Contractor shall be fully responsible for the operation of the respective Work provided under this Contract during all periods of testing and instruction and will neither have nor make any claim for damage to any item of Work prior to its Final Acceptance.

Training Services may be more fully described in Article 6.

3.41 TESTING

Three (3) types of testing are required for certain equipment and components covered under this Contract: Shop Tests; Acceptance Tests; and Performance Tests. All Tests shall be conducted so that they may be witnessed by representatives of the Owner. It shall be the responsibility of the Contractor to assure that such tests are performed and shall submit the written test reports and certificates to the Owner summarizing the results of all tests and indicating satisfactory completion of all required tests. The reports and certificates for Shop Tests shall be submitted to the Owner as soon as possible after shipment of the equipment and components to the Owner's facility, unless they can be submitted prior to shipment. In all cases such reports and certificates shall be submitted prior to Acceptance Testing on site.

The various tests and obligations of the Contractor during testing are more specifically described in Article 6.

The Contractor shall note that the design requirements provided in the Contract Documents including the Specifications for each component of work as well as overall performance are considered essential to meeting the minimum requirements of this Contract.

3.42 CONTROL OF MATERIALS

A. Quality Requirements

The materials, labor, equipment and systems used on the Work shall conform to the requirements of the Contract Documents.

The Owner expects that all manufactured and installed items, equipment, components and materials will perform at or above the manufacturer's or supplier's written specifications, as well as all applicable standards, laws and regulations.

The Contractor shall be responsible for the quality of the materials and construction

and shall be solely responsible for complying fully with the Contract Documents.

The Owner or its authorized representative may inspect, at its source, any specified materials or assembly to be used in the Work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the Work and to obtain samples required for the Owner's acceptance of the materials or assembly.

It is understood and agreed that the Owner shall have the right to retest any material which has been tested and approved at the source of supply after it has been delivered to the Job Site. The Owner shall have the right to reject material which, when retested, does not meet the requirements of the Contract, plans, or Specifications.

All storage sites on private property or the Job Site shall be restored to their original condition by the Contractor at its entire expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

B. Unacceptable Materials

Any materials or assembly that does not conform to the requirements of the Contract Documents, shall be considered unacceptable and may be rejected. The Contractor shall remove any rejected materials or assembly from the Site of the Work, unless otherwise instructed by the Owner.

No rejected materials or assembly, the defects of which have been corrected by the Contractor, shall be returned to the Job Site of the Work until such time as the Contractor has demonstrated, to the Owner's satisfaction that the use of such materials or assembly in the Work will produce a finished product which complies, in all respects, with the requirements of the Contract Documents.

The decisions of the Engineer, through the Construction Manager, as to whether materials and workmanship should be accepted or rejected will be binding upon the Contractor.

The Owner will not be stopped by any measurement, estimate, or certificate made by it or any of its representatives from later showing that the Work, materials, or equipment do not conform to the requirements of the Contract Documents.

C. Owner-Furnished Materials and Equipment

The Contractor shall furnish all materials and equipment required to complete the Work, except those specified herein (if any) to be furnished by the Owner. Owner-furnished Materials and Equipment shall be made available to the Contractor at the location specified in the Contract Documents.

3.43 AUTHORITY AND DUTIES OF INSPECTOR

Inspectors employed by the Owner shall be authorized to inspect all Work done and all material furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the materials to be used. Inspectors are not authorized to revoke, alter, or waive any provision of the Contract or accept any Work.

Inspectors are not authorized to issue instructions contrary to the Contract Documents or to act as foremen for the Contractor.

3.44 INSPECTION OF THE WORK

All materials and each part or detail of the Work shall be subject to inspection by the Owner. The Owner shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Owner requests it, the Contractor, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra Work; but should the Work so exposed or examined prove unacceptable or in any way defective, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the expense of the Contractor who performed the unacceptable Work.

Any Work done or materials used without inspection by an authorized representative of the Owner may be ordered removed and replaced at the Contractor's expense.

Should the Work include relocation, adjustment, or any other modification to existing facilities, not the property of the Owner or its authorized representative, the owners of such facilities shall have the right to inspect such Work. Such inspection shall in no way make any facility owner a party to the Contract, and shall in no way interfere with the rights of the parties to this Contract.

If any rule or and regulation of any body having jurisdiction require any Work (or any part thereof) specifically to be inspected, tested or approved by an employee or other representative of such body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, paying all costs in connection therewith, and shall furnish the Construction Manager the required certificates of inspection, for approval. The Contractor shall also be responsible for arranging and obtaining and shall pay for all costs in connection with inspection, tests or approvals required for the Owner's acceptance of materials or equipment to be incorporated in the Work.

3.45 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK

All Work which does not conform to the requirements of the Contract Documents will be considered Defective Work and unacceptable, unless otherwise determined acceptable by the Owner.

Defective Work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, shall be removed immediately and replaced in an acceptable manner in accordance with the Contract Documents. The Contractor shall pay all claims, costs, losses and damages caused or resulting from such correction or removal (including but not limited to all costs of repair or replacement of the Work of others).

Work done contrary to the instructions of the Owner, Work done contrary to the Specifications, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply within **three (3) working days** with any order of the Owner made under the provisions of this Section, the Owner will have authority to cause Defective Work to be remedied or removed and replaced and unauthorized Work to be removed and to deduct the costs (incurred by or on behalf of the Owner) from any monies due or to become due the Contractor.

3.46 OWNER MAY STOP THE WORK

If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform with the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any surety or any other party. Only such orders issued in a writing signed by the Engineer and issued through the Construction Manager shall be considered valid.

3.47 ACCEPTANCE OF DEFECTIVE WORK

If instead of requiring correction or removal and replacement of Defective Work, the Owner prefers to accept it, the Owner may do so. The Contractor shall pay all expenses, claims, costs, losses and damages attributable to the Owner's evaluation of and determination to accept such Defective Work. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Sum. If the acceptance occurs after final payment, an appropriate amount will be paid by the Contractor to the Owner or, at the Owner's option, may be set-off from other amounts owed by Owner to the Contractor pursuant to other contracts.

3.48 OWNER MAY CORRECT DEFECTIVE WORK

If the Contractor fails within **three (3) working days** after receipt of a written notice from the Engineer to correct Defective Work or to remove and replace rejected Work as required by the Owner, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the Owner may correct and remedy any such deficiency. In connection with such corrective and remedial action, the Owner may exclude the Contractor from all or part of the Job Site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the Job Site and incorporate in the Work all materials and equipment stored at the Job Site or for which the Owner has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Owner, the Owner's representatives, agents and employees access to the Job Site to enable the Owner

to exercise the rights and remedies under this Section. All claims, costs, losses and damages incurred or sustained by the Owner in exercising such rights and remedies will be charged against the Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Sum or any other remedy permitted in the Contract Documents or allowed by laws and regulations. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement or Work of others destroyed or damaged by correction, removal or replacement of the Contractor's Defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by the Owner of the Owner's rights and remedies hereunder.

3.49 PROTECTION, MAINTENANCE AND SECURITY DURING CONSTRUCTION

The Contractor shall protect, maintain and secure the Work during construction and until the Work is accepted. This protection, maintenance and security shall constitute continuous and effective Work prosecuted day by day, with adequate equipment and forces so that the Work is protected, maintained and secured in satisfactory condition at all times.

All costs of protection, maintenance and security Work during construction and before the Project is accepted shall be included in the prices for the various Contract Items, and the Contractor will not be paid an additional amount for such Work.

Should the Contractor at any time fail to so protect, maintain and secure the Work, the Owner upon observing such a failure, shall notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory condition.

Should the Contractor fail to respond to the Owner's notification, the Owner may suspend any of the Contractor's Work necessary for the Owner to correct such unsatisfactory protection, maintenance or security condition, depending on the exigency that exists. Any protection, maintenance or security cost incurred by the Owner, shall be deducted from monies due or to become due the Contractor.

3.50 CERTIFICATION OF SUBSTANTIAL COMPLETION

A. Preliminary Procedures:

Before requesting inspection for certification of Substantial Completion of entire work, the Contractor shall have completed the following:

1. In the Application for Payment that coincides with, or first follows, the date Substantial Completion is claimed, show **ninety percent 90%** completion of the Work. Include supporting documentation for completion as indicated in the Contract Documents and a statement showing an accounting of changes to the Contract Sum, if any.
2. Advise the Owner of pending insurance change-over requirements.

3. Submit specific warranties, including all Manufacturer's warranties, Workmanship bonds, maintenance agreements, final certifications and similar documents.
4. Obtain and submit any releases enabling the Owner unrestricted use of the Work and access to services and utilities; include occupancy permits, operating certificates and other similar releases.
5. Submit As-Built and Record Drawings, operations and maintenance manuals, damage or settlement survey, property survey, (if any) and similar final record information for all work completed at substantial completion.
6. Deliver tools, spare parts, extra stock, and similar items.
7. Make any final change-over of permanent locks and transmit keys to the Owner, if necessary. Advise the Owner's personnel of change-over in security provisions.
8. Certify that start-up, Performance and Acceptance testing of Work, and instruction and training of the Owner's operating and maintenance personnel has been completed.
9. Submit Consent of Surety to Reduction in Retainage.
10. Submit such other documentation as may be requested by the Owner.
11. Disposal manifests of all material removed during cleaning.
12. Submit all television logs in PACP format.
13. Submit copies of all DVDs showing pre and post construction televising in WinCan format in Mpeg or Jpeg format.

B. Inspection Procedures:

1. On receipt of a Contractor request for inspection for certification of Substantial Completion, the Construction Manager will coordinate, within a reasonable time thereof, a final inspection and advise the Contractor of any unfilled Contract requirements. The Owner will either prepare the Certificate of Substantial Completion form following the inspection, or, through the use of a punch list form, will advise the Contractor of Work that must be completed prior to issuance of the certification.
2. The Construction Manager will arrange another inspection when requested and assured by the Contractor that the Work has been substantially completed. The Contractor shall bear all costs the Owner may incur with regard to such re-inspections. Results of the completed inspection will form part of the basis of the requirements for Final Acceptance.

B. Certificate of Substantial Completion:

Upon the Contractor's completion of all the above, and based upon the Construction Manager's recommendation, the Owner will issue a Certificate of Substantial Completion.

3.51 FINAL ACCEPTANCE

A. Preliminary Procedures:

At least five [5] calendar days before requesting final inspection for certification of Final Acceptance and final payment, the Contractor shall have completed the following in form and substance acceptable to the Owner:

1. Submit Guarantees and Bonds as required by the Contract.
2. Submit Maintenance Bond.
3. Submit the final payment request with releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for products and completed operations where required.
4. Submit an updated final statement, accounting for final additional changes to the Contract Sum.
5. Submit a certified copy of the final inspection punch list of items to be completed or corrected, stating that each item has been completed or otherwise resolved for Final Acceptance, and the list has been endorsed and dated by the Engineer.
6. Submit final meter readings for utilities, a measured record of stored fuel, and similar data as of the date of Substantial Completion, or when the Owner took possession of and responsibility for corresponding elements of the Work.
7. Submit consent of surety to final payment.
8. Submit a final liquidated damages settlement statement.
9. Submit evidence of final, continuing insurance coverage complying with insurance requirements.
10. Submit the Contractor's Release and Waiver of Claims.
11. Submit Releases and Waivers in form acceptable to the Owner from any or all subcontractors or suppliers or the like who performed Work or supplied labor, materials or services pursuant to the execution of this Contract or as may be requested by the Owner.
12. Submit the Contractor's Affidavit of Payment of Debts and Claims.
13. Submit written certification that:

- a. the Contract Documents have been reviewed.
 - b. the Work has been inspected for compliance with the Contract Documents.
 - c. the Work has been completed in accordance with the Contract Documents.
 - d. the Work has been tested in the presence of the Construction Manager and is operational.
 - e. the Work is complete and ready for final inspection.
14. Submit all other submittals required by the Contract Documents or otherwise reasonably requested by the Owner.

B. Re-inspection Procedure:

The Construction Manager will coordinate re-inspection of the Work upon receipt of Contractor notice that the Work, including inspection of punch list items from earlier inspections, has been completed. The Contractor shall bear all costs the Owner may incur with regard to such re-inspections.

- 1. Upon completion of re-inspection, the Owner will either prepare a Certificate of Final Acceptance, or, through the use of a punch list form, will advise the Contractor of Work that is incomplete or of obligations that have not been fulfilled but are required for Final Acceptance.
- 2. If necessary, re-inspection will be repeated. This, however, shall not limit the Owner's right to receive liquidated damages for delay.
- 3. Non-Pennsylvania corporations and their sureties will not be relieved of their obligations until they furnish evidence that they have paid or posted security for, all state taxes and any other obligations owed to the Commonwealth.

If the Contractor refuses or fails to perform the punch list items, the Contractor hereby consents to the withholding of payments owed to the Contractor by the Owner for any reason or on any project, made at the discretion of the Owner and which may be deducted from any monies due or to become due the Contractor.

C. Certificate of Final Acceptance:

Upon the Contractor's completion of all the above, to the Construction Manager's satisfaction, the Owner will issue a Certificate of Final Acceptance.

D. Final Cleaning Up:

Upon completion of the Work and before Final Acceptance and Final Payment will be made, the Contractor shall remove from the Job Site all of its machinery, equipment, surplus and discarded materials, rubbish and temporary structures. The

Contractor shall leave the Site in a neat and presentable condition and shall call the Work "Broom-Clean" or its equivalent, except as otherwise specified. Material cleared from the Site and deposited on adjacent property will not be considered as having been disposed of satisfactorily.

3.52 USE OR PARTIAL PAYMENT NOT ACCEPTANCE

It is agreed that this is an entire Contract for one whole and complete Work and that neither the Owner's entrance upon or use of any part of the Work nor any partial payments by the Owner shall constitute an acceptance of the Work or any part thereof before its entire completion and Final Acceptance. The exception being such instances where, as may be specifically provided for in the Specifications or by Written Amendment, the Owner provides acceptance covering one or more completed unit(s) or portion(s) of the Work.

If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

3.53 ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE OF OWNER

Acceptance by the Contractor of final payment shall release the Owner and any representative of the Owner, from all claims and all liability to the Contractor for all things done or furnished in connection with the Work, and from every act, omission or neglect of the Owner, its agents and others relating to or arising out of the Work. No payment, however, final or otherwise, shall operate to release the Contractor from its obligations under this Contract. Failure of the Owner or any of its agents or representatives during the progress of the Work to discover or reject materials, equipment or Work not in accordance with the Contract Documents shall not be considered an acceptance or a waiver of defects therein, and payment to the Contractor or partial occupancy by the Owner shall not be considered an acceptance of the Work or materials which are not strictly in accordance with the Contract Documents.

3.54 DISPUTIES AND CLAIMS

Subject to **Section 3.33** and any other applicable provisions of the Contract Documents, any dispute, claim or controversy of any nature arising out of or relating to this Contract, or the breach thereof, or otherwise related to the Project, excluding claims and disputes between Prime Contractors described above in **Section 3.8** (hereinafter called "Disputed Matter"), must be presented by the Contractor to the Construction Manager in writing within **fifteen (15) calendar days** of **(a)** discovery of the event giving rise to the Disputed

Matter, or **(b)** when, by the exercise of reasonable diligence, the Contractor should have recognized the condition giving rise to the Disputed Matter.

In the event that the Contractor disputes the Initial Response provided by the Construction Manager, the Contractor must refer the Disputed Matter, in writing, with all material facts

described, to the Executive Director for determination within **fifteen (15) calendar days** of the Initial Response from the Construction Manager. No Disputed Matter will be reviewed by the Executive Director and the Contractor shall have waived its right to contest the Disputed Matter unless the Contractor has complied with all procedures and/or requirements relating to the Disputed Matter found in the Contract Documents or otherwise established by the Owner.

As an additional express condition precedent to the Contractor's right to submit a Disputed Matter to the Executive Director, the Contractor may be required to provide certain materials utilized by the Contractor in preparation of its Bid, including, but not limited to, worksheets, quotations, calculations, pricing data, estimates and correspondence relating thereto, clarification, additional information or data requested, and shall present in writing to the Executive Director evidence regarding the Disputed Matter, including evidence regarding liability, causation and damages, sufficient to enable the Executive Director to render a decision with respect to the Disputed Matter, and such evidence must be submitted to the Executive Director within **thirty (30) calendar days** of the Initial Response from the Construction Manager. The Executive Director, in his/her sole discretion, may require an informal hearing prior to making a determination. The Executive Director may conduct the hearing or may appoint a hearing officer of his/her choice. If the hearing officer is other than the Executive Director, the hearing officer shall make a recommendation to the Executive Director as to the disposition of the Disputed Matter. The decision of the Executive Director, or hearing officer, shall be made in writing within **fifteen (15) calendar days** of the hearing.

It is mutually agreed that any controversies, claims or disputes of any nature arising out of or relating to this Contract, or the breach thereof, or otherwise related to the Project, including any unresolved Disputed Matter, may, at the Owner's sole discretion, be settled by arbitration in accordance with the then current Construction Industry Arbitration Rules of the American Arbitration Association (in the Pittsburgh, Pennsylvania office only) and that all findings and decisions by the arbitrators shall be conclusive and binding on both parties and shall not be appealable and judgment upon the award rendered by the arbitration panel may be entered in the Court of Common Pleas of Allegheny County. The Owner may exercise its discretion to utilize arbitration at any time and shall not be deemed to have waived such discretion by any lapse of time or performance of any act.

If so determined by the arbitrators, and to the extent so determined by the arbitrators, the fees, costs and expenses of the arbitration shall be borne by the party against whom the arbitration is determined.

It is mutually agreed that any controversies, claims or disputes of any nature arising out of or relating to this Contract, or the breach thereof, or otherwise related to the Project, including any unresolved Disputed Item, may, at the Owner's sole discretion be resolved by legal proceedings in the courts of the Commonwealth of Pennsylvania beginning in the Court of Common Pleas, Allegheny County Pennsylvania unless otherwise determined by the Owner.

The Contractor shall comply with all directions and decisions of the Owner and shall proceed diligently with performance of the Work including disputed Work pending final

resolution of any Disputed Item and shall maintain the Contract Schedule during any claims, disputes, questions, or related matters or proceedings unless otherwise agreed to by the Contractor and the Owner in writing. If the Contractor is proceeding with the Work, or any portion thereof, under protest, the Contractor must notify the Construction Manager, in writing, prior to the commencement of such Work.

The Contractor shall make no claim against any officer, agent, or employee of the Owner for, or on account of, any act or omission to act in connection with the Contract, and hereby waives any and all rights to make any such claim or claims.

3.55 NO WAIVER OF RIGHTS

Neither inspection nor witnessing of tests by the Owner, nor any payment for, nor acceptance of, the whole or any part of the Work by the Owner, nor any extension of time, nor any possession taken, nor use made by the Owner, shall operate as a waiver of any provision of the Contract, nor of any power herein provided, nor shall any waiver, actual or implied, of any breach of the Contract be held to be a waiver of any other or subsequent breach. Issuance of the Final Acceptance or acceptance of any part of the Work by the Owner shall not be binding and conclusive upon the Owner with regard to Defective Work, fraud or bad faith, or such gross mistakes as may amount to fraud, or as regards to the Owner's rights under any warranty. Defective Work shall be corrected, and unsuitable materials, equipment, apparatus and other Items shall be replaced by the Contractor, notwithstanding that such Work, materials, equipment, apparatus and other Items may have been previously overlooked and/or accepted or estimated for payment. Failure of the Owner to require strict compliance with any term or condition of the Contract in any specific instance shall not be deemed a waiver of the right to subsequent enforcement thereof.

No failure of the Owner to insist upon strict compliance by the Contractor to any requirements of this Contract or to promptly exercise any right accruing from any default of the Contractor shall impair the Owner's rights in case the Contractor's default continues or in case of any subsequent default by the Contractor.

3.56 BONDS

When the Contractor delivers the executed Contract Agreement, it shall also provide a Performance Bond and a Labor and Material Payment Bond on the forms included in these Contract Documents, each with corporate surety satisfactory to the Owner and valid Power of Attorney attached. Each such Bond shall be in the full amount (**100%**) of the Contract Sum, payable to the Allegheny County Sanitary Authority, said Bonds to be conditioned upon the full and faithful performance by the Contractor pursuant to the Contract Documents and payment by the Contractor for all materials and supplies furnished and labor supplied or performed, and all other legal debts incurred in the prosecution of the Work. If the Contract Sum is increased pursuant to a Change Order, the Contractor shall increase the amount of each Bond proportionately. The Contractor shall furnish the proper Performance Bond and Labor and Material Payment Bond to the Owner prior to the execution of the Contract by the Owner. The Owner reserves the right to reject any bond furnished where it determines it is in its best interest to do so. No bond shall be furnished

from a Surety which is not registered to do business with the Pennsylvania Insurance Commission for the limits so required.

Upon Final Acceptance of the completed Work and before the Surety which has furnished the Performance Bond is released, the Contractor shall furnish a Maintenance Bond of a surety company acceptable to the Owner in the amount of **One Hundred (100%)** of the Contract Sum. The form of the Maintenance Bond shall not deviate from the form Maintenance Bond attached to the Contract Documents. The Owner reserves the right to reject any surety or bond furnished where it determines it is in the best interest of the Owner to do so.

All Bonds (including any Bid Bond) shall be duly executed by the Contractor as principal and by a corporate surety or sureties approved to do business in the Commonwealth of Pennsylvania and must be satisfactory to the Owner. If the surety on any bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business in Pennsylvania is terminated, the Contractor shall immediately notify the Owner in writing, and shall within **ten (10) working days** thereafter substitute another bond and surety, both of which must be acceptable to the Owner.

3.57 WARRANTY

The Contractor represents and warrants that the Work and services to be performed under the Contract, and all workmanship, materials, Work and equipment provided, furnished, used or installed in the construction of the same, shall be safe, substantial and durable construction in all respects, of the highest quality and best obtainable in every respect, new (unless otherwise provided herein), shall be free from faults or defects, shall be performed and furnished in strict accordance with the Contract Documents, and that the strength of parts of all manufactured equipment shall be adequate and as specified and explicitly warrants the merchantability and the fitness for use and quality of all Owner approved substituted Items provided by it or its subcontractors and warrants that all Owner approved substituted Items will perform to the standard of the Item originally specified. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of the materials and equipment.

The Contractor further agrees on behalf of itself, any heirs, executors, administrators, successors and assigns that it shall repair and replace promptly, without charge, all workmanship, Work, materials or equipment (or any damage to owned or controlled real or personal property resulting from Defective Work, equipment or materials or resulting from the replacement of such) furnished under the Contract that fail to meet the above standard or are otherwise Defective. This obligation shall survive the completion of the Work and/or the termination of the Contract. If within **three (3) working days** after the Contractor has been notified of a defect, the Contractor has not made substantial progress nor shown a satisfactory attempt to make the necessary corrections, the Owner is hereby authorized to make the corrections or to order the Work to be done by a third party, and the cost of the corrections shall be paid by the Contractor.

This warranty shall be for a period of **twelve (12) months** from the date the Work is placed into service and Final Acceptance by the Owner (the "Warranty Period"). In special

circumstances where a portion of the Work is accepted by the Owner, pursuant to a signed writing, before Final Acceptance of all the Work, the Warranty Period for that portion of the Work may start to run from an earlier date if so provided in the Specifications or by Written Amendment. If, during the Warranty Period, the Work, materials, equipment or system is unavailable due to defects covered by the warranty in excess of **fifteen (15) calendar days** during a **thirty (30) calendar day** period, the Warranty Period shall be extended by **thirty (30) calendar days**. This Warranty Period extension shall apply to all subsequent **thirty (30) calendar day** periods where these provisions apply or such longer period of time as may be prescribed by law or by the terms of the Contract Documents. Repetitive malfunction of the Work, materials, equipment or any portion thereof shall be cause for the Work, materials or equipment replacement and an extension of the Warranty Period to a date **twelve (12) months** following acceptable replacement. Repetitive malfunction shall be defined as three failures of the same component or subsystem within the Warranty Period. Work, materials or equipment replacement shall be defined to mean the replacement of the major piece of the Work, materials or equipment containing the failed component or subsystem (e.g., pump, feed system, hydraulic power unit, control panel). Nothing herein shall limit the Owner's right to seek recovery for latent defects which are not observable until after the Warranty Period has expired. The Warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents. The Contractor will be responsible to make sure that all third-party warranties flow through to the Owner and will enforce all such warranties for the benefit of the Owner. If the maker of any such warranties and guarantees fails to fulfill its obligations thereunder, the Contractor shall fulfill such obligation of the guarantor or reimburse the Owner for any costs incurred by the Owner in replacing Defective Materials and correcting Defective, unsound or improper Work covered by any such warranties and guarantees.

The Contractor further represents and warrants that: **(1)** it has the right to transfer title to the materials, parts, components and Items of Work to the Owner, free and clear of any liens, security interests or other encumbrances; **(2)** all of the materials, parts, components and Items of Work will be new; and **(3)** none of the materials, parts, components and Items of Work will be substitute components, unless such substitutions have been approved in advance, in writing by the Owner.

For equipment, products or systems that carry a Manufacturer's Warranty, the Contractor shall make sure that the Manufacturer supplies the Owner with the following prior to final close out.

- A. Certificate of Warranty for the equipment, product or system.
- B. Letter of acknowledgment identifying:
 - 1. The starting and end dates of the Warranty Period.
 - 2. All conditions under which the Warranty operates or under which it can become null and void.
 - 3. Names, Address and Telephone Number of the authorized Warranty Service Center or Servicing Company.

3.58 TERMINATION OF THE CONTRACT

A. Termination for Cause

The Owner may, upon **seven (7) calendar days** of written notice to the Contractor and its surety, terminate and/or take over the entire Contract, or any part of it, for reasons including but not limited to the following: **(1)** the Contractor's Work or performance impairs or delays the progress of the Project or any portion thereof or any Other Contractor at the Job Site, **(2)** the Contractor fails, refuses or neglects to supply sufficient skilled workmen or materials or equipment of proper quality and quantity or adequate equipment to perform the Work or fails to comply with the Specifications as required by this Contract, **(3)** the Contractor persistently or repeatedly fails to make prompt payment to subcontractors for material or labor, **(4)** the Contractor fails, refuses or neglects to remove materials or to perform anew such Work as may be rejected as unacceptable or unsuitable by the Owner or the Construction Manager, **(5)** the Contractor fails to keep its Work on schedule as required by the Owner through the Construction Manager, including modifications or remedial instructions or revisions, **(6)** the Contractor otherwise fails in any respect to comply with any provision of this Contract, or applicable law, ordinance or regulation, **(7)** the Contractor becomes insolvent, files a voluntary petition for bankruptcy or becomes the subject of an involuntary petition of bankruptcy, receivership, control of assets by a Trustee, or sequestration of assets or allows any final judgment to stand against him unsatisfied for a period of **ten (10) calendar days**, makes an assignment for the benefit of creditors, or **(8)** for any other cause whatsoever, fails to carry on the Work in an acceptable manner.

If the Contractor does not remedy nor make acceptable progress at the remedy of the deficiencies or failures which are the basis of the Owner's termination notice within the **seven (7) calendar day** notice period, the Owner may, at its option and without prejudice to any other right or remedy that the Owner may have under the Contract or otherwise and without any further notice or communication of any kind, correct the deficiency or failure and charge back the cost, expense, loss and damages (including the Owner's overhead and the Contractor's expected profit as reasonably determined by the Owner) for its correction to the Contractor as they accrue, and/or the Owner may withhold further payment to the Contractor until satisfactory performance has resumed, and/or the Owner may terminate this Contract in whole or in part in writing, and the Owner shall thereafter have the rights and remedies set forth in this Contract and as allowed by law. If the Contractor corrects the deficiency or failure within the notice period to the Owner's satisfaction, then this Contract shall continue in full force except that the Contractor shall reimburse the Owner for all of the Owner's costs, expenses, damages, losses, and other liabilities related to the deficiency or failure.

If this Contract or any part of it is terminated, the Owner shall have the option to complete the Work required by the Contract, either in whole or in part, or re-let the remaining Work. If this Contract is terminated in whole or in part, the Owner shall have the right to take possession of all tools, equipment, scaffolding, materials, and supplies which are on the Job Site, in transit to the Job Site, or related to the Work at the Job Site, whether the Contractor owns those items or not, and to use or have

others use those items to complete this Contract. The use of those items will be at no cost or liability to the Owner. The Owner may also notify and require the surety to complete the Work, either in whole or in part, in accordance with the Contract Documents.

To the extent this Contract is terminated, the Contractor shall immediately take all steps to protect the Work, discontinue the Work and not place additional orders or subcontracts for labor, materials, equipment, or services with respect to the terminated part of this Contract. The Owner may then suspend all further payments to the Contractor until after (1) this Contract Work is completed and (2) the Owner has made final payment for the Work. After the Owner makes final payment for the completed Work, and subject however to any pending or expected claims, by the Owner, the Owner shall pay the Contractor the amount or part of it, if any, due the Contractor for retainage and/or progress billings that were previously earned but unpaid as of the termination date.

In any event, the Owner's maximum liability to the Contractor shall be limited to the lesser of the pro-rata part of the Contract Sum for, or the value to the Owner of, Work actually and properly completed and incorporated into the Project before the termination date. However, the above liability shall be decreased by any amounts previously paid to the Contractor or on its behalf, and also decreased by all additional costs, expenses, damages, liabilities and losses the Owner incurs to complete this Contract and pay for the Work (including, but not limited to payment of any Owner's creditor claims arising from or related to this Contract, reasonable compensation for managerial and administrative services and other overhead of the Owner, the Owner's attorney fees and other legal expenses) and also decreased by all other damages, liabilities, losses, costs and expenses the Owner incurs arising out of or relating to this Contract or the Contract Work. Any savings realized shall be the sole property of the Owner. If the total amounts previously paid to the Contractor and on the Contractor's behalf plus the Owner's damages, losses, costs and expenses (including but not limited to overhead and the Contractor's expected profit as reasonably determined by the Owner reasonable profit) to complete this Contract plus other losses, damages, liabilities, costs and expenses of the Owner arising out of or relating to the Contractor's default, this Contract and the Work, exceeds the total Contract Sum, the Contractor and its surety shall be liable for and shall reimburse the Owner for the excess upon demand at any time. Without otherwise limiting its recovery, the Owner shall be entitled to deduct that amount or any part of it from any funds otherwise payable to the Contractor. In addition to the above, the Contractor is liable for liquidated damages pursuant to the Contract Documents.

If this Contract is so terminated, the Contractor shall, at the Owner's option, assign in full force to the Owner those subcontracts of any tier (including supply contracts) held by the Contractor, or any part of them, for which the Owner requests assignment (the Contractor shall place in all of its subcontracts and supply contracts a provision allowing such assignment at the Owner's option). The Contractor shall remain liable for all its obligations to its suppliers, subcontractors and other persons on those assigned subcontracts and supply contracts for rights that accrued before,

or upon, the assignment and shall remain liable to the Owner for any breaches of the assigned subcontracts and supply contracts whether occurring before or after such assignment.

The duties and obligations of the Contractor as stated or referred to hereunder shall also apply to the surety.

Notwithstanding any termination of this Contract, the Contractor's obligations to the Owner shall continue as to all Work performed. The obligations and duties of the Contractor under this Contract, including but not limited to warranty provisions, shall remain in full force after termination, except to the extent necessarily limited by such termination, and after completion of the Work. Termination for cause shall not waive or release any of the Owner's claims, rights or remedies against the Contractor or its surety, as allowed by this Contract or applicable law. If it is subsequently determined that adequate cause did not exist for the Owner's termination of this Contract for cause, this termination by the Owner shall be then considered a termination by the Owner for its convenience under **Paragraph B**.

The rights and remedies of the Owner provided in this provision are in addition to any other rights or remedies provided by law or under the Contract Documents.

B. Termination for Convenience

The Owner shall have the right to terminate this Contract or any part of it at any time without cause upon written notice to the Contractor specifying the extent to which this Contract is terminated and the date upon which such termination becomes effective. After the Contractor receives the Owner's Notice of Termination, and unless otherwise directed, the Contractor shall **(1)** stop Work on the terminated part of this Contract on the date and to the extent specified, **(2)** place no further orders or subcontracts for equipment, materials, labor, services or facilities except what may be necessary for completion of that part of the Contract that is not terminated; **(3)** transfer title for the terminated part and deliver to the Owner any Work in progress, completed Work and materials and equipment for which the Contractor has been or will be paid; **(4)** complete performance of any part of the Work required by this Contract that is not terminated by the Owner's Notice of Termination; and **(5)** take such other actions as may be directed by the Owner.

The Contractor shall notify the Owner in writing within **seven (7) calendar days** after receipt of the Owner's Notice of Termination of the effect of such order upon the Contractor's Work.

If the Owner terminates this Contract for its convenience the Owner's liability to the Contractor for the termination shall be expressly subject and limited to **(1)** payments and retainage actually and properly accrued and unpaid for Work, materials and equipment actually and properly completed, stored and incorporated into the Project before termination and **(2)** the reasonable costs and expenses for terminating supply contracts (not to exceed actual costs) which cannot be mitigated by the Contractor and which are necessarily and unavoidably incurred by the

Contractor and caused by the Owner's Notice of Termination (subject to full prior advice, cooperation and concurrence with the Owner as to mitigation measures to reduce as much as possible such termination costs and expenses as well as subsequent verification and documentation of these costs and expenses), (3) less any claim the Owner has against the Contractor. If the sum of all previous payments and credits made by the Owner exceeds the sums payable above, such excess shall be refunded by the Contractor to the Owner immediately upon determination of such excess by the Owner or at the Owner's option may be the basis of a claim by the Owner against any other amounts due the Contractor.

If this Contract is so terminated, the contractor shall, at the Owner's option, assign in full force to the Owner those subcontracts of any tier (including supply contracts), or parts of them, held by the Contractor, for which the Owner requests such assignment. (The Contractor shall place in all its subcontracts a provision allowing assignment at the Owner's option.) The Contractor shall remain liable for all its obligations to suppliers and subcontractors and other persons on the assigned subcontracts and supply contracts for rights that accrued before, or upon, the assignment.

In no event will the Owner be liable for the loss of anticipated profits or overhead, or any special, consequential, incidental, overhead or other costs or liability arising from any termination for convenience other than that previously described. The Contractor agrees to remove promptly its tools, equipment, materials and employees from the Job Site upon the stated termination date. Notwithstanding any termination of this Contract, the Contractor's obligation to the Owner shall continue as to all Work performed. The obligations and duties of the Owner under this Contract, including but not limited to warranty provisions, shall remain in full force after termination, except to the extent necessarily limited by such termination, and after completion of the Work. This termination for convenience will not waive or release any of the Owner's claims, rights or remedies against the Contractor or its surety, as allowed by this Contract or applicable law.

3.59 LIMITATION OF LIABILITY

Notwithstanding any other provision of the Contract Documents, in no event shall the Owner, the Consulting Engineer, the Construction Manager, their officers, Board members, indemnitees, agents, guests, invitees and employees be liable (in contract or in tort, including negligence) to the Contractor for incidental or consequential damages, including, but not limited to, interest or carrying charges on its investment, expenses arising from costs of capital, loss of profits on Work not performed, or for loss of use of or under-utilization of labor, equipment or facilities of the Contractor, resulting from any

performance, nonperformance, or delay in performance on the part of the Owner, the Consulting Engineer, the Construction Manager, their officers, Board members, indemnitees, agents, guests, invitees and employees of obligations under this Contract, or from the Owner's delay, termination or suspension of the Work.

3.60 INTERPRETATION

Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning unless defined otherwise in the Contract Documents.

Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specifications, manuals, codes or Laws or Regulations in effect at the time of the opening of Bids (or, on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated. However, no provision of any reference, standard, specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Owner or the Contractor or any of their consultants, agents or employees from those set forth in the Contract Documents.

3.61 PARTIAL INVALIDITY

In the event any one or more of the provisions of this Contract are found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Contract shall remain in full force and effect. The Owner and the Contractor agree that the Contract shall be reformed to replace such stricken provision or part thereof, with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

3.62 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of the laws and regulations required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though they were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract will forthwith be physically amended to make such insertion or to correct such insertion.

3.63 BINDING EFFECT

The terms, provisions, covenants and conditions contained in this Contract shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns except as otherwise expressly provided.

3.64 SURVIVAL

All covenants, representations and warranties contained in this Contract shall remain in force in perpetuity unless terminated as provided in this Contract.

3.65 INTEGRATION

The terms of this Contract (including any document which is referenced by this Contract) sets forth the entire agreement and understanding between the parties.

3.66 MODIFICATIONS AND CHANGES

No verbal agreement or conversation with any officer, agent, consultant or employee of the Owner, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

3.67 JURISDICTIONAL DISPUTES

The Owner or the Executive Director shall not be brought into any dispute or controversy by reason of inadvertence or seeming necessity for issuing the Contract Documents in the form herewith presented. No arrangement of topics or other interrelation or reference used throughout in connection with any of the Contract Documents shall be construed by anyone to be an interference on the part of either the Owner or the Executive Director with any jurisdictional or other trade rules or agreement.

3.68 GOVERNING LAW; FORUM

This Contract shall be governed construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania. Pursuant to **Section 3.54** hereof entitled "Disputes and Claims," the Executive Director may make a determination regarding any controversy, claim or dispute. The Owner may refer any controversy, claim or dispute to arbitration or court. The exclusive venue and jurisdiction for any court proceedings regarding this Contract shall be in the courts of the Commonwealth of Pennsylvania beginning in the Court of Common Pleas, Allegheny County Pennsylvania.

3.69 ATTORNEY'S FEES

In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses.

REGULATORY REQUIREMENTS

3.70 COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable laws and regulations, the Owner shall not be responsible for monitoring the Contractor's compliance with any laws and regulations.

If the Contractor performs any Work that is contrary to laws and regulations, the Contractor shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

The Contractor shall, throughout the performance of the Contract, keep itself fully informed of all existing and future laws and regulations in any manner affecting those engaged or employed in the Work, or in any way affecting the conduct of the Work. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such laws and regulations, the Contractor shall indemnify and forthwith report the same, in writing, to the Engineer and the Construction Manager.

The Contractor shall at all times itself observe and comply with and cause all its agents and employees to observe and comply with all such existing and future laws and regulations; and shall protect and indemnify the Owner, its officers and agents against any claims or liability arising from or based upon violation of such laws and regulations, whether by itself or its agents or employees.

No provisions of these Contract Documents shall act to make the Owner and its agents or any other party other than the Contractor responsible for safety. The Contractor shall indemnify, defend and hold harmless the Owner and its agents from and against any and all actions, damages, fines, suits and losses arising from the Contractor's failure to meet safety requirements and/or provide a safe worksite.

3.71 NONDISCRIMINATION CLAUSE

During the term of the Contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee, applicant for employment, independent contractor or any other person because of race, color, religious creed, ancestry, national origin, age, sex or handicap. The Contractor shall take actions to ensure that applicants are employed, and that employees or agents are treated without regard to national origin, sex, or handicap. Such actions shall include, but are not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The Contractor shall post in conspicuous places, available to employees, agents, applicants for employment, and other persons, a notice to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause. The Contractor shall abide by the Contract Compliance Regulations issued by the Pennsylvania Human Relations Commission ("Compliance Regulations").
- B. The Contractor shall not discriminate against the Owner's employees or agents on any of the bases set forth in the preceding paragraph. This includes, but is not limited to, the Contractor's obligation to provide the Owner's employees and agents who deal with the Contractor, a workplace that is free from any and all forms of harassment on the basis of race, color, religious creed, ancestry, national origin, age, sex or disability. As a condition of accepting and executing this Contract, the Contractor agrees to adopt and comply with the Owner's Sexual Harassment Policy which is attached hereto and made a part hereof as **Exhibit "C"**.
- C. The Contractor shall, in advertisements or requests for employment placed by it or on its behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin,

age, sex or handicap.

- D. The Contractor shall send each labor union or workers' representative with which it has a collective bargaining agreement or other contract or understanding, a notice advising said labor union or worker's representative of its commitment to this nondiscrimination clause. Similar notice shall be sent to every other source of recruitment regularly utilized by the Contractor.
- E. It shall be no defense to a finding of noncompliance of the Compliance Regulations or with this nondiscrimination clause that the Contractor had delegated some of its employment practices to any union, training program, or other source of recruitment which prevents it from meeting its obligations. However, if the evidence indicates that the Contractor was not on notice of the third-party discrimination or made a good faith effort to correct it, such factors shall be considered in mitigation in determining appropriate sanctions.
- F. Where the practices of a union or of any training program or other source of recruitment will result in the exclusion of minority group persons, so that the Contractor will be unable to meet its obligations, under the Compliance Regulations or under this nondiscrimination clause, the Contractor shall notify the Owner in writing and then employ and fill vacancies through other nondiscriminatory employment procedures.
- G. The Contractor shall comply with the Compliance Regulations and all local, state and federal laws prohibiting discrimination in hiring or employment opportunities. In the event of this Contractor's noncompliance with the nondiscrimination clause of this Contract or with any such laws, this Contract may be terminated or suspended, in whole or in part, and the Contractor may be declared temporarily ineligible for further Owner contracts, and other sanctions may be imposed, and remedies invoked.
- H. The Contractor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the Owner or other governmental agency, for purposes of investigation to ascertain compliance with the provisions of this clause. If the Contractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the Owner or applicable governmental agency.
- I. The Contractor shall actively recruit minority subcontractors or subcontractors with substantial minority representation among their employees.
- J. The Contractor shall include the provisions of this nondiscrimination clause in every subcontract, so that such provisions will be binding upon each subcontractor.
- K. The Contractor's obligations under this clause are limited to the Contractor's facilities within Pennsylvania, or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually produced.

3.72 PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

During the term of this Contract, the Contractor agrees as follows:

- A. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. 35.101 et seq. the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from activities provided for under this Contract except to the extent that accommodating such a person with a disability would impose an undue burden on the Contractor. As a condition of accepting and executing this Contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Owner through contracts with outside individuals and entities.
- B. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Owner from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner as a result of the Contractor's failure to comply with the provisions of indemnify 1. above.

3.73 COMPLIANCE WITH HEALTH, SAFETY AND ENVIRONMENTAL LAWS

- A. The Contractor represents and warrants to the Owner that, to the extent it performs any Work or provides any services to the Owner, it shall be familiar and in full compliance with all applicable workplace requirements of, and standards and regulations issued by the Federal Occupational Safety and Health Administration ("OSHA") and/or by the Pennsylvania Department of Labor and Industry, including but not limited to the Occupational Health and Safety Act of 1970.

The Contractor represents and warrants to the Owner that, to the extent it or its subcontractors perform any work or provide any services to the Owner, it shall be familiar and in full compliance with all applicable workplace safety requirements.

- B. The Contractor agrees to take all reasonable and necessary precautions to prevent injury to persons, property and equipment and shall be solely responsible for the implementation and enforcement of a safety program. This safety program shall cover all subcontractors working on the Job Site for the Contractor. If at any time, and in the sole judgment and discretion of the Owner, proper safety measures are not being taken, or Work is being performed in an unsafe manner, such unsafe work shall be stopped and shall resume only after such unsafe conditions shall have been corrected. All costs incurred by the Contractor as a result of such stoppage of Work shall be borne by the Contractor without any right of reimbursement from the Owner. This right to stop Work shall impose no liability upon the Owner or Its agents to the Contractor or to any third parties for establishment of safety requirements or enforcement of job safety.

As outlined in the bid process, pre-construction meeting or OSHA and/or the Department of Labor regulation, a written site-specific health and safety plan (HASP) shall be submitted to the Owner prior to performing any Work on the Job Site. Any employees working under these site-specific conditions must have appropriate license and/or training prior to starting work on the site. Violation of these standards will be addressed with corrective action up to and including Stop Work.

- C. No Work shall be performed at the Owner's Job Site that could prevent the Owner from performing any daily operations. The Contractor shall properly protect and restrict access to the work area to protect employees/contractors as necessary and appropriate.

If at any time proper safety measures are not being taken or the work is being performed in an unsafe manner the Owner may take any or all of the following actions.

1. Require the removal of the Contractor's employee responsible for the safety violation, including the Contractor's superintendent.
2. Withhold part or all of a current payment request;
3. Notify the Contractor's insurance carrier of the safety violation;

Notwithstanding the Construction Manager's right to issue Safety Non-compliance notices and the Owner's right to take actions with regard to safety infractions as described in the Contract documents, neither the Owner nor the Construction Manager shall have any obligation to exercise these rights with respect to any safety infraction by the Contractor. Furthermore, the exercise or non-exercise of these rights shall not be deemed to make the Owner or the Construction Manager responsible for the Contractor's safety.

- D. The Contractor is wholly responsible for performing the Work in a safe manner that complies with the provisions of the Contract Documents and with the requirements of the governmental agencies responsible for establishing safe procedures for the workplace and protection to the public.

The Contractor is an independent contractor and neither the Contractor nor any of its subcontractors, nor the employees of the Contractor nor any of its subcontractors shall be deemed to be servants, employees, agents or under the control of the Owner.

If an accident should occur on the Job Site, the Contractor or party involved must notify the Owner immediately after notifying any required emergency services. Copies of all accident reports shall be transmitted to the Owner's Manager of Loss Control.

No provision of the Contract Documents shall act to make the Owner, Construction Manager or any other party other than the Contractor responsible for safety. The Contractor shall indemnify, defend, and hold harmless the Owner, its Directors, the

Construction Manager, the Engineer, and any of the owner's agents and employees from and against any and all actions, damages, fines, suits, and losses of any kind arising from the Contractor's failure to meet all safety requirements and/or provide a safe work site.

3.74 HAZARDOUS SUBSTANCES

A. Labeling.

The Contractor shall insure that each individual product (as well as the carton, container or package in which the product is shipped) of any of the following substances (as defined by the Worker and Community Right-to-Know Act and the regulations promulgated thereunder) supplied to the Owner by the Contractor is clearly labeled with the information listed in **Paragraphs (1) through (4)**:

1. Hazardous substances;
 - a. the chemical name or common name,
 - b. hazard warning,
 - c. the name, address and telephone number of the Manufacturer, and
 - d. the contractor's name and project office telephone number, and ALCOSAN contract number.

2. Hazardous mixtures;
 - a. the common name, but if none exists, then the trade name,
 - b. the chemical or common name of special hazardous substances comprising 0.1% or more of the mixture,
 - c. the chemical or common name of hazardous substances comprising 1 % or more of the mixture,
 - d. a hazard warning,
 - e. the name, address and telephone number of the Manufacturer, and
 - f. the contractor's name and project office telephone number, and ALCOSAN contract number.

3. Single chemicals;
 - a. the chemical name or common name,
 - b. a hazard warning, if appropriate,
 - c. the name, address and telephone number of the Manufacturer, and
 - d. the contractor's name and project office telephone number, and

ALCOSAN contract number.

4. Mixtures;
 - a. the common name, but if none exists, the trade name,
 - b. a hazard warning, if appropriate,
 - c. the name, address and telephone number of the Manufacturer,
 - d. the chemical name or common name of either the top five substances by volume or those substances constituting 5% or more of the mixture, and
 - e. the contractor's name and project office telephone number, and ALCOSAN contract number.

FAILURE TO PROPERLY LABEL EACH INDIVIDUAL PRODUCT AND THE CARTON, CONTAINER OR PACKAGE IN WHICH THE PRODUCT IS SHIPPED CAN RESULT IN THE REJECTION OF THE SHIPMENT.

B. Material Safety Data Sheet.

The Contractor shall provide Material Safety Data Sheets (MSDS) with the information required by the Act and the regulations for each hazardous substance or hazardous mixture. The Owner must be provided an appropriate MSDS with the initial shipment and with the first shipment after an MSDS is updated or product changed. For any other chemical, the Contractor shall provide an appropriate MSDS, if the Manufacturer, importer or supplier produces or possesses the MSDS. The Contractor shall also notify the Owner when a substance or mixture is subject to the provisions of the Act. Material Safety Data Sheets should be attached to the carton, container or package mailed to the Owner at the time of shipment.

- C. If the Contractor performs any Work or provides any services at the Owner's Site, the Contractor shall comply with all applicable surveying, posting, labeling, reporting, disclosure and training requirements of the OSHA Hazard Communication Standard and of the Worker and Community Right-to-Know Act and the regulations promulgated thereunder. The Contractor hereby represents and warrants that it is familiar with the above-mentioned Standard Act and regulations.

3.75 WORKING HOURS

Work performed at the Job Site shall be performed during normal working hours (**7:00 AM to 5:00 PM**) or at other times approved by the Owner.

The Contractor shall schedule all Job Site Work so that its working hours and the normal working hours of the Owner coincide. Should it be necessary to work hours other than the Owner's normal working hours, the Contractor shall arrange for access to the area with the Construction Manager, in writing, no less than 48 hours prior to this need.

Work performed after hours, during the Owner holidays and weekends shall be overseen by the Construction Manager, at the sole expense of the Contractor except for the cost of the Owner's employees. Owner will waive Construction Manager costs for work performed during construction constraints that interrupt normal operation as identified in the contract documents.

The Owner observes the following holidays on the day that is designated by the Federal Government:

- New Year's Day
- Martin Luther King Day
- President's Day
- Good Friday
- Memorial Day
- Independence Day (Fourth of July)
- Labor Day
- Columbus Day (Indigenous Peoples Day)
- Election Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Day

Any Contractor that wishes to perform work on these holidays will be responsible for any additional costs incurred by the Owner, including but not limited to, the cost of the Owner's staff and the CM's staff.

3.76 MINIMUM WAGE RATES

The Contractor shall pay not less than the minimum wage rates established by the governmental agency having jurisdiction. The Contractor shall comply with the requirements of the Pennsylvania Prevailing Wage Act, Act No. 442, approved August 15, 1961.

3.77 BUY AMERICAN

It is the desire of the Owner that items supplied under this Contract shall be manufactured and assembled in the United States of America and utilize American materials to the maximum practical extent, consistent with the needs of this Contract and the availability of products and components of American manufacture. In this respect, all items supplied under this Contract shall comply with all applicable State and Federal laws relating to utilizing products, materials supplies of local or domestic origin.

3.78 PENNSYLVANIA STEEL PRODUCTS PROCUREMENT ACT

The Contractor agrees to comply with the Pennsylvania Steel Products Procurement Act and shall submit with its Bid a signed copy of the Certificate of Compliance with the Pennsylvania Steel Products Procurement Act that is incorporated as part of the Contract Documents.

3.79 TRADE PRACTICES ACT

The Contractor agrees to comply with the Trade Practices Act and shall not use or permit to be used in the Work any aluminum or steel products made in a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania.

3.80 WORKMEN'S COMPENSATION

The Contractor agrees, in any contract involving construction or doing any work involving construction or doing any work involving the employment of labor, to accept the provisions of the Workmen's Compensation Act and any reenactment, supplements or amendments thereto and shall insure its liability thereunder or file with the Owner a certificate of exemption of insurance from the Department of Labor and Industry of the Commonwealth of Pennsylvania.

EXHIBIT "A"**INSURANCE**

All insurance required by the Contract Documents (including this Exhibit) to be purchased and maintained by the Contractor shall be obtained from insurance companies that are duly licensed or authorized in the Commonwealth of Pennsylvania for the issuance of insurance policies for the limits and coverages so required. Such insurance companies shall also meet such additional requirements and qualifications as may be provided in the Contract Documents and provided below.

All coverage shall be without voluntary deductibles, and if the insurance contains deductibles, the Contractor shall pay all costs and expenses not covered because of such deductibles. All insurance shall be on an occurrence basis.

The Contractor shall provide to the Engineer and the Construction Manager (with copies to each additional insured identified in the Contract Documents) prior to commencing Work, Certificates of Insurance evidencing the required insurance (as well as any other evidence of insurance requested by the Owner or any other additional insured). Each certificate shall, in addition to the insurance coverage, contain the following:

- Inception and expiration dates of insurance policy(ies);
- Limits of liability;
- Nature of coverage(s) provided including special hazards, if required;
- Name(s) of insurance company(ies);
- Policy Numbers(s);
- Notation of deductible and self-insurance retention applicable to any contract of insurance.
- Notation of policy endorsement that provides for **thirty (30) calendar days** prior written notice to the Owner in the event of change, canceling or renewal;
- Underlying insurance requirement for excess liability contracts

The Owner will accept no certificate which exculpates the issuer or reduces any right conferred on the Owner by the above certificates, nor will the Owner accept certificates unless the certificates bear the signature of a direct representative of the insurance company authorized to do business in Pennsylvania.

The Contractor will furnish a certificate of renewal or extension of the policy that expires during the term of this contract **thirty (30) calendar days** prior to the expiration date of the policy.

The Contractor shall deliver to the Owner a certified copy of each policy required hereunder, as well as a copy of the endorsement adding additional insureds hereunder (on 150 Form B for general liability coverage) as well as a listing of all policy exclusions different from the standard for CG

00 01 prior to beginning the Work.

Contractor's Liability Insurance:

The Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from the Contractor's performance and furnishing of the Work and the Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the Contractor, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable for not less than the following amounts or greater if required by law:

1. claims under workers' compensation, disability benefits and other similar employee benefits acts pursuant to the amounts provided in 2 below;
2. claims for damages because of bodily injury, occupational sickness or disease, or death (including wrongful death) of the Contractor's employees; Worker's Compensation Insurance in compliance with all states in which the Contractor does business, including coverage B Employers' Liability;
 - Bodily Injury by accident, **\$100,000** for each accident;
 - Bodily Injury by disease **\$500,000** policy limit;
 - Bodily Injury by disease **\$100,000** for each employee;
3. claims for damages because of bodily injury, sickness or disease, or death (including wrongful death) of any person other than the Contractor's employees;
4. claims for damages insured by customary personal injury liability coverage which are sustained:
 - (I) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or
 - (II) by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

The Contractor's liability insurance shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of the Contractor for not less than the following amounts:

- | | | |
|----|---|---------------------------|
| a. | General Aggregate
(except Products - Completed Operations) | <u>\$2,000,000</u> |
| b. | Products
Completed Operations Aggregate | <u>\$2,000,000</u> |
| c. | Personal and Advertising Injury | |

- (Per Person/Organization) **\$1,000,000**
- d. Each Occurrence
(Bodily Injury and Property Damage) **\$1,000,000**
- e. Property Damage Liability Insurance will
provide explosion, collapse, underground
coverages where appropriate
- f. Excess Liability
General Aggregate **\$2,000,000**
Each occurrence **\$2,000,000**
- g. claims for damages because of bodily injury or death of any person or property damage
arising out of the ownership, maintenance or use of any motor vehicle.

Automobile Liability:

- (1) Bodily Injury:
Each Person **\$1,000,000**
Each Accident **\$1,000,000**
and
Property Damage:
Each Accident **\$1,000,000**
or
- (2) Combined Single Limit
(Bodily Injury and Property Damage):
Each Accident **\$1,000,000**

The policies of liability insurance so required by above to be purchased and maintained shall:

- (a) with respect to insurance required by **paragraphs 3,4,5 and 6** include as additional insureds (subject to any customary exclusion in respect of professional liability) the Owner, Consulting Engineer and any other persons or entities identified by the Owner, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;
- (b) include completed operations insurance;
- (c) include contractual liability insurance covering the Contractor's indemnity obligations with coverage of not less than **(1) General Aggregate \$ 2,000,000, (2) Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000.**

- (d) remain in effect at least until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing Defective Work in accordance with the Contract Documents; and
- (e) with respect to completed operations insurance, it shall remain in effect for at least two years after final payment (and the Contractor shall furnish the Owner and each other additional insured identified by the Owner to whom a certificate of insurance has been issued evidence satisfactory to the Owner and any such additional insured of continuation of such insurance at final payment and two years thereafter).

(f) Railroad Protective Liability Insurance

Generally, the Railroad will require this insurance as a requirement to work in their right of way. The amount of coverage is **\$5,000,000** per occurrence and **\$10,000,000** aggregate. (Contractor needs to verify these amounts). The information that the Contractor’s insurance carrier will need to know concerning this insurance is (1) Number of active mainline tracks, (2) Number of inactive side tracks (3) Number of trains per day coming through, (4) the type of traffic, and (5) the timetable speed. Policy is to be in the name of the railroad and is to be on ISO/RIMIA Form (ISO Form CG 00 28 31).

Owner's Protective Liability:

The Contractor shall purchase and maintain protective liability which will protect the Owner against claims which may arise from operations under the Contract Documents, with coverages of not less than:

General Aggregate	<u>\$1,000,000</u>
Each Occurrence	<u>\$1,000,000</u>

Property Insurance:

The Contractor shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. This insurance shall:

1. include the interests of the Owner, the Contractor, subcontractors, Consulting Engineer, Construction Manager each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of any laws, water damage, and such other perils as may be specifically required by the Owner.
3. include expense incurred in the repair or replacement of any insured property including but not limited to fees and charges of engineers and architects;
4. include coverage for loss of use or time delay;

5. cover materials and equipment in transit for incorporation in the Work or stored at the site or at another location that was agreed to in writing by the Owner prior to being incorporated in the Work.
6. Contain no partial occupancy restriction for utilization of the Project by the Owner for the purpose intended.
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by the Owner, and shall provide **thirty (30) calendar days** written notice to each other additional insured to whom a certificate of insurance has been issued.

The Contractor shall purchase and maintain boiler and machinery insurance including coverage for explosion, damage, mechanical breakdown and business interruption which will include the interests of the Owner, subcontractors, Consulting Engineer and any other persons or entities identified by the Owner, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured, with coverages of not less than the following amounts or greater if required by law:

\$500,000

Waiver of Rights:

The Owner and the Contractor intend that all policies purchased related to the Work will protect the Owner, the Contractor, subcontractors, Consulting Engineer, Construction Manager and all other persons or entities identified by the Owner to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. The Owner and the Contractor waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages cause by; arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against subcontractors, Consulting Engineer and all other persons or entities identified by the Owner to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance otherwise payable under any policy so issued.

None of the above waivers shall extend to the Consulting Engineer, or the Construction Manager, their agents or employees, for the liability arising out of (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications or (2) the giving of, or the failure to give, directions or instructions by the Consulting Engineer, or the Construction Manager, their agents or employees, provided any such act or omission is the sole cause of the Damages.

EXHIBIT "B"**COST REDUCTION INCENTIVE**

The provisions herein will apply only to contracts awarded to the lowest bidder pursuant to competitive bidding. The status of lowest bidder will be determined without reference to any cost reduction incentives that are proposed by the Contractor.

On projects with original contract amounts in excess of **\$100,000.00**, the Contractor may submit to the Owner, in writing, proposals for modifying the plans, specifications or other requirements of the Contract for the purpose of reducing the cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, design and safety standards. Such a cost reduction proposal shall, also, not impose additional time or cost restraints upon other contractors working on the project. This provision shall not apply unless the proposal submitted is specifically identified by the Contractor as being presented for consideration as a value engineering proposal.

As a minimum, the following information shall be submitted by the Contractor with each proposal:

- (a) A description of both the existing Contract and proposed requirements for performing the Work and the proposed changes, with a discussion of the comparative advantages and disadvantages of each;
- (b) An itemization of the Contract requirements that must be changed if the proposal is adopted;
- (c) A detailed estimate of the cost of performing the Work under the existing Contract and under the proposed changes;
- (d) A statement of the time by which a Change Order adopting the proposal must be issued;
- (e) A statement of the effect that adoption of the proposal will have on the Contract Time; and
- (f) The Contract Items of work affected by the proposed changes, including any quantity variation attributable to them.
- (g) An assessment of the impact the proposal would have on other work or projects of the Owner.
- (h) The Contractor shall also provide for whatever financial assistance the Owner may require to review and/or approve proposals.

The Contractor may withdraw, in whole or in part, any cost reduction proposal not accepted by the Owner, within the period specified in the proposal. The provisions of this Section shall not be construed to require the Owner to consider any cost reduction proposal which may be submitted.

The Contractor shall continue to perform the Work in accordance with the requirements of the Contract until a Change Order incorporating the cost reduction proposal has been issued. If a Change Order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision should be made, or such other date as the Contractor may subsequently have requested in writing, such cost reduction proposal shall be deemed rejected.

The Owner shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, the Owner may disregard the Contract Bid prices if, in the Owner's judgment, such prices do not represent a fair measure of the value of the Work to be performed or deleted.

The Owner may, whether the Contractor's proposal is accepted or not, require the Contractor to pay the Owner's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall acknowledge acceptance of it in writing. Such acceptance shall constitute full authority for the Owner to deduct the cost of investigating a cost reduction proposal from amounts payable to the Contractor under the Contract. If the Contractor fails to acknowledge and accept such a request from the Owner his proposal shall be deemed rejected.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a Contract Change Order which shall specifically state that it is executed pursuant to this Section. Such Change Order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted and shall include any conditions upon which the Owner's approval is based. The Change Order shall also set forth the estimated net savings attributable to the cost reduction proposal. The net savings shall be determined as the difference in costs between the original Contract costs for the involved Work Items and the costs occurring as a result of the proposal change. The Change Order shall also establish the net savings agreed upon and shall provide for adjustment in the Contract Sum that will divide the net savings providing the Owner with **sixty percent (60%)** of the net savings and the Contractor with forty percent (40%) of the net savings.

The **Contractor's forty percent (40%)** share of the net savings shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the Work.

Acceptance of the cost reduction proposal and performance of the cost reduction Work shall not extend the Contract Time unless specifically provided for in the Contract Change Order.

EXHIBIT "C"

Effective Date - December, 2002
ALLEGHENY COUNTY SANITARY AUTHORITY
NO HARASSMENT POLICY

This Exhibit applies to the conduct of the Contractor's employees at the Job Site, and the conduct of the Contractor's employees when representatives of the Owner visit the Contractor's facilities:

The Allegheny County Sanitary Authority is committed to maintaining a work environment free of discrimination. In keeping with this commitment, ALCOSAN will not tolerate harassment of its employees by anyone, including any supervisor, co-worker, vendor, client, contractor, or customer of ALCOSAN or any third party, based on inherent characteristics such as race, color, sex, national origin, ancestry, and place of birth, age, religious beliefs, disability and sexual orientation.

Harassment consists of unwelcome conduct, whether verbal, physical or visual. Harassment includes pranks, kidding and teasing. It includes displaying derogatory material or objects, such as cartoons or symbols that threaten or ridicule a particular race, religion or ethnic group. It also includes telling jokes based on racial, ethnic or sexual stereotypes, or which mock individuals based on their disability, race, color, sex, age, national origin, ethnicity, and ancestry, place of birth, religion or sexual orientation. Harassment may include interfering with someone's personal belongings, working space, tools, and equipment as well as touching, pushing, and other physical contact.

Sexual harassment is conduct based on sex, whether directed towards a person of the opposite or same sex, and may include explicit sexual propositions, sexual innuendo, sexually suggestive comments, gesture or noises, off-color jokes, sexually oriented "kidding," "teasing", or "practical jokes", talking about sexual behavior or sexual preferences, creating or displaying sexually suggestive, sexually demeaning or sexually explicit objects, graffiti, magazines, posters or other printed or visual material, and physical contact such as patting, pinching, grabbing, or brushing against another person's body.

All ALCOSAN employees are responsible for ensuring that the work environment is free of harassment. ALCOSAN urges any employee who believes he or she has been harassed to report the harassment to the Manager of Human Resources, or, if the employee prefers, to the Executive Director. Employees who believe they have witnessed an act of harassment against another are to notify the Manager of Human Resources or the Executive Director.

ALCOSAN'S policy is to investigate all harassment complaints thoroughly and promptly. To the fullest extent possible, ALCOSAN will keep complaints confidential. ALCOSAN will take appropriate corrective action, if an investigation confirms that a violation of this policy has occurred.

EXHIBIT "D"

**ALLEGHENY VALLEY RAILROAD COMPANY
INSURANCE REQUIREMENTS**

Before entry, and until this Agreement shall be terminated, the PERMITEE shall provide and maintain the following insurance, in form and amount with companies satisfactory to, and as approved by, the RAILROAD:

1. Statutory Workers' Compensation and Employer's Liability Insurance.
2. Automobile Liability in an amount not less than One Million (\$1,000,000.00) Dollars combined single limit.
3. Comprehensive General Liability in an amount not less than Two Million (\$2,000,000.00) Dollars combined single limit. In the even the policy is a Claims Made Policy, coverage shall include an aggregate of Six Million (\$6,000,000.00) Dollars.
4. **THE RAILROAD MAY REQUIRE RAILROAD PROTECTIVE LIABILITY INSURANCE AT ITS SOLE DISCRETION.** (\$5,000,000 each occurrence and \$10,000,000 aggregate)

The policy must name:
ALLEGHENY VALLEY RAILROAD COMPANY
519 CEDAR WAY, BUILDING 1, SUITE 100
OAKMONT, PA 15139
AND
CARLOAD EXPRESS, INC.
519 CEDAR WAY, BUILDING 1, SUITE 100
OAKMONT, PA 15139

As an Additional Insured and must not contain any exclusions related to doing business on, near, or adjacent to RAILROAD facilities.

PERMITEE shall provide RAILROAD with a CERTIFICATE of INSURANCE, evidencing such coverage and, upon request, the PERMITEE shall deliver a certified, true and complete copy of the policy or policies. The policies shall provide for not less than ten (10) days' prior written notice to the RAILROAD of cancellation of, or any material change in, the policies.

It is understood and agreed that the foregoing insurance coverage is not intended to, and shall not, relieve the PERMITEE from or serve to limit PERMITEE'S liability under the provisions of the Agreement.

It is further understood and agreed that, so long as this Agreement shall remain in force, the RAILROAD shall have the right, from time to time, to revise the amount or form of insurance coverages provided in this paragraph as circumstances or changing economic conditions may require. The RAILROAD shall give the PERMITEE written notice of any such requested changes at least thirty (30) days prior to the date of expiration of the then existing policy or policies, which notice constitutes an amendment to the Agreement and shall become a part hereof; and the PERMITEE agrees to, and shall, thereupon provide the RAILROAD with such revised policy or policies therefore.

All insurance provided must be primary and shall not be reduced or limited by any insurance procured by RAILROAD.



CONTRACT 1746 MELANCHTON PUMP STATION REPLACEMENT

PREBID MEETING AGENDA Thursday, March 21, 2024 11:00AM Microsoft Teams Video Conference

INTRODUCTIONS AND KICKOFF

Mike Lichte - ALCOSAN Director of Regional Conveyance
Shawn McWilliams - ALCOSAN Project Engineer (PM)
Suzanne Thomas - ALCOSAN Procurement Officer
Mike Bezanson - Prime AE, Design Project Manager
Adam Zweig - Carload Express
*See attached List of Attendees

MEETING INTRODUCTIONS

The information provided in this meeting is intended to introduce the project details to potential bidders. Questions and requests for clarifications must be submitted in writing prior to the deadline for questions to be officially answered in an issued addendum.

A list of attendees for this meeting will be created based on individual's inputs (name/company/phone number/email address) in the Microsoft Teams Chat function or via email to shawn.mcwilliams@alcosan.org. Participants that do not supply this information may not be accounted for in the attendee list.

MBE/WBE REQUIREMENTS

Article 1, Pages 1-18 to 1-22 are the forms required with the bid; Article 2, Section 2.28 describes the MBE/WBE policy guidelines in the Contract for bidders to participate in meeting the 10-25% goal. ALCOSAN accepts certification from the Pennsylvania Unified Certification Program (PAUCP). Any other certification will be reviewed on a case by case basis. ALCOSAN does not accept self-certifications nor third-party certifications that do. Lack of MBE/WBE documentation is cause for rejection of the bid.

The PA UCP (<https://paucp.dbesystem.com/>) site is an available resource to find companies.

ALCOSAN requires a monthly MBE/WBE Utilization Report (Form C) which will be submitted with each pay estimate.

For any questions on MBE/WBE requirements please contact Suzanne Thomas at suzanne.thomas@alcosan.org or by phone at (412)734-8020.

CONTRACT SUMMARY

The work in this Contract is to replace an existing ejector station with a package submersible pump station. This project has been designed around a Xylem package pump station and alternatives to specified equipment will not be entertained. Work includes clearing and grubbing for construction access and to improve permanent access, constructing and operating bypass-pumping system during construction, demolishing existing facilities, furnishing and installing new pump station system, securing and maintaining all required railroad permits and protective measures, performing sampling and testing of demolished and excavated materials and disposing materials at an approved disposal site, testing and commissioning of new equipment, final restoration, and all other incidentals necessary to complete the work as outlined in the Contract Documents.

Contract Estimate \$1,700,000 - \$1,875,000

RAILROAD REQUIREMENTS AND COORDINATION

The worksite is adjacent to active Carload Express railroad tracks and portions of the work is within their right-of-way. The awarded Contractor will be responsible to secure a Right-of-Entry permit to perform the Work. In addition, the Contractor will be responsible to secure approval for the excavation shoring system as well as coordinate and cover the cost of flagging as required to complete the Work. Resource and reference information is provided in the Contract Documents.

Adam Zweig from Carload Express explained that Contractors performing work onsite will be required to obtain a right-of-entry permit, coordinate flagging and obtain approval on the excavation shoring system due to the work location within the railroad track live load envelope. The shoring system will have to be engineered to Cooper E-80 load rating. All permit and flagging costs are the responsibility of the permittee. Information is provided in the contract documents and also at the Carload Express website:

<https://www.carloadexpress.com/property-access/>

CONSTRUCTION INSPECTION

ALCOSAN will have on-site resident representatives assigned to review and monitor the work.

LEGAL NOTICE

Public bid opening is Thursday, April 11, 2024 at 2:00 PM EST. If the bidder is using a delivery service such as Fed Ex or UPS, it is their responsibility to confirm that delivery was made and the package was checked-in as received prior to this time.

Contract Documents may be examined and obtained at the Engineering office of the Authority. A non-refundable fee of One hundred dollars (\$100) (no cash or credit cards will be accepted) will be charged for each set of Contract Documents received. Bid Security shall be furnished by providing with the Bid a Certified Check or Bid Bond in the amount of 510% of the Bid Price. Contract documents must be purchased directly from ALCOSAN to qualify as an eligible bidder.

Any questions regarding the Technical aspects of the Project should be directed to Shawn McWilliams, ALCOSAN, via email to shawn.mcwilliams@alcosan.org.

Any questions regarding the Purchase of Contract Documents should be directed to Kathleen P. Uniatowski, ALCOSAN, via email to contract.clerks@alcosan.org.

NOTE: Contract Documents must be Purchased Directly from ALCOSAN to Qualify as an Eligible Bidder.

ARTICLE 1 - BIDDING DOCUMENTS

Submission of Bid: All Article 1 documents must be completed and submitted with the bid. Only the Article 1 Bidding Documents and required supporting documents need to be submitted in the bid envelope, not the entire specifications book.

Lowest responsive Bidder will be based on the sum of Bid Items 1 through C-14.

The intent is to award this Contract at the April 25, 2024 Board Meeting and issue a Notice to Proceed in late May to early June 2024.

Deadline for technical questions is 4:00 pm on Monday, April 1, 2024.

ARTICLE 2 - INFORMATION FOR BIDDERS

2.03 LOCATION OF WORK – The Work is located in the Hazelwood neighborhood of the City of Pittsburgh. Access to the site is available from 2nd Avenue via W. Elizabeth St. to Lytle St. to Melancthon Street. The site is adjacent to active Carload Express tracks.

NOTE: If visiting the site, nobody should cross or approach the railroad tracks within 25-feet. If there is group interest in a site visit, one may be arranged and coordinated with bidders.

2.04 DESCRIPTION OF BID ITEMS - Descriptions of the various Bid Items are included in this section. Prospective bidders are advised to review all items and make investigations as necessary to satisfy themselves of the existing conditions prior to submitting a bid.

2.05 BYPASS PUMPING - Bypass Pumping is covered in this section and also Specification Section 02080. Bidders will be required to bypass pump station flows while the station is inoperable. Bidders are made aware that they are not to create backups into

private properties or illicit discharges from sewers. Any such backup or discharge will be reported to the proper regulatory agency and the Bidder will be responsible for any penalties.

2.06 DEBRIS DISPOSAL - Debris from the Work will be disposed of at a permitted facility. Several pre-approved sites are listed in Section 2.06 where ALCOSAN already has disposal manifests available for described materials. However, Bidders will be responsible for determining proper disposal site(s), setting up their own account for billing purposes, and performing all required sampling, testing, handling, storage and hauling to dispose of materials.

2.07 SUBMISSION AND OPENING OF BIDS - Submission and Opening of Bids is covered in this section. Sealed Bids must be labeled "SEALED BID FOR CONTRACT NO. 1746, MELANCHTON PUMP STATION REPLACEMENT" and addressed to the **ALCOSAN Engineering Department, Attn: Contract Clerks**, and must be received on or before the Bid Opening time and date. Late bids will be treated as "nonresponsive" and returned to the Bidder unopened.

If a Bid is submitted with conditions or exceptions, or not in conformance with the terms and conditions of the Contract Documents, it may be rejected.

2.08 SUPPLEMENTARY INFORMATION PACKAGE (SIP): Experience, Equipment Subcontractors.

A. Documents will be requested from the Apparent Low Bidder following the Bid Opening. Documents must be received prior to contract award, but can also be submitted with the bid package. Additional information will be requested as needed during the bid review period.

2.10 AWARD, CONTRACT EXECUTION AND NOTICE TO PROCEED: ALCOSAN reserves the right to reject any and all bids.

2.14 QUESTIONS REGARDING CONTRACT DOCUMENTS/ERRORS: If any alleged errors are noted in the Contract Documents, Bidder should immediately notify Shawn McWilliams and, if confirmed, Addenda will be sent to all prospective Bidders known to have received the Contract Documents.

2.17 QUANTITIES:

A. Language per Article 2.17C and Section 01025 Measurement and Payment

"Contingent items of Work shall be done when ordered by the Engineer and shall be paid for at the contract unit bid price. The purpose of the contract items designated in the bid form as "C" is to establish unit prices for work not included in other bid items. The Engineer has the right to order that contingent work be provided in smaller or larger quantities than the estimated quantity indicated in the Bid Form. The Contractor shall not have any right to demand payment for, and will not be paid for, any costs associated with the item, including, but not limited to overhead and profit, due to the fact that the item

was not used in the work or was used in smaller or larger quantities than those indicated in the bid form. The Contract Sum shall be subject to adjustment according to final measured quantities and the unit prices in the bid will apply to such final quantities.”

2.19 ACKNOWLEDGEMENT OF ADDENDA: The Bidder shall acknowledge any addenda issued by signing and returning the Acknowledgment page attached to any issued Addenda immediately via email to Tyler Trainor at contract.clerks@alcosan.org and providing a hard copy of the Acknowledgement with the Bidder’s Proposal.

2.22 BID SECURITY/CONTRACT EXECUTION: Bid Security in the amount of 10% of the Total Lump Sum Price bid is required via certified check or bid bond.

ATTACHMENT A: Bidders and subcontractors shall review the Labor Stabilization Agreement and execute a Letter of Assent prior to commencing work.

ARTICLE 3 - GENERAL CONTRACT CONDITIONS

3.73 - Health, Safety and Environmental Laws

1. ALCOSAN review and approval of the Contractor’s safety manual is required before work can start.

3.75 - Working Hours

1. Any work performed outside normal working hours as defined in Article 3.75 will require prior approval and 48-hours’ notice.

3.78 - PA Steel Products Procurement Act

1. Requirements apply to this Work

EXHIBIT A - Insurance Requirements

1. Certificates required before any work begins.

EXHIBIT D: Allegheny Valley Railroad Company Insurance Requirements

1. Railroad Protective Liability (RRP) is insurance required as outlined in this section

ARTICLE 4 - CONTRACT AGREEMENT

A. Substantial Completion of Contract 1746 - 360 Calendar days from Notice to Proceed

B. Liquidated Damages:

1. Failure to complete the Work within the time of Completion - \$500/day

ARTICLE 5 - BONDS, CERTIFICATES AND STATEMENTS

Performance Bond, Labor and Material Bond, Contractors Certificate of Satisfaction, Maintenance Bond are required.

ARTICLE 6 - SPECIFICATIONS

Please review all Technical Specification sections in relation to the Work descriptions and payment guidelines and drawings.

Contractors should be aware that they are responsible for permitted disposal of all materials and should review information in Section 02860 - Management Handling and Disposal of Excavated Soil and Other Excavated Materials.

For planned work, advance notification (1 week) to ALCOSAN and Construction Manager is required prior to Mobilization.

ARTICLE 7 - PREVAILING WAGE RATES

Prevailing wages apply to this Contract. Rate guidelines are contained in the Wage Determination included in this section.

APPENDIX A - DRAWINGS

APPENDIX B - CARLOAD EXPRESS INC. GUIDELINES FOR PLANS AND PROCEDURES

APPENDIX C - ENVIRONMENTAL DUE DILLIGENCE EVALUATION

QUESTIONS

1. Question: Is the cost of railroad flagging the Contractor's responsibility? Will flagging be needed if a "fouling" condition exists during construction?

Answer: Flagging costs will be the Contractor's responsibility and this will be better defined through addendum. Carload Express has indicated that flagging would not be required once temporary fencing is in place to segregate the worksite from the railroad. However, work without fencing in place or where work could cross the fence plain to cause a "fouling" condition will require flagging. This will depend largely on Contractor's means and methods and will be important for railroad flagging coordination.

2. Question: Will a copy of the meeting agenda be provided?

Answer: Meeting minutes including the agenda and attendance list will be issued by addendum.

3. Question: Are bypass pumping suction and discharge locations shown in the plans?

Answer: Specific locations are not currently identified in the plans. Additional

information regarding bypass pumping locations will be provided by addendum.

Any questions to from this meeting and all technical questions regarding these Contract Documents shall be submitted in writing by email to shawn.mcwilliams@alcosan.org no later than 4:00 PM EST on Monday, April 1, 2024 to be answered by Addendum.

PRE-BID: 1746 Melancthon Pump Station Replacement

Summary
Meeting title PRE-BID: 1746 Melancthon Pump Station Replacement

Attended 30
Start time 03/21/2024, 11:05:00 AM
End time 03/21/2024, 11:45:00 AM
Meeting duration 40m

Full Name	Company	Email	User Action	Timestamp
Kathleen P. Uniatowski	ALCOSAN	kathleen.uniatowski@alcosan.org	Joined	3/21/24, 10:54:26 AM
Mike Turske	Advanced Integration Group	mturske@aigcontrols.com	Joined	3/21/24, 10:54:27 AM
Donna Chappel	Advanced Integration Group	dchappel@aigcontrols.com	Joined	3/21/24, 10:54:27 AM
Kevin DeFrancesco	A. Folino Construction	contracts@afolino.com	Joined	3/21/24, 10:54:27 AM
Justin Arnold	Kokosing	lwaz2@kokosing.biz	Joined	3/21/24, 10:55:02 AM
Steve McMannis	Mele & Mele & Sons	simmannis@meleinc.com	Joined	3/21/24, 10:55:41 AM
Mike Bezanson	Prime AE	mbezanson@primeeng.com	Joined	3/21/24, 10:56:32 AM
Michael Lichte P.E.	ALCOSAN	Michael.Lichte@alcosan.org	Joined	3/21/24, 10:56:50 AM
Suzanne Thomas	ALCOSAN	suzanne.thomas@alcosan.org	Joined	3/21/24, 10:57:10 AM
Shawn McWilliams, EIT	ALCOSAN	Shawn.McWilliams@alcosan.org	Joined	3/21/24, 10:57:47 AM
Bryan Frye	Fay, S&B USA Construction	bfrye@shikunusa.com	Joined	3/21/24, 10:58:16 AM
Maruschak, Michael	HATCH	michael.maruschak@hatch.com	Joined	3/21/24, 10:58:36 AM
Judith Shropshire Bonner	ALCOSAN	judith.shropshirebonner@alcosan.org	Joined	3/21/24, 10:58:38 AM
Matt Brody	Fay, S&B USA Construction	mbrody@shikunusa.com	Joined	3/21/24, 10:59:50 AM
Hogg, Mike	Wellington Power Corporation	mhogg@wellingtonpower.com	Joined	3/21/24, 10:59:55 AM
Ryan Novelli	Independent Enterprises Inc.	rnovelli@iei.net.co	Joined	3/21/24, 11:00:00 AM
Chad Gray	Malcolm Drilling Company	cgray@malcolmdrilling.com	Joined	3/21/24, 10:58:36 AM
Adam Caroon	PRIME AE Group, Inc.	acaroon@primeeng.com	Joined	3/21/24, 10:58:38 AM
Kevin DeFrancesco	A. Folino Construction	contracts@afolino.com	Joined	3/21/24, 10:58:36 AM
Brad Olsavsky	The Whiting-Turner Contracting Co.	brad.olsavsky@whiting-turner.com	Joined	3/21/24, 10:58:38 AM
Jay Kester	Mike Coates Construction	mail@mikecoatesconstruction.com	Joined	3/21/24, 10:59:50 AM
Mike Surenda	Stefanik's Next Generation Contracting Company	msurenda@stefaniks.com	Joined	3/21/24, 10:55:02 AM
Justin Arnold	Kokosing	lwaz2@kokosing.biz	Joined	3/21/24, 10:55:41 AM
Samuel Doss	Prime AE Group, Inc.	samuel.doss@primeeng.com	Joined	3/21/24, 10:56:32 AM
John Graham	Advanced Integration Group	jgraham@aigcontrols.com	Joined	3/21/24, 10:56:50 AM
Dan Kelly	Multivista	d.kelly@multivista.com	Joined	3/21/24, 10:56:50 AM
Dan Bradley	SSM Industries	dbradley@ssmi.biz	Joined	3/21/24, 10:54:27 AM
Adam Caroon	Prime AE Group Inc	acaroon@primeeng.com	Joined	
Adam Zweig	Carload Express, Inc.		Joined	
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