

SECTION 5

STANDARD AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the day of \_\_\_\_\_ in the year 20\_\_\_\_  
by and between

**Cleveland Utilities** (hereinafter called OWNER) and

\_\_\_\_\_ (hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**Article 1. WORK.**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The work is generally described as follows:

**Article 2. ENGINEER.**

The Project has been designed by Cleveland Utilities Water Division.

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**Article 3. CONTRACT TIME.**

3.1 The Work will be substantially completed within \_\_\_\_\_ days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within \_\_\_\_\_ days after the date when the Contract Time commences to run.

3.2 *Liquidated Damages* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as penalty) CONTRACTOR shall pay OWNER \_\_\_\_\_ dollars

(\$ \_\_\_\_\_) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete.

**Article 4. CONTRACT PRICE.**

4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows:

Unit prices as shown on the Contract Bid Schedule

**Article 5. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 *Progress Payments.* OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the \_\_\_\_\_ day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.1 of the General Conditions.

5.1.1. Prior to Substantial Completion progress payments will be in an amount equal to:

\_\_\_\_\_ % of the Work completed, and

\_\_\_\_\_ % of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

5.1.2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR as \_\_\_\_\_ % of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.7 of the General Conditions.

5.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

**Article 6. INTEREST.**

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

**Article 7. CONTRACTOR'S REPRESENTATIONS.**

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies for such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

**Article 8. CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consists of the following:

- 8.1 This Agreement (pages 1 to \_\_\_\_\_, inclusive).
- 8.2 Performance and other Bonds, identified as exhibits \_\_\_\_\_ and consisting of \_\_\_\_\_ pages.
- 8.3 Notice of Award.
- 8.4 Specifications bearing the title \_\_\_\_\_ and consisting of \_\_\_\_\_ sections as listed in table of contents thereof and including Sections 8.5, 8.6, 8.7 below.

- 8.5 General Conditions (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive).
- 8.6 Supplementary General Conditions (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive).
- 8.7 Special Conditions (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive).
- 8.8 Drawings, consisting of a cover sheet and sheets numbered \_\_\_\_\_ through \_\_\_\_\_ inclusive with each sheet bearing the following general title:
- 8.9 Addenda numbers \_\_\_\_\_ as \_\_\_\_\_ , inclusive.
- 8.10 CONTRACTOR's Bid (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive) marked exhibit \_\_\_\_\_ (Attach Bid Form only in special circumstances).
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_ , inclusive).
- 8.12 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

#### **Article 9. MISCELLANEOUS**

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

**Article 10. OTHER PROVISIONS.**

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, 19\_\_\_\_\_

OWNER: CLEVELAND UTILITIES\_\_\_\_ CONTRACTOR \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

(CORPORATE SEAL) (CORPORATE SEAL)  
Attest \_\_\_\_\_ Attest \_\_\_\_\_

Address for giving notices Address for giving notices  
\_\_\_\_\_  
\_\_\_\_\_

(If OWNER is a public body attach evidence of authority to sign and resolution or other document authorizing execution of Agreement.) License No \_\_\_\_\_  
Agent for service of process: \_\_\_\_\_  
\_\_\_\_\_

**\*\* END OF SECTION \*\***