

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated:

Addenda – Written or graphic instruments issued prior to the opening of Bids which make additions, deletions, or revisions to the Contract Documents.

Agreement – The written contract between the OWNER and the CONTRACTOR for the performance of the WORK pursuant to the Contract Documents. Documents incorporated into the contract by reference become part of the contract and of the Agreement.

Application for Payment – The form furnished by the ENGINEER and completed by the CONTRACTOR to request progress or final payment including supporting documentation to substantiate the amounts for which payment is requested.

Bid – The offer or proposal of a Bidder, submitted on the prescribed form, setting forth the price or prices for the WORK to be performed.

Bidder – Any person, firm or corporation submitting a Bid for the WORK.

Bonds – Performance and Payment Bonds and other instruments which protect the OWNER against loss due to inability or refusal of the CONTRACTOR to perform pursuant to the Contract Documents.

Change Order – A document recommended by the ENGINEER, which is signed by the CONTRACTOR and the OWNER and authorizes an addition, deletion, or revision in the WORK, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

Contract Documents – The documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the WORK, consisting of the Drawings, Technical Specifications, General Conditions, Supplementary General Conditions, Notice Inviting Bids, Instructions to Bidders, Addenda, CONTRACTOR's Bid, Information Required of Bidder, Agreement, Performance Bond, Payment Bond, Notice To Proceed and Change Orders. Only printed or hard copies of the documents listed above are Contract Documents.

Contract Price – The total monies payable by the OWNER to the CONTRACTOR for completion of the WORK under the terms and conditions of the Contract Documents.

Contract Time – The number of successive Days or the date stated in the Contract Documents for Substantial Completion of the WORK. The Contract Time begins to run on the date specified in the Notice to Proceed.

CONTRACTOR – The person, firm, or corporation with whom the OWNER has executed the Agreement.

Day – A calendar day of 24 hours measured from midnight to the next midnight.

Defective Work – Work that: is unsatisfactory, faulty, or deficient; does not conform to the Contract Documents; does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents; has been damaged prior to the ENGINEER's recommendation of final payment.

Drawings – The drawings, plans, maps, profiles, diagrams, and other graphic representations which show the character, location, nature, extent, and scope of the WORK.

Effective Date of the Agreement – The date indicated in the Agreement on which it was executed.

ENGINEER – The person, firm or corporation named as such in the Contract Documents.

Field Order – A written order issued by the ENGINEER which requires minor changes in the WORK, but which does not involve a change in the Contract Price or Contract Time.

General Requirements – Division 1 of the Technical Specifications.

Laws and Regulations; Laws or Regulations – Includes any and all applicable state, federal and local statutes, common law, rules, regulations, ordinances, codes, and/or orders.

Notice of Award – The OWNER's written notice to the apparent successful Bidder stating that upon compliance with the conditions precedent enumerated therein by the apparent successful Bidder within the time specified, the OWNER will enter into the Agreement.

Notice to Proceed – The OWNER's written notice to the CONTRACTOR authorizing the CONTRACTOR to proceed with the work and establishing the date of commencement of the Contract Time.

OWNER – The Metropolitan Water District of Salt Lake & Sandy.

Partial Utilization – Placing a portion of the WORK in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion of the WORK.

Project – A unit of total construction of which the WORK to be provided under the Contract Documents, may be the whole, or a part thereof.

Project Representative – The authorized representative of the ENGINEER who is assigned to the site or any part thereof.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of WORK and all illustrations, brochures, standard schedules, performance charts, instruction, and diagrams to illustrate material or equipment for some portion of the WORK.

Specifications – (Same definition as for Technical Specifications hereinafter).

Subcontractor – An individual, firm, or corporation having a direct contract with the CONTRACTOR or with any other Subcontractor for the performance of a part of the WORK.

Substantial Completion – That state of construction when the WORK has progressed to the point where, in the opinion of the ENGINEER as evidenced by the Notice 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. The terms "substantially complete" and "substantially completed" as applied to any work refer to substantial completion thereof.

Supplementary General Conditions – The part of the Contract Documents which makes additions, deletions, or revisions to these General Conditions.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor.

Technical Data – The factual information contained in reports describing physical conditions, including exploration method, plans, logs, laboratory test methods and factual data. Technical Data does not include conclusions, interpretations, interpolations, extrapolations or opinions contained in reports or reached by the CONTRACTOR.

Technical Specifications – Those portions of the Contact Documents consisting of the General Requirements and written technical descriptions of products and execution of the WORK.

Underground Utilities – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments and any encasements containing such facilities which have been installed under ground to furnish any of the following services or materials: water, sewage and drainage removal, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, traffic, or other control systems.

WORK – The entire construction required to be furnished under the Contract Documents. WORK is the result of performing services, furnishing labor and supervision, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 DELIVERY OF BONDS/INSURANCE CERTIFICATES

- A. The CONTRACTOR shall deliver to the OWNER the Bonds and insurance certificates required by the Contract Documents within ten (10) days after receiving the Notice of Award from the OWNER.

2.02 COPIES OF DOCUMENTS

- A. The OWNER shall furnish the CONTRACTOR five copies of the Contract Documents (Specifications and reduced Drawings), together with five sets of full-scale Drawings. Additional quantities of the Contract Documents will be furnished at reproduction cost.

2.03 STARTING THE PROJECT

- A. The CONTRACTOR shall begin construction of the WORK within 10 days after the commencement date stated in the Notice to Proceed, but shall not commence construction prior to the commencement date.

2.04 BEFORE STARTING CONSTRUCTION

- A. Before undertaking each part of the WORK, the CONTRACTOR shall carefully study and compare the Contract Documents to check and verify pertinent figures and dimensions shown thereon with all applicable field measurements. The CONTRACTOR shall promptly report in writing to the ENGINEER any conflict, error, or discrepancy which the CONTRACTOR may discover and shall obtain a written interpretation or clarification from the ENGINEER before proceeding with any work affected thereby.
- B. The CONTRACTOR shall submit to the ENGINEER for review those documents called for under the Section entitled "Contractor Submittals" in the General Requirements.

2.05 PRECONSTRUCTION CONFERENCE

- A. The CONTRACTOR shall attend a preconstruction conference with the OWNER, the ENGINEER and others as appropriate to discuss the construction of the WORK in accordance with the Contract Documents.

2.06 FINALIZING SCHEDULES

- A. At least 7 days before the CONTRACTOR's submittal of its first Application for Payment, the CONTRACTOR, the ENGINEER, and others as appropriate will meet to finalize the schedules submitted in accordance with the General Requirements.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 INTENT

- A. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the WORK. The Contract Documents are complementary, what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

- B. It is the intent of the Contract Documents to describe the WORK, functionally complete, to be constructed in accordance with the Contract Documents. All work, materials, or equipment that may be reasonably inferred from the Contract Documents as being required to produce the completed work shall be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe work, materials, or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes or any technical society, organization, or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated. However, no provision of any referenced 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, the CONTRACTOR, or the ENGINEER or any of their consultants, agents, or employees from those set forth in the Contract Documents.

- C. If, during the performance of the WORK, the CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, the CONTRACTOR shall immediately report it to the ENGINEER in writing and before proceeding with the work affected thereby. The ENGINEER shall then make a written interpretation, clarification, or correction from the ENGINEER.

3.02 ORDER OF PRECEDENCE OF CONTRACT DOCUMENTS

- A. In resolving conflicts resulting from conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence shall be as follows:
 - 1. Change Orders
 - 2. Agreement
 - 3. Addenda
 - 4. Supplementary General Conditions

5. General Conditions
 6. Technical Specifications
 7. Referenced Standard Specifications
 8. Drawings
 9. Contractor's Bid (Bid Form).
- B. With reference to the Drawings the order of precedence is as follows:
1. Figures govern over scaled dimensions
 2. Detail drawings govern over general drawings
 3. Addenda/change order drawings govern over general drawings
 4. Contract Drawings govern over standard drawings.

3.03 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- A. The Contract Documents may be amended by a Change Order (pursuant to Article 10) to provide for additions, deletions or revisions in the WORK or to modify terms and conditions.

3.04 REUSE OF DOCUMENTS

- A. Neither the CONTRACTOR, Subcontractor, Supplier, nor any other person or organization performing any of the WORK under a contract with the OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Technical Specifications, or other documents used on the WORK, and they shall not reuse or reproduce any of them on the extensions of the Project or any other project without the written consent of the OWNER and the ENGINEER.
- B. The Contract Documents are for official use only and are exempt from the Freedom of Information Act (FOIA) (exemption 2). All Contract Documents and any copies made from them shall be returned to the office of the OWNER upon project completion. No refunds will be made for returned documents.

ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 AVAILABILITY OF LANDS

- A. The OWNER shall furnish the lands, rights-of-way and easements upon which the WORK is to be performed and for access thereto, together with other lands designated for the use of the CONTRACTOR in the Contract Documents. Easements or other adequate property interest for permanent

structures or permanent changes in existing major facilities will be obtained and paid for by the OWNER, unless otherwise provided in the Contract Documents. Nothing contained in the Contract Documents shall be interpreted as giving the CONTRACTOR exclusive occupancy of the lands or rights-of-way provided. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The CONTRACTOR shall not enter upon nor use any property not under the control of the OWNER until a written temporary construction easement agreement or other appropriate agreement has been executed by the CONTRACTOR and the property owner, and a copy of the easement furnished to the ENGINEER prior to its use. Neither the OWNER nor the ENGINEER shall be liable for any claims or damages resulting from the CONTRACTOR's unauthorized trespass or use of any properties.

4.02 PHYSICAL CONDITIONS – SUBSURFACE AND EXISTING STRUCTURES

- A. Explorations and Reports: The Supplementary General Conditions identify exploration reports and subsurface conditions tests at the site that have been utilized by the ENGINEER in the preparation of the Contract Documents. The CONTRACTOR may rely upon the accuracy of the Technical Data contained in these reports. The CONTRACTOR is responsible for the interpretation, extrapolation or interpolation of all technical as well as nontechnical data and its reliance on the completeness, opinions and interpretation of the reports.
- B. Existing Structures: The Supplementary General Conditions identify the drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Utilities referred to in Paragraph 4.04 herein) which are at or contiguous to the site that have been utilized by the ENGINEER in the preparation of the Contract Documents. The CONTRACTOR is responsible for the interpretation, extrapolation or interpolation of all technical as well as nontechnical data and its reliance on the completeness, opinions and interpretation of the reports.
- C. In preparation of Drawings and Specifications, ENGINEER or ENGINEER's Consultants relied upon the reports of explorations and tests of subsurface conditions at the Site as listed in the Supplementary Conditions.

4.03 DIFFERING SITE CONDITIONS

- A. The CONTRACTOR shall notify the ENGINEER upon encountering any of the following unforeseen conditions, hereinafter called "differing site conditions," during the prosecution of the WORK. The CONTRACTOR's notice to the ENGINEER shall be in writing and delivered before the differing site conditions are disturbed, but in no event later than 14 days after their discovery.

1. Subsurface or latent physical conditions at the site of the WORK which could not reasonably have been discovered through diligent inspection by CONTRACTOR before his Bid was submitted which differs materially from those indicated, described, or delineated in the Contract Documents including those reports and documents discussed in Paragraph 4.02; and
 2. Physical conditions at the site of the WORK of an unusual nature which could not reasonably have been discovered through diligent inspection by CONTRACTOR before his Bid was submitted and which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents including those reports and documents discussed in Paragraph 4.02.
- B. The ENGINEER will review the alleged differing site conditions, determine the necessity of obtaining additional explorations or tests with respect to verifying their existence and extent and advise the OWNER in writing of the ENGINEER's findings and conclusions.
- C. If the OWNER concludes that because of newly discovered conditions a change in the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the differing site conditions.
- D. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to the differing site conditions. If the OWNER and the CONTRACTOR are unable to agree as to the amount or length of the Change Order, a claim may be made as provided in Articles 11 and 12.
- E. The CONTRACTOR's failure to give written notice of differing site conditions within 14 days of their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith, whether direct or consequential in nature.

4.04 PHYSICAL CONDITIONS – UNDERGROUND UTILITIES

- A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Utilities at or contiguous to the site are based on information and data furnished to the OWNER or the ENGINEER by the owners of Underground Utilities or by others. Unless it is expressly provided in the Supplementary General Conditions, the OWNER and the ENGINEER shall not be responsible for the accuracy or completeness of any Underground Utilities information or data. The CONTRACTOR's responsibility relating to underground utilities are:

review and check all information and data, locate all Underground Utilities shown or indicated in the Contract Documents, coordinate the WORK with the owners of Underground Utilities during construction, safeguard and protect the Underground Utilities, and repair any damage to Underground Utilities resulting from the WORK. The cost of all these activities will be considered as having been included in the Contract Price.

- B. Not Shown or Indicated: If an Underground Utility not shown or indicated in the Contract Documents is uncovered or revealed at or contiguous to the site and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall identify the owner of the Underground Utility, give written notice of the location to that owner and notify the ENGINEER.

4.05 REFERENCE POINTS

- A. The ENGINEER will provide one bench mark, near or on the site of the WORK, and will provide two points near or on the site to establish a base line for use by the CONTRACTOR in laying out the WORK. Unless otherwise specified in the General Requirements, the CONTRACTOR shall furnish all other lines, grades, and bench marks required for proper execution of the WORK.
- B. The CONTRACTOR shall preserve all bench marks, stakes, and other survey marks. In case of their removal or destruction by its own employees or by its subcontractor's employees, the CONTRACTOR shall be responsible for the accurate replacement of reference points by professionally qualified personnel at no additional cost to the OWNER.

ARTICLE 5 – BONDS AND INSURANCE

5.01 PERFORMANCE, PAYMENT AND OTHER BONDS

- A. The CONTRACTOR shall furnish Performance and Payment Bonds, each in the amount of 100% of the Contract Price as security for the faithful performance and payment of all the CONTRACTOR's obligations under the Contract Documents. The Performance Bond shall remain in effect at least until one year after the date of Notice of Completion, except as otherwise provided by Law or Regulation or by the Contract Documents. After the ENGINEER issues the Notice of Completion, the amount of the Performance Bond may be reduced to 10 percent of the Contract Price, or \$1,000, whichever is greater. The CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary General Conditions.
- B. If the surety on any Bond furnished by the CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the WORK is located, the CONTRACTOR shall

within 7 days after written approval by the OWNER of a substitute Bond and Surety substitute the approved Bond and Surety.

5.02 INSURANCE

- A. The CONTRACTOR shall purchase and maintain the insurance required under this paragraph. This insurance shall include the specific coverages set out herein and be written for not less than the limits of liability and coverages provided in the Supplementary General Conditions, or required by law, whichever is greater. The CONTRACTOR's liabilities under the Agreement shall not be deemed limited in any way to the insurance coverage required.
- B. The CONTRACTOR shall furnish the OWNER with certificates indicating the type, amount, class of operations covered, effective dates and expiration dates of all policies and in a form acceptable to the OWNER. All insurance shall remain in effect until the ENGINEER issues the Notice of Final Completion and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing defective work in accordance with Paragraph 13.01B or completing punch list items required by the Notice of Substantial Completion. In addition, the insurance required herein (except for Worker's Compensation and Employer's Liability) shall name the OWNER, the ENGINEER, and their officers, agents, and employees as "additional insured" under the policies for claim arising out of the Project. Such coverage to the additional insureds shall be primary to other coverage available to the additional insureds. All liability insurance policies shall be occurrence and not claims made policies.
1. Workers' Compensation and Employer's Liability: This insurance shall protect the CONTRACTOR against all claims under applicable state workers' compensation laws. The CONTRACTOR shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" endorsement. The CONTRACTOR shall require each subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees to be engaged in the WORK unless its employees are covered by the protection afforded by the CONTRACTOR's Workers' Compensation Insurance. In the event a class of employees is not protected under the Workers' Compensation Statute, the CONTRACTOR or Subcontractor, as the case may be, shall provide adequate employer's liability insurance for the protection of its employees not protected under the statute.
 2. Comprehensive General Liability: This insurance shall be written in comprehensive form and shall protect the CONTRACTOR against all claims arising from injuries to persons, other than its employees, and damage to property of the OWNER or others arising out of any act or

omission of the CONTRACTOR or its agents, employees or subcontractors. The policy shall include the following endorsements: (1) Protective Liability endorsement to insure the contractual liability assumed by the CONTRACTOR under the indemnification provisions in these General Conditions; (2) Broad Form Property Damage endorsement; (3) Personal Injury endorsement to cover personal injury liability for intangible harm. The Comprehensive General Liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground structures.

3. Comprehensive Automobile Liability: This insurance shall be written in comprehensive form. The policy shall protect the CONTRACTOR against all claims for injuries to employees, members of the public and damage to property of others arising from the use of CONTRACTOR's motor vehicles, whether they are owned, non-owned, or hired, and whether used or operated on or off the site. The motor vehicle insurance required under this paragraph shall include: (a) motor vehicle liability coverage; (b) personal injury protection coverage and benefits; (c) uninsured motor vehicle coverage; and (d) underinsured motor vehicle coverage.
4. Subcontractor's Insurance: The CONTRACTOR shall require each of its subcontractors to procure and to maintain Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance of the type and in the amounts specified in the Supplementary General Conditions or insure the activities of its subcontractors in the CONTRACTOR's own policy, in like amount.
5. Builder's Risk: This insurance shall be of the "all risk" type, shall be written in completed value form, and shall protect the CONTRACTOR, the OWNER, and the ENGINEER against damage to buildings, structures, materials and equipment. The amount of this insurance shall not be less than the insurable value of the WORK at completion. Builder's risk insurance shall provide for losses to be payable to the CONTRACTOR, the OWNER, and the ENGINEER as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against the CONTRACTOR, the OWNER, or the ENGINEER. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any external cause including flood and earthquake. Allowable exclusions, if any, shall be as specified in the Supplementary General Conditions.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 SUPERVISION AND SUPERINTENDENCE

- A. The CONTRACTOR shall supervise and direct the WORK competently and efficiently, devoting the attention and applying the skills and expertise 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 and safety precautions and programs incidental thereto. The CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents.
- B. The CONTRACTOR shall employ the superintendent named in "Information Required of Bidder" on the work site at all times during the progress of the WORK. The superintendent shall not be replaced without the OWNER's written consent. The superintendent will be the CONTRACTOR's representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The CONTRACTOR shall issue all its communications to the OWNER through the ENGINEER.
- C. The CONTRACTOR's superintendent, or OWNER approved representative shall be present at the site of the WORK at all times while work is in progress. Failure to observe this requirement shall be considered suspension of the WORK by the CONTRACTOR until the superintendent is again present at the site.

6.02 LABOR, MATERIALS, AND EQUIPMENT

- A. The CONTRACTOR shall provide skilled, competent and suitably qualified personnel to survey and lay out the WORK and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site.
- B. Except in connection with the safety or protection of persons at the WORK, or property at the site or adjacent thereto, all work at the site shall be performed during regular working hours (7:00 a.m. – 6:00 p.m., Monday through Friday), and the CONTRACTOR will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday observed by the OWNER without the OWNER's written consent given after prior written notice to the ENGINEER. Except as otherwise provided in this Paragraph, the CONTRACTOR shall receive no additional compensation for overtime work, i.e., work in excess of 8 hours in any one calendar day or 40 hours in any one calendar week, even though such overtime work may be required under emergency conditions and may be ordered by the ENGINEER in writing. Additional compensation will be paid the CONTRACTOR for

overtime work in the event extra work is ordered by the ENGINEER and the Change Order specifically authorizes the use of overtime work, but only to the extent that the CONTRACTOR pays overtime wages on a regular basis being paid (>40 hours per week) for overtime work of a similar nature in the same locality.

- C. All costs of inspection and testing performed during overtime work approved solely for the convenience of the CONTRACTOR shall be borne by the CONTRACTOR. The OWNER shall have the authority to deduct the costs of all inspection and testing from any partial payments otherwise due to the CONTRACTOR.
- D. Unless otherwise specified in the Contract Documents, the CONTRACTOR shall furnish, erect, maintain and remove the construction plant, and temporary works and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities and all other facilities and incidentals necessary for the furnishing, performance testing, start-up and completion of the WORK.
- E. All materials and equipment incorporated into the WORK shall be of new and good quality, except as otherwise provided in the Contract Documents. If required by the ENGINEER, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. The CONTRACTOR shall apply, install, connect, erect, use, clean, and condition all material and equipment in accordance with the instructions of the manufacturer and Supplier except as otherwise provided in the Contract Documents.

6.03 ADJUSTING PROGRESS SCHEDULE

- A. The CONTRACTOR shall submit any adjustments in the progress schedule to the ENGINEER for acceptance in accordance with the provisions for "Contractor Submittals" in the General Requirements.

6.04 SUBSTITUTES AND "OR-EQUAL" ITEMS

- A. The CONTRACTOR shall submit proposed substitutes and "or-equal" items in accordance with the provisions for "Contractor Submittals" in the General Requirements.

6.05 SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. The CONTRACTOR shall be responsible to the OWNER and the ENGINEER for the acts and omissions of its subcontractors and their employees to the same extent as the CONTRACTOR is responsible for the acts and omissions of its own employees. Nothing contained in this paragraph shall create any contractual relationship between any

subcontractor and the OWNER or the ENGINEER nor relieve the CONTRACTOR of any liability or obligation under the Agreement.

6.06 PERMITS

- A. Unless otherwise provided in the Supplementary General Conditions, the CONTRACTOR shall obtain and pay for all construction permits and licenses from the agencies having jurisdiction, including furnishing the insurance and bonds required by such agencies. The costs incurred by the CONTRACTOR in compliance with this paragraph shall not be made the basis for claims for additional compensation. 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, including all utility connection charges for utilities required by the WORK.

- B. The CONTRACTOR shall pay all license fees and royalties and assume all costs when any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others when issued in the construction of the WORK or incorporated into the WORK. If a particular invention, design, process, product, or device is specified in the Contract Documents for incorporation into or use in the construction of the WORK and if to the actual knowledge of the OWNER or the ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of these rights shall be disclosed by the OWNER in the Contract Documents. The CONTRACTOR shall indemnify, defend and hold harmless the OWNER and the ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses, and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the WORK or resulting from the incorporation in the WORK of any invention, design, process, product, or device not specified in the Contract Documents.

6.07 LAWS AND REGULATIONS

- A. The CONTRACTOR shall observe and comply with all Laws and Regulations which in any manner affect those engaged or employed on the WORK, the materials used in the WORK, or the conduct of the WORK. If any discrepancy or inconsistency should be discovered in the Contract Documents in relation to any Laws or Regulations, the CONTRACTOR shall report the same in writing to the ENGINEER. Notwithstanding any immunity otherwise provided by applicable workers' compensation statutes, the CONTRACTOR shall indemnify, defend and hold harmless the OWNER, the ENGINEER and their officers, agents, and employees against all claims arising from violation of any Laws or Regulations, by CONTRACTOR or by

its employees or subcontractors. This indemnity provision is intended to provide the greatest protection of the OWNER and ENGINEER allowed by law. Any particular law or regulation specified or referred to elsewhere in the Contract Documents shall not in any way limit the obligation of the CONTRACTOR to comply with all other provisions of federal, state, and local laws and regulations.

6.08 EQUAL OPPORTUNITY

- A. The CONTRACTOR agrees not to discriminate against anyone because of race, national origin, ancestry, color, religion, sex, age, or disability. The CONTRACTOR agrees to abide by all applicable civil rights Laws and Regulations.
- B. Utah Code Ann § 63G-11-103(3) prohibits the OWNER from entering into a contract for the physical performance of services within the state unless the CONTRACTOR registers and participates in the Status Verification System to verify the work eligibility status of the CONTRACTOR's new employees who are employed in the state or who are employed to work in the state. CONTRACTOR shall become familiar with, and strictly comply with, all employment verification requirements applicable to the OWNER and applicable to CONTRACTOR or any subcontractor or Supplier. CONTRACTOR shall assure that all subcontracts relating to the WORK contain a similar mandate. CONTRACTOR shall take all reasonable steps to assure compliance by all subcontractors on the WORK. CONTRACTOR shall regularly confirm the compliance of all subcontractors on the WORK. CONTRACTOR and all subcontractors on the WORK shall maintain records that will allow the OWNER to confirm compliance and make them available to the OWNER upon request.

6.09 TAXES

- A. The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by the CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the WORK.

6.10 USE OF PREMISES

- A. The CONTRACTOR shall confine construction equipment, stored materials and equipment, and other operations of workers to (1) the Project site, (2) the land and areas identified for the CONTRACTOR's use in the Contract Documents, and (3) other lands whose use is acquired by Laws and Regulations, rights-of-way, permits, and easements. The CONTRACTOR shall be fully responsible to the owner and occupant of such lands for any damage to the lands or areas contiguous thereto, resulting from the performance of the WORK or otherwise. Should any claim be made against

the OWNER or the ENGINEER by owner or occupant of lands because of the performance of the WORK, the CONTRACTOR shall promptly settle the claim by agreement, or resolve the claim through litigation. The CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold the OWNER and the ENGINEER harmless from and against all claims, damages, losses, and expenses (including, but not limited to, fees of engineers, architects, attorneys, and other professionals and court costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any owner or occupant of land against the OWNER or the ENGINEER to the extent the claim is based or arises out of the CONTRACTOR's performance of the WORK.

6.11 SAFETY AND PROTECTION

- A. The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. All persons on or near the work site and other persons and organizations who may be affected by activities on or near the work site.
 - 2. All the WORK and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - 3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- B. The CONTRACTOR shall comply with all applicable Laws and Regulations (whether referred to herein or not) of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the WORK may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Unless the CONTRACTOR otherwise designates in writing a different individual as the responsible individual, the CONTRACTOR's superintendent shall be CONTRACTOR's representative at the site whose duties shall include providing all persons on the work site with a reasonably safe environment and the prevention of accidents.

6.12 SHOP DRAWINGS AND SAMPLES

- A. After checking and verifying all field measurements and after complying with the applicable procedures specified in the General Requirements, the CONTRACTOR shall submit all shop drawings to the ENGINEER for review and approval in accordance with the approved schedule for shop drawings submittals specified in the General Requirements.
- B. The CONTRACTOR shall also submit to the ENGINEER for review and approval all samples in accordance with the approved schedule of sample submittals specified in the General Requirements.
- C. Before submitting shop drawings or samples, the CONTRACTOR shall determine and verify all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and review or coordinate each shop drawing or sample with other shop drawings and samples and with the requirements of the WORK and the Contract Documents. The CONTRACTOR shall stamp each shop drawing, certifying his review. If the same shop drawings require re-submittal more than two times, the CONTRACTOR shall pay for the costs of ENGINEER's and OWNER's subsequent review(s).

6.13 CONTINUING THE WORK

- A. The CONTRACTOR shall carry on the WORK and adhere to the progress schedule during all disputes or disagreements with the OWNER. No work shall be delayed or postponed pending resolution of any dispute or disagreement, except as the CONTRACTOR and the OWNER may otherwise mutually agree in writing.

6.14 INDEMNIFICATION

- A. To the fullest extent permitted by Laws and Regulations, and notwithstanding any immunity the CONTRACTOR might otherwise have under applicable workers' compensation statutes, the CONTRACTOR shall defend, the OWNER, the ENGINEER, and their officers, agents, and employees, against all claims arising under or by reason of, or claimed by others to arise under or by reason of, the Agreement or any performance of the WORK,. Such defense by the CONTRACTOR shall include but not be limited to the following:
 - 1. Claims resulting in whole or in part, directly or indirectly from, or claimed by others to result in whole or in part, directly or indirectly from, the negligence, carelessness or other fault of the CONTRACTOR or its employees, Subcontractors, Suppliers or agents in the performance of the WORK, or in guarding or maintaining the same, or from any improper materials, implements, or appliances used in its construction;

2. Claims arising in whole or in part, directly or indirectly, from or based on, or claimed by others to arise in whole or in part, directly or indirectly, from or based on, the violation of any Laws or Regulations by the CONTRACTOR or its employees, Subcontractors, Suppliers or agents;
 3. Claims arising in whole or in part, directly or indirectly, from, or claimed by others to arise in whole or in part, directly or indirectly from, the use or manufacture by the CONTRACTOR, or its Subcontractors, Suppliers or agents in the performance of this Agreement of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Agreement.
 4. Claims arising in whole or in part, directly or indirectly, from, or claimed by others to arise in whole or in part, directly or indirectly from, the breach of any warranties, whether express or implied, made by the CONTRACTOR or its Subcontractors, Suppliers or agents;
 5. Claims arising in whole or in part, directly or indirectly, from, or claimed by others to arise in whole or in part, directly or indirectly from, the willful misconduct of the CONTRACTOR or its Subcontractors, Suppliers or agents; and,
 6. Claims arising in whole or in part, directly or indirectly, from, or claimed by others to arise in whole or in part, directly or indirectly from, any breach of the obligations assumed herein by the CONTRACTOR or its Subcontractors, Suppliers or agents.
 7. Such obligations of defense shall apply only to the extent the OWNER and/or ENGINEER are not otherwise defended under a policy of insurance, and request for defense is made in writing.
 8. If there is a finding of fault of the OWNER and or ENGINEER, such entities shall pay their own proportionate share of damages based upon their own individual allocation of fault.
 9. CONTRACTOR shall, notwithstanding any workers' compensation immunity, indemnify and hold OWNER and ENGINEER harmless from the payment of any increased liability which results from a reapportionment of the fault of the CONTRACTOR, or any of its employees, Subcontractors or Suppliers pursuant to Utah Code Annotated section 78B-5-819 or similar law.
- B. The CONTRACTOR shall reimburse the OWNER, and the ENGINEER for all costs and expense, (including but not limited to fees and charges of engineers, architects, attorneys, and other professional and court costs)

incurred by the OWNER, and the ENGINEER in enforcing the provisions of this Paragraph.

- C. The indemnification obligation under this Paragraph shall not be limited in any way by any limitation of 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' compensation acts, disability benefit acts, or other employee benefit acts.

6.15 CONTRACTOR'S DAILY REPORTS

- A. The CONTRACTOR shall complete a daily report indicating manpower, major equipment, subcontractors, weather conditions, etc., involved in the performance of the WORK. The daily report shall be completed on forms prepared by the CONTRACTOR and acceptable to the ENGINEER, and shall be submitted to the ENGINEER at the conclusion of each workday.

6.16 ASSIGNMENT OF CONTRACT

- A. The CONTRACTOR shall not assign, sublet, sell, transfer, or otherwise dispose of the Agreement or any portion thereof, or its right, title, or interest therein, or obligations thereunder, without the written consent of the OWNER except as imposed by law. If the CONTRACTOR violates this provision, the Agreement may be terminated at the option of the OWNER. In such event, the OWNER shall be relieved of all liability and obligations to the CONTRACTOR and to its assignee or transferee, growing out of such termination.

ARTICLE 7 – OTHER WORK

7.01 RELATED WORK

- A. The OWNER may perform other work related to the Project at the site by the OWNER's own forces, have other work performed by utility owners, or let other direct contracts for the performance of the other work which may contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to commencing any other work.
- B. The CONTRACTOR shall afford each utility owner and other contractor who is a party to a direct contract (or the OWNER, if the OWNER is performing the additional work with the OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of the other work. The CONTRACTOR shall properly connect and coordinate the WORK with the other work. 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 with the other work. The CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and shall only cut or alter their work with the written consent of the ENGINEER and the others whose work will be affected.

- C. If the proper execution or results of any part of the CONTRACTOR's work depends upon the integration of work with the completion of other work by any other contractor or utility owner (or the OWNER), the CONTRACTOR shall inspect and report to the ENGINEER in writing all delays, defects, or deficiencies in the other work that renders it unavailable or unsuitable for proper integration with the CONTRACTOR's work. Except for the results or effects of material latent defects and deficiencies in the other work which could not reasonably have been discovered by the CONTRACTOR, the CONTRACTOR's failure to report will constitute an acceptance of the other work as fit and proper for integration with the CONTRACTOR's work and as a waiver of any claim for additional time or compensation associated with the integration of the CONTRACTOR's work with the other work.

7.02 COORDINATION

- A. If the OWNER contracts with others for the performance of other work on the Project at the site, a coordinator will be identified to the extent that the coordinator can be identified at this time, in the Supplementary General Conditions and delegated the authority and responsibility for coordination of the activities among the various contractors. The specific matters over which the coordinator has authority and the extent of the coordinator's authority and responsibility will be itemized in the Supplementary General Conditions or in a notice to the CONTRACTOR at such time as the identity of the coordinator is determined.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 COMMUNICATIONS

- A. The OWNER shall issue all its communications to the CONTRACTOR through the ENGINEER.

8.02 PAYMENTS

- A. The OWNER shall make payments to the CONTRACTOR as provided in Article 14.

8.03 LANDS, EASEMENTS, AND SURVEYS

- A. The OWNER's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. The OWNER shall identify and make available to the CONTRACTOR copies of exploration reports and subsurface conditions

tests at the site and in existing structures which have been utilized by the ENGINEER in preparing the Drawings and Technical Specifications as set forth in Paragraph 4.02.

8.04 CHANGE ORDERS

- A. The OWNER shall execute approved Change Orders for the conditions described in Paragraph 10.01D.
- B. When funds are not budgeted to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

8.05 INSPECTIONS AND TESTS

- A. The OWNER's responsibility with respect to inspection, tests, and approvals is set forth in Paragraph 13.03B.

8.06 SUSPENSION OF WORK

- A. In connection with the OWNER's right to stop work or suspend work, see Paragraphs 13.04 and 15.01. Paragraphs 15.02 and 15.03 deal with the OWNER's right to terminate services of the CONTRACTOR under certain circumstances.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S REPRESENTATIVE

- A. The ENGINEER will be the OWNER's representative during the construction period. The duties, responsibilities and the limitations of authority of the ENGINEER as the OWNER's representative during construction are set forth in a separate agreement with the OWNER and are summarized hereafter.

9.02 VISITS TO SITE

- A. The ENGINEER will make visits to the site during construction to observe and inspect the progress and quality of the WORK and to determine, in general if the WORK is proceeding in accordance with the Contract Documents.

9.03 PROJECT REPRESENTATIVE

- A. The ENGINEER will furnish a Project Representative to observe and inspect the performance of the WORK. The Project Representative and/or other authorized agents of the ENGINEER shall serve as the primary contact(s)

with the Contractor during the construction phase. All submittals shall be delivered to, and communications between the ENGINEER and the CONTRACTOR shall be handled by, the Project Representative and/or other authorized agents. The Project Representative shall be the primary authorized representative of the OWNER and the ENGINEER in all on-site relations with the CONTRACTOR.

9.04 CLARIFICATIONS AND INTERPRETATIONS

- A. The ENGINEER will issue, with reasonable promptness written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

9.05 AUTHORIZED VARIATIONS IN WORK

- A. The ENGINEER may authorize minor variations in the WORK as described in the Contract Documents when such variations do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These variations shall be accomplished by issuing a Field Order. The issuance of a Field Order requires the CONTRACTOR to perform the work described in the order promptly. If the CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim therefor as provided in Article 11 and 12.

9.06 REJECTION OF DEFECTIVE WORK

- A. The ENGINEER is authorized to reject work which the ENGINEER believes to be defective and require special inspection or testing of the WORK as provided in Paragraph 13.03G, whether or not the WORK is fabricated, installed, or completed.

9.07 CONTRACTOR SUBMITTALS, CHANGE ORDERS, AND PAYMENTS

- A. The ENGINEER will review for approval all CONTRACTOR submittals, including shop drawings, samples, substitutes, and "or equal" items, etc., in accordance with the procedures set forth in the General Requirements.
- B. In connection with the ENGINEER's responsibilities as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with the ENGINEER's responsibilities as to Applications for Payment, see Article 14.

9.08 DISPUTES, CLAIMS AND OTHER MATTERS

- A. All claims, disputes, and other matters concerning the acceptability of the WORK, the interpretation of the requirements of the Contract Documents pertaining to the performance of the WORK, and claims for changes in the Contract Price or Contract Time under Articles 11 and 12 will be referred to the ENGINEER in writing with a request for formal decision in accordance with this paragraph. The ENGINEER will render a decision in writing within 30 days of receipt of the request. Written notice of each claim, dispute, or other matter will be delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than 30 days) after the occurrence of the event. Written supporting data will be submitted to the ENGINEER with the written claim unless the ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.
- B. When reviewing the claim or dispute, the ENGINEER will not show partiality to the OWNER or the CONTRACTOR and will incur no liability in connection with any interpretation or decision rendered in good faith. The ENGINEER's rendering of a decision with respect to any claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in Paragraph 14.12) shall be a condition precedent to the OWNER's or the CONTRACTOR's exercise of their rights or remedies under the Contract Documents or by Law or Regulations with respect to the claim, dispute, or other matter.

9.09 LIMITATION ON ENGINEER'S RESPONSIBILITIES

- A. Neither the ENGINEER's authority to act pursuant to its agreement with the OWNER, nor the description of that authority under this Article 9, nor any other description of the ENGINEER's responsibility in the Contract Documents nor any decision made by the ENGINEER in good faith either to exercise or not exercise its authority shall give rise to any duty or responsibility on the part of the ENGINEER to the CONTRACTOR, any Subcontractor, any Supplier, any surety or any other person or organization performing any part of the WORK.
- B. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as reviewed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of the ENGINEER as to the WORK, it is intended that such requirement, direction, review, or judgment will be solely to evaluate the WORK for compliance with the Contract Documents, unless there is a specific statement indicating otherwise. The use of any such term or adjective shall not be effective to assign to the ENGINEER any duty or authority to supervise or direct the

performance of the WORK or any duty or authority to undertake responsibility contrary to the provisions of its agreement with the OWNER.

- C. The ENGINEER will not be responsible for the CONTRACTOR's means, methods, techniques, sequences, or procedures of construction not specified in the Contract Documents. Neither the OWNER nor the ENGINEER shall have any responsibility for safety precautions or programs on site or for the safety of CONTRACTOR's employees, Subcontractors, employees of Subcontractors, Suppliers, employees of Suppliers, or others on site.
- D. The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR nor of any Subcontractor, Supplier, or any other person or organization performing any of the WORK to the extent that such acts or omissions are not reasonably discoverable considering the level of observation and inspection required by the ENGINEER's agreement with the OWNER.

ARTICLE 10 – CHANGES IN THE WORK

10.01 GENERAL

- A. Without invalidating the Agreement and without notice to any surety, the OWNER may at any time or from time to time, order additions, deletions, or revisions in the WORK; these will be authorized by a written Field Order and/or a Change Order issued by the ENGINEER. Upon receipt of any of these documents, the CONTRACTOR shall promptly proceed with the work involved pursuant to the applicable conditions of the Contract Documents.
- B. If the OWNER and the CONTRACTOR are unable to agree upon the increase or decrease in the Contract Price or an extension or shortening of the Contract Time, if any, that should be allowed as a result of a Field Order, a claim may be made therefor as provided in Articles 11 and 12.
- C. The CONTRACTOR shall not be entitled to an increase in the Contract Price nor an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented by Change Order, except in the case of an emergency and except in the case of uncovering work provided in the Paragraph 13.03G.
- D. The OWNER and the CONTRACTOR shall execute appropriate Change Orders covering:
 - 1. Changes in the WORK which are ordered by the OWNER pursuant to Paragraph 10.01A;
 - 2. Changes required because of acceptance of defective work under Paragraph 13.06;

3. Changes in the Contract Price or Contact Time which are agreed to by the parties; or
 4. Any other changes agreed to by the parties.
 5. Any construction contract change order which increases the contract amount shall have the prior written certification of the District's general manager that the expenditure of the change order amount is properly authorized by the District's board of trustees consistent with the District's budget and financial management policies and the instructions of the board of trustees.
- E. If the provisions of any Bond require notice of any change to be given to a surety, the giving of these notices will be the CONTRACTOR's responsibility. The CONTRACTOR shall provide for the amount of each applicable Bond to be adjusted accordingly.

10.02 ALLOWABLE QUANTITY VARIATIONS

- A. Whenever a unit price and quantity have been established for a bid item in the Contract Documents, the quantity stated may be increased or decreased to a maximum of 25 percent with no change in the unit price. An adjustment in the quantity in excess of 25 percent will be sufficient to justify a change in the unit price. All changes in the quantities of bid items shall be documented by Change Order.
- B. In the event a part of the WORK is to be entirely eliminated and no lump sum or unit price is named in the Contract Documents to cover the eliminated work, the price of the eliminated work shall be agreed upon in writing by the OWNER and the CONTRACTOR. If the OWNER and the CONTRACTOR fail to agree upon the price of the eliminated work, the price shall be determined in accordance with the provisions of Article 11.

ARTICLE 11 – CHANGE OF CONTRACT PRICE

11.01 GENERAL

- A. The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the WORK. Except as directed by Change Orders, all duties, responsibilities, and obligations assigned to or undertaken by the CONTRACTOR shall be at its expense without change in the Contract Price.
- B. The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than 30 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with

supporting data shall be delivered with the claim, unless the ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim, and shall be accompanied by the CONTRACTOR's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of the occurrence of the event. If the OWNER and the CONTRACTOR cannot otherwise agree on the amount involved, all claims for adjustment in the Contract Price shall be determined by the ENGINEER in accordance with Paragraph 9.08A. No claim for an adjustment in the Contact Price will be valid if not submitted in accordance with this paragraph.

- C. The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contact Price shall be determined in one of the following ways:
1. Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved.
 2. By mutual acceptance of a lump sum, which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.
 3. On the basis of the cost of work (determined as provided in Paragraphs 11.02 and 11.03) plus a CONTRACTOR's fee for overhead and profit (determined as provided in Paragraph 11.04).

11.02 COST OF WORK (BASED ON TIME AND MATERIALS)

- A. General: The term "cost of work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR for labor, materials, and equipment in the proper performance of work. Except as otherwise may be agreed to in writing by the OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project.
- B. Labor: The cost of labor used in performing work by the CONTRACTOR, a Subcontractor, or other forces will be the sum of the following:
1. The actual wages paid plus any employer payments to, or on behalf of workers for fringe benefits including health and welfare, pension, vacation, and similar purposes. The cost of labor may include the rates paid to foremen when determined by the ENGINEER that the services of foremen do not constitute a part of the overhead allowance.
 2. All payments imposed by state and federal laws including, but not limited to, compensation insurance, and social security payments.

3. The amount paid for subsistence and travel required by collective bargaining agreements, or in accordance with the regular practice of the employer.

At the beginning of the extra work and as later requested by the ENGINEER, the CONTRACTOR shall furnish the ENGINEER proof of labor compensation rates being paid.

- C. Materials: The cost of materials used in performing work will be the cost to the purchaser, whether CONTRACTOR or Subcontractor, from the Supplier thereof, except as the following are applicable:

1. Trade discounts available to the purchase shall be credited to the OWNER notwithstanding the fact that such discounts may not have been taken by the CONTRACTOR.
2. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual Supplier as determined by the ENGINEER. Markup except for actual costs incurred in the handling of such materials will not be allowed.
3. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from these sources on extra work items or current wholesale price for the materials delivered to the work site, whichever is lower.
4. If, in the opinion of the ENGINEER, the cost of material is excessive, or the CONTRACTOR does not furnish satisfactory evidence of the cost of the material, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned, delivered to the work site less trade discount. The OWNER reserves the right to furnish materials for the extra work and no claim shall be made by the CONTRACTOR for costs and profit on such materials.

- D. Equipment: The CONTRACTOR will be paid for the use of equipment at the rental rate listed for the equipment specified in the Rental Rate Blue Book published by Dataquest, Inc. The rental rate will be used to compute payments for equipment whether the equipment is under the CONTRACTOR's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate resulting in the least total cost to the OWNER for the total period of use.

1. All equipment shall, in the opinion of the ENGINEER, be in good working condition and suitable for the purpose for which the equipment is to be used.

2. Before construction equipment is used on the extra work, the CONTRACTOR shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the ENGINEER, in duplicate, a description of the equipment and its identifying number.
 3. Unless otherwise specified, manufacturers' ratings and manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
 4. Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore.
 5. Rental time will not be allowed while equipment is inoperative due to breakdowns.
- E. Equipment on the Work: The rental time to be paid for equipment used on the WORK shall be the time the equipment is in productive operation on the extra work being performed and, in addition, shall include the time required to move the equipment to the location of the extra work and return it to the original location or to another location that requires no more moving time than that required to return it to its original location. Moving time will not be paid if the equipment is used on other than the extra work, even though located at the site of the extra work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power. However, no payment will be made for loading and transporting costs when the equipment is used on other than the extra work even though located at the site of the extra work. The following shall be used in computing the rental time of equipment on the WORK.
1. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.
 2. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation. When owner-operated equipment is used to perform extra work to be paid for on a time and materials basis, the CONTRACTOR will be paid for the equipment and operator, as set forth in Paragraph (3), (4), and (5), following.
 3. Payment for the equipment will be made in accordance with the provisions in Paragraph 11.02D, herein.

4. Payment for the cost of labor and subsistence or travel allowance will be made at the rates paid by the CONTRACTOR to other workers operating similar equipment already on the WORK, or in the absence of such labor, established by collective bargaining agreements for the type of workmen and location of the extra work, whether or not the operator is actually covered by such an agreement. A labor surcharge will be added to the cost of labor described herein in accordance with the provisions of Paragraph 11.02B, herein, which surcharge shall constitute full compensation for payments imposed by state and federal laws and all payments made to on behalf of workers other than actual wages.
5. To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Paragraph 11.04, herein.

11.03 SPECIAL SERVICES

- A. Special work or services are defined as that work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry. The following may be considered by the ENGINEER in making estimates for payment for special services:
 1. When the ENGINEER and the CONTRACTOR, by agreement, determine that a special service or work is required which cannot be performed by the forces of the CONTRACTOR or those of any of its Subcontractors, the special service or work may be performed by an entity especially skilled in the work to be performed. After validation of invoices and determination of market values by the ENGINEER, invoices for special services or work based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental cost.
 2. When the CONTRACTOR is required to perform work necessitating special fabrication or machining process in a fabrication or a machine shop facility away from the job site, the charges for that portion of the work performed at the off-site facility may by agreement, be accepted as a special service and accordingly, the invoices from the work may be accepted without detailed itemization.
 3. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of the allowances for overhead and profit specified in Paragraph 11.04, herein, an allowance of 5 percent will be added to invoices for special services.

- B. All work performed hereunder shall be subject to all of the provisions of the Contract Documents and the CONTRACTOR's sureties shall be bound with reference hereto as under the original Agreement. Copies of all amendments to surety bonds or supplemental surety bonds shall be submitted to the OWNER for review prior to the performance of any work hereunder.

11.04 CONTRACTOR'S FEE

- A. Work ordered on the basis of time and materials will be paid for at the actual necessary cost as determined by the ENGINEER, plus allowances for overhead and profit. For extra work involving a combination of increases and decreases in the WORK, the actual necessary cost will be the arithmetic sum of the additive and deductive costs. The allowance for overhead and profit shall include full compensation for superintendence, bond and insurance premiums, taxes, office expenses, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Paragraphs 11.02B, C, and D herein, including extended overhead and home office overhead. The allowance for overhead and profit will be made in accordance with the following schedule:

OVERHEAD AND PROFIT ALLOWANCE

Labor	10 percent
Materials	10 percent
Equipment	10 percent

- B. It is understood that labor, materials, and equipment may be furnished by the CONTRACTOR or by a Subcontractor, and that the allowance specified herein shall be applied to the labor, materials, and equipment costs of the Subcontractor, to which the CONTRACTOR may add five percent of the Subcontractor's total cost of work. Regardless of the number of hierarchical tiers of Subcontractors, the five- percent markup may be applied one time only for each separate work transaction.

ARTICLE 12 – CHANGE OF CONTRACT TIME

12.01 GENERAL

- A. The Contract Time may only be changed by a Change Order. Any claim for an extension of the Contract time shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than 30 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within 30 days after such occurrence (unless the ENGINEER allows an additional period of time to ascertain more

accurate data in support of the claim) and shall be accompanied by the CONTRACTOR's written statement that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. Claims for adjustment in the Contract Time shall be determined by the ENGINEER in accordance with Paragraph 9.08 if the OWNER and the CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph.

- B. The Contract Time will be extended in an amount equal to time lost if the CONTRACTOR makes a claim as provided in Paragraph 12.01A and the ENGINEER determines that the delay was caused by events beyond the control of the CONTRACTOR. Examples of events beyond the control of the CONTRACTOR include acts or neglect by the OWNER or others performing additional work as contemplated by Article 7, or by acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, labor disputes, sabotage, or freight embargoes.
- C. All time limits stated in the Contract Documents are of the essence.
- D. None of the aforesaid time extensions shall entitle the CONTRACTOR to any adjustment in the Contract Price or any damages for delay. Furthermore, the CONTRACTOR hereby indemnifies and holds harmless the OWNER and ENGINEER, their officers, agents and employees from and against all claims, damages, losses and expenses (including lost property and attorney's fees) arising out of or resulting from the temporary suspension of work whether for the OWNER's convenience as defined in Article 15.01A or for whatever other reasons including the stoppage of work by the ENGINEER for the CONTRACTOR's failure to comply with any order issued by the ENGINEER.

12.02 EXTENSIONS OF THE TIME FOR DELAY DUE TO INCLEMENT WEATHER

- A. "Inclement weather" is any weather condition or conditions resulting immediately therefrom, causing the CONTRACTOR to suspend construction operations or preventing the CONTRACTOR from proceeding with at least 75 percent of the normal labor and equipment force engaged on the WORK.
- B. Should the CONTRACTOR prepare to begin work at the regular starting time at the beginning of any regular work shift on any day on which inclement weather, or its effects on the condition of the WORK prevents work from beginning at the usual starting time and the crew is dismissed as a result thereof, the CONTRACTOR will not be charged for a working day whether or not conditions change thereafter during the day and the major portion of the day could be considered to be suitable for construction operations.

- C. The CONTRACTOR shall base its construction schedule upon the inclusion of the number of days of inclement weather specified in the Supplementary General Conditions. No extension of the Contract Time due to inclement weather will be considered until after the stated number of days of inclement weather has been reached. However, no reduction in Contract Time will be made if the number of inclement weather days is not reached.

12.03 EXTENSIONS OF TIME FOR OTHER DELAYS

- A. If the CONTRACTOR is delayed in completion of the WORK beyond the Contract Time, by acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, labor disputes, industry-wide shortage of raw materials, sabotage or freight embargoes, the CONTRACTOR shall be entitled to an adjustment in the Contract Time. No such adjustment will be made unless the CONTRACTOR shall notify the ENGINEER in writing of the causes of delay within 15 calendar days from the beginning of any such delay. The ENGINEER shall ascertain the facts and the extent of the delay. No adjustment in time shall be made for delays resulting from noncompliance with the Contract Documents, accidents, failure on the part of the CONTRACTOR to carry out the provisions of the Contract Documents including failure to provide materials, equipment or workmanship meeting the requirements of the Contract Documents; the occurrence of such events shall not relieve the CONTRACTOR from the necessity of maintaining the required progress.
- B. If the CONTRACTOR is delayed in completing the WORK beyond the Contract Time by reason of shortages of raw materials required for CONTRACTOR-furnished items, the CONTRACTOR shall be entitled to an adjustment in the Contract Time in like manner as if the WORK had been suspended for the convenience and benefit of the OWNER; provided, however, that the CONTRACTOR shall furnish documentation acceptable to the OWNER and ENGINEER that he placed or attempted to place firm orders with Suppliers at a reasonable time in advance of the required date of delivery of the items in question, that such shortages shall have developed following the date such orders were placed or attempts made to place same, that said shortages are general throughout the affected industry, that said shortages are shortages of raw materials required to manufacture CONTRACTOR-furnished items and not simply failure of CONTRACTOR's Suppliers to manufacture, assemble or ship items on time, and that the CONTRACTOR shall, to the degree possible, have made revisions in the sequence of his operations, within the terms of the Contract Documents, to offset the expected delay. The CONTRACTOR shall notify the ENGINEER, in writing, concerning the cause of delay, within 15 calendar days of the beginning of such delay. The validity of any claim by the CONTRACTOR to an adjustment in the Contract Time shall be determined by the OWNER acting through the ENGINEER, and his findings thereon shall be based on the ENGINEER's knowledge and observations of the events involved and

documentation submitted by the CONTRACTOR, showing all applicable facts relative to the foregoing provisions. Only the physical shortage of raw materials will be considered under these provisions as a cause for adjustment of time and no consideration will be given to any claim that items could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the OWNER that such items could have been obtained only at exorbitant prices entirely out of line with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.

- C. If the CONTRACTOR is delayed in completion of the WORK by any act of the ENGINEER or of the OWNER not authorized by the Contract Documents, an adjustment in the Contract Time will be made by the OWNER in like manner as if the WORK had been suspended for the convenience and benefit of the OWNER. In the event of such delay, the CONTRACTOR shall notify the ENGINEER in writing of the causes of delay within 15 calendar days from the beginning of any such delay.

ARTICLE 13 – WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.01 WARRANTY, GUARANTEE AND CORRECTION PERIOD

- A. The CONTRACTOR warrants and guarantees to the OWNER and the ENGINEER that all work, equipment, materials and workmanship are in accordance with the Contract Documents and are not defective. Reasonably prompt notice of defects discovered by the OWNER or ENGINEER shall be given to the CONTRACTOR. All defective work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 13.
- B. If within one (1) year after the date of final completion, as set by the Contractor's Certificate of Final Completion, or a longer period of time prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provisions of the Contract Documents, any part of the WORK is found to be defective, the OWNER shall notify the CONTRACTOR in writing and the CONTRACTOR shall promptly, without cost to the OWNER and in accordance with the OWNER's written notification, either correct the defective work, or, if it has been rejected by the OWNER, remove it from the site and replace it with non-defective work. In the event the CONTRACTOR does not promptly comply with the notification, or in an emergency where delay would cause serious risk of loss or damage, the OWNER may have the defective work corrected or rejected work removed and replaced. All direct, indirect, and consequential costs of the removal and replacement including but not limited to fees and charges of engineers, architects, attorneys and other professionals will be paid by the CONTRACTOR. This paragraph shall not be construed to limit nor diminish the

CONTRACTOR's absolute guarantee to complete the WORK in accordance with the Contract Documents.

13.02 ACCESS TO WORK

- A. The ENGINEER, other representatives of the OWNER, testing agencies, and governmental agencies with jurisdictional interests shall have access to the work at reasonable times for their observation, inspections, and testing. The CONTRACTOR shall provide proper and safe conditions for their access.

13.03 TESTS AND INSPECTIONS

- A. The CONTRACTOR shall give the ENGINEER timely notice of readiness of the WORK for all required inspections, tests, or approvals.
- B. If Laws or Regulations of any public body other than the OWNER, with jurisdiction over the WORK require any work to be specifically inspected, tested, or approved, the CONTRACTOR shall pay all costs in connection therewith. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the OWNER's or the ENGINEER's acceptance of a Supplier of materials or equipment proposed as a substitution or "or-equal" to be incorporated in the WORK and of materials or equipment submitted for review prior to the CONTRACTOR's purchase for incorporation in the WORK. The cost of all inspections, tests, and approvals, with the exception of the above which are required by the Contract Documents, shall be paid by the OWNER (unless otherwise specified).
- C. The ENGINEER will make, or has made, such inspections and test as the ENGINEER deems necessary to see that the WORK is being accomplished in accordance with the Contract Documents. The CONTRACTOR, without additional cost to the OWNER, shall provide the labor and equipment necessary to make the WORK available for inspections. Unless otherwise specified in the Supplementary General Conditions, all other costs of inspection and testing will be borne by the OWNER. In the event the inspections or tests reveal non-compliance with the requirements of the Contract Documents, the CONTRACTOR shall bear the cost of corrective measures deemed necessary by the ENGINEER, as well as the cost of subsequent re-inspection and retesting. Neither observations by the ENGINEER nor inspections, tests, or approvals by others shall relieve the CONTRACTOR from the CONTRACTOR's obligation to perform the WORK in accordance with the Contract Documents.
- D. All inspections, tests, or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by properly licensed organizations selected by the OWNER.

- E. If any work (including the work of others) that is to be inspected, tested, or approved is covered without the ENGINEER's written authorization, it must, if requested by the ENGINEER, be uncovered for testing, inspection, and observation. The uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR timely notified the ENGINEER of the CONTRACTOR's intention to cover the same and the ENGINEER failed to act with reasonable promptness in response to the notice.
- F. If any work is covered contrary to the written request of the ENGINEER, it must, if requested by the ENGINEER, be uncovered for the ENGINEER's observation at the CONTRACTOR's expense.
- G. If the ENGINEER considers it necessary or advisable that covered work be observed, inspected or tested by the ENGINEER or others, the ENGINEER shall direct the CONTRACTOR to uncover, expose, or otherwise make available for observation, inspection, or testing that portion of the work in question. The CONTRACTOR shall comply with the ENGINEER's direction and furnish all necessary labor, material, and equipment. If the work is defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction of the work, including, but not limited to, fees and charges for engineers, architects, attorneys, and other professionals. However, if the work is not defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both. The increase in Contract Time and Contract Price shall be the CONTRACTOR's actual time and costs directly attributable to uncovering and exposing the work. If the parties are unable to agree as to the amount or extent of the changes, the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

13.04 OWNER MAY STOP THE WORK

- A. If the WORK is defective, or the CONTRACTOR fails to perform work in such a way that the completed WORK will conform to the Contract Documents, the OWNER may order the CONTRACTOR to stop the WORK, or any portion thereof, until the cause for the order has been eliminated. 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 other party.

13.05 CORRECTION OR REMOVAL OF DEFECTIVE WORK

- A. When directed by the ENGINEER, the CONTRACTOR shall promptly correct all defective work, whether or not fabricated, installed, or completed, or, if the work has been rejected by the ENGINEER, remove it from the site and replace it with non-defective work. The CONTRACTOR shall bear all direct, indirect and consequential costs of correction or removal, including but not

limited to fees and charges of engineers, architects, attorneys, and other professionals made necessary thereby. If the CONTRACTOR does not correct the defective work within 30 days, the OWNER may correct the WORK and charge the CONTRACTOR for the cost of correcting the defective WORK.

13.06 ACCEPTANCE OF DEFECTIVE WORK

- A. If, instead of requiring correction or removal and replacement of defective work, the OWNER prefers to accept the work, the OWNER may do so. The CONTRACTOR shall bear all direct, indirect, and consequential costs attributable to the OWNER's evaluation of and determination to accept the defective work. If any acceptance of defective work 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 Price.

ARTICLE 14 – PAYMENTS TO CONTRACTOR, LIQUIDATED DAMAGES AND COMPLETION

14.01 LUMP SUM BID

- A. A schedule of values or lump sum price breakdown will serve as the basis for progress payments for a lump sum Bid and will be incorporated into the form of Application for Payment included in the Contract Documents.

14.02 UNIT PRICE BID

- A. Progress payments for a unit price Bid will be based on the number of units completed.

14.03 APPLICATION FOR PROGRESS PAYMENT

- A. Unless otherwise prescribed by the OWNER, on the 25th of each month, the CONTRACTOR shall submit to the ENGINEER for review and approval, an Application for Payment completed and signed by the CONTRACTOR covering the WORK completed as of the date of the Application and accompanied by such supporting documentation as required by the Contract Documents.
- B. The Application for Payment shall identify, as a sub-total, the amount of the CONTRACTOR's Total Earnings to Date, plus the Net Value of Materials On-site which have not yet been incorporated in the WORK.
- C. The Net Payment Due to the CONTRACTOR shall be the above-mentioned sub-total, from which shall be deducted the retainage amount and the total amount of all previous payments made to the CONTRACTOR.

- D. The OWNER may retain five percent of the amount otherwise due to the Contractor as retainage. Monies retained shall be placed in an interest-bearing account for the benefit of the CONTRACTOR.
- E. Except as otherwise provided in the Supplementary General Conditions, the value of materials stored at the site shall be valued at 80 percent of the value of the materials. This amount shall be based upon the value of all acceptable materials and equipment stored at the site or at another location agreed to in writing by the OWNER; provided, each individual item has a value of more than \$5000 and will become a permanent part of the WORK. The Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the CONTRACTOR has received the materials and equipment free and clear of all liens, charges, security interests, and encumbrances (which are hereinafter referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the OWNER's interest therein, all of which will be satisfactory to the OWNER.

14.04 CONTRACTOR'S WARRANTY OF TITLE

- A. The CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated in the WORK or not, will pass to the OWNER no later than the time of final payment, free and clear of all liens.

14.05 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

- A. The ENGINEER will, within 7 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the OWNER, or return the Application to the CONTRACTOR indicating in writing the ENGINEER's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application. Thirty days after presentation of the Application for Payment with the ENGINEER's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.05B) become due and when due will be paid by the OWNER to the CONTRACTOR.
- B. The OWNER may refuse to make payment of the full amount recommended by the ENGINEER to compensate for claims made by the OWNER on account of the CONTRACTOR's performance of the WORK or other items entitling the OWNER to a credit against the amount recommended, but the OWNER must give the CONTRACTOR written notice within 7 days (with a copy to the ENGINEER) stating the reasons for such action.

14.06 PARTIAL UTILIZATION

- A. The OWNER may utilize or place into service any item of equipment or other usable portion of the WORK at any time prior to completion of the WORK. The OWNER shall notify the CONTRACTOR in writing of its intent to exercise this right. The notice will identify the equipment or specific portion or portions of the WORK to be utilized or otherwise placed into service.
- B. It shall be understood by the CONTRACTOR that until such written notification is issued, all responsibility for care and maintenance of all items or portions of the WORK to be partially utilized shall be borne by the CONTRACTOR. Upon the issuance of a notice of partial utilization, the ENGINEER will deliver to the OWNER and the CONTRACTOR a written recommendation as to division of responsibilities between the OWNER and the CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Upon the OWNER's acceptance of these recommendations, the ENGINEER's aforesaid recommendation will be binding on the OWNER and the CONTRACTOR until final payment.
- C. The CONTRACTOR shall retain full responsibility for satisfactory completion of the WORK, regardless of whether a portion thereof has been partially utilized by the OWNER, and the CONTRACTOR's one-year correction period shall commence only after the date of Final Completion for the WORK.

14.07 DAMAGES

- A. The CONTRACTOR shall pay to the OWNER the amount specified in the Supplementary General Conditions, not as a penalty but as liquidated damages, if he fails to complete the WORK or specified parts of the WORK within the Contract Time. The periods for which these damages shall be paid shall be the number of Days from the Contract Time as contained in the Agreement, or from the date of termination of any extension of time approved by the OWNER, to the date or dates on which the ENGINEER issues the Notice of Substantial Completion as provided in Article 14.08, herein. The OWNER may deduct the amount of said damages from any monies due or to become due the CONTRACTOR. After Substantial Completion, if the CONTRACTOR fails to complete the remaining WORK within 45 days or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER the amount stated in the Supplementary General Conditions as liquidated damages for each day that expires after the 45 days, until readiness for final payment.
- B. The said amount is fixed and agreed upon by and between the CONTRACTOR and the OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would sustain; and said amount is agreed to be the amount of damages which the OWNER would sustain.

- C. If actual damages are assessed, they will include all costs incurred by the OWNER as a result of a delay in the completion time of the work beyond the contract time.
- D. All times specified in the Contract Documents are hereby declared to be of the essence.

14.08 SUBSTANTIAL COMPLETION

- A. When the CONTRACTOR considers the WORK ready for its intended use, the CONTRACTOR will notify the OWNER and the ENGINEER in writing that the WORK is Substantially Complete. Within a reasonable time thereafter, the OWNER, the CONTRACTOR, and the ENGINEER shall make an inspection of the WORK to determine the status of completion. If the ENGINEER does not consider the WORK Substantially Complete, the ENGINEER will notify the OWNER and CONTRACTOR in writing giving the reasons therefor. If the ENGINEER considers the WORK Substantially Complete, the ENGINEER will prepare and deliver to the OWNER for its execution the Notice of Substantial Completion signed by the ENGINEER and CONTRACTOR, which shall fix the date of Substantial Completion.
- B. The Notice of Substantial Completion shall be a release by the CONTRACTOR of the OWNER and its agents from all claims and liability to the CONTRACTOR for anything done or furnished for, or relating to, the WORK or for any act or neglect of the OWNER or of any person relating to or affecting the WORK, to the date of Substantial Completion, except demands against the OWNER for the remainder of the amounts kept or retained from progress payments and excepting pending, unresolved claims filed in writing prior to the date of Substantial Completion. At the time of delivery of the Notice of Substantial Completion, the ENGINEER will deliver to the OWNER and the CONTRACTOR, if applicable, a written recommendation as to division of responsibilities between the OWNER and the CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Upon the OWNER's acceptance of these recommendations, the ENGINEER's recommendation will be binding on the OWNER and the CONTRACTOR until final payment.
- C. The OWNER, upon written notice to the CONTRACTOR, shall have the right to exclude the CONTRACTOR from the WORK after the date of Substantial Completion, and complete all or portions of the WORK at the CONTRACTOR's expense.

14.09 COMPLETION AND FINAL PAYMENT

- A. Upon written certification from the CONTRACTOR that the WORK is complete (if a Notice of Substantial Completion has been issued this certification must occur within 45 days of that date), the ENGINEER will

make a final inspection with the OWNER and the CONTRACTOR. If the OWNER and ENGINEER do not consider the WORK complete, the ENGINEER will notify the OWNER and the CONTRACTOR in writing of all particulars in which this inspection reveals that the WORK is incomplete or defective. The CONTRACTOR shall immediately take the measures necessary to remedy these deficiencies. If the ENGINEER and OWNER consider the WORK complete, the CONTRACTOR may proceed to file its application for final payment pursuant to this Article. At the request of the CONTRACTOR, the ENGINEER may recommend to the OWNER that certain minor deficiencies in the WORK that do not prevent the entire WORK from being used by the OWNER for its intended use, and the completion of which will be unavoidably delayed due to no fault of the CONTRACTOR, be exempted from being completed prerequisite to final payment. These outstanding items of pickup work, or "punch list items", shall be listed on the Notice of Substantial Completion, together with the recommended time limits for their completion, and extended warranty requirements for those items and the value of such items.

- B. After the issuance of the Notice of Completion and after the CONTRACTOR has completed corrections that have not been exempted to the satisfaction of the ENGINEER and delivered to the ENGINEER all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents; and after the ENGINEER has indicated that the WORK is acceptable, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by all documentation called for in the Contract Documents and other data and schedules as the OWNER or ENGINEER may reasonably require, including an affidavit of the CONTRACTOR that all labor, services, material, equipment and other indebtedness connected with the WORK for which the OWNER or his property might in any way be responsible, have been paid or otherwise satisfied, and a consent of the payment bond surety to final payment, all in forms approved by the OWNER.

14.10 FINAL APPLICATION FOR PAYMENT

- A. If, on the basis of the ENGINEER's observation of the WORK during construction and final inspection, and the ENGINEER's review of the final application for payment and accompanying documentation, all as required by the Contract Documents, the ENGINEER is satisfied that the WORK has been completed and the CONTRACTOR has fulfilled all of his obligations under the Contract Documents, the ENGINEER will, within ten days after receipt of the final application for payment, indicate in writing his recommendation of payment and present the application to the OWNER for payment. Thereupon, the ENGINEER will give written notice to the OWNER and the CONTRACTOR that the WORK is acceptable by executing the

Notice of Completion. Otherwise, the ENGINEER will return the application to the CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the application.

- B. Within 45 calendar days after the Notice of Completion, the OWNER will make final payment including all deducted retainage and interest to the CONTRACTOR. The OWNER's remittance of final payment shall be the OWNER's acceptance of the WORK if formal acceptance of the WORK is not indicated otherwise. The final payment shall be that amount remaining after deducting all prior payments and all amounts to be kept or retained under the provisions of the Contract, including the following items:
1. Liquidated or actual damages, as applicable.
 2. Two times the value of any outstanding items of pickup work or "punch list items", indicated on the ENGINEER's Notice of Completion as being yet uncompleted.

14.11 CONTRACTOR'S CONTINUING OBLIGATIONS

- A. The CONTRACTOR's obligation to perform and complete the WORK in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the ENGINEER, nor the issuance of a Notice of Substantial Completion or Notice of Completion, nor payment by the OWNER to the CONTRACTOR under the Contract Documents, nor any use or occupancy of the WORK or any part thereof by the OWNER, nor any act of acceptance by the OWNER nor any failure to do so, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work or materials not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the WORK in accordance with the Contract Documents.

14.12 FINAL PAYMENT TERMINATES LIABILITY OF OWNER

- A. Final payment is defined as the last progress payment made to the CONTRACTOR for earned funds, less deductions listed in Paragraph 14.10B herein. The acceptance by the CONTRACTOR of the final payment referred to in Paragraph 14.10 herein, shall be a release of the OWNER and its agents from all claims of liability to the CONTRACTOR for anything done or furnished for, or relating to, the work or for any act or neglect of the OWNER or of any person relating to or affecting the work, except demands against the OWNER for the remainder, if any, of the amounts kept or retained under the provisions of Paragraph 14.10 herein; and excepting pending, unresolved claims filed prior to the date of the Notice of Substantial Completion.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 SUSPENSION OF WORK BY OWNER

- A. The OWNER acting through the ENGINEER may, by written notice to the Contractor, temporarily suspend the WORK, in whole or in part, for a period or periods of time, but not to exceed 90 days, for the convenience and benefit of the OWNER upon the occurrence of any one or more of the following: (1) unsuitable weather; (2) delay in delivery of OWNER- furnished equipment or materials, or such other conditions as are considered unfavorable for prosecution of the work; (3) shortfall in construction funds; (4) constraints imposed by public entities, public utilities, property owners or legal proceedings; (5) failure or delay in acquisition of easements or right-of-way by the OWNER; or (6) other conditions which, in the opinion of the OWNER, warrant a delay in the WORK. Suspended WORK shall be resumed by the CONTRACTOR within 10 calendar days of receipt from the ENGINEER of written notice to resume work. Whenever the OWNER temporarily suspends work for any conditions enumerated in this Article, the CONTRACTOR shall be entitled to an adjustment in the Contract Time as specified in Article 12.03 C.
- B. The suspension of work shall be effective upon receipt by the CONTRACTOR of a written order suspending the work and shall be terminated upon receipt by the Contractor of a written order terminating the suspension.
- C. The CONTRACTOR hereby indemnifies and holds harmless the OWNER and ENGINEER, their officers, agents and employees, from and against all claims, damages, losses and expenses, including lost profits and attorney's fees, arising out of or resulting from the temporary suspension of the WORK, whether for the OWNER's convenience described in this Article or for whatever other reasons, including the stoppage of work by the ENGINEER for the CONTRACTOR's failure to comply with any order issued by the ENGINEER.

15.02 TERMINATION OF AGREEMENT BY OWNER (CONTRACTOR DEFAULT)

- A. In the event of default by the CONTRACTOR, the OWNER may give written notice to the CONTRACTOR of OWNER's intent to terminate the Agreement. The notice shall state the event of default and the time allowed to remedy the default. It shall be considered a default by the CONTRACTOR whenever the CONTRACTOR shall: (1) declare bankruptcy, become insolvent, or assign its assets for the benefit of its creditors; (2) fail to provide materials or workmanship meeting the requirements of the Contract Documents; (3) disregard or violate provisions of the Contract Documents or ENGINEER's instructions, (4) fail to prosecute the WORK according to the approved progress schedule; or, (5) fail to provide a qualified superintendent,

competent workmen, or materials or equipment meeting the requirements of the Contract Documents. If the CONTRACTOR fails to remedy the conditions constituting default within the time allowed, the OWNER may then issue a Notice of Termination.

- B. In the event the Agreement is terminated in accordance with Paragraph 15.02A, the OWNER may take possession of the WORK and may complete the WORK by whatever method or means the OWNER may select. The cost of completing the WORK shall be deducted from the balance which would have been due the CONTRACTOR had the Agreement not been terminated and the WORK completed in accordance with the Contract Documents. If such cost exceeds the balance which would have been due, the CONTRACTOR shall pay the excess amount to the OWNER. If such cost is less than the balance which would have been due, the CONTRACTOR shall have no claim to the difference.

15.03 TERMINATION OF AGREEMENT BY OWNER (FOR CONVENIENCE)

- A. The OWNER may terminate the Agreement at any time if it is found that reasons beyond the control of either the OWNER or CONTRACTOR make it impossible or against the OWNER's interests to complete the WORK. In such a case, the CONTRACTOR shall have no claims against the OWNER except: (1) for the value of the work, as determined by the engineer, performed by the Contractor up to the date the Agreement is terminated; and, (2) for the cost of materials and equipment on hand, in transit, or on definite commitment, as of the date the Agreement is terminated, which would be needed in the WORK and which meet the requirements of the Contract Documents. The value of work performed and the cost of materials and equipment delivered to the site, as mentioned above, shall be determined by the ENGINEER in accordance with the procedure prescribed from making the final application for payment and final payment under Paragraphs 14.09 and 14.10.

15.04 TERMINATION OF AGREEMENT BY CONTRACTOR

- A. The CONTRACTOR may terminate the Agreement upon 10 days written notice to the OWNER, whenever: (1) the WORK has been suspended under the provisions of Paragraph 15.01, for more than 90 consecutive days through no fault or negligence of the CONTRACTOR, and notice to resume work or to terminate the agreement has not been received from the OWNER within this time period; or, (2) the OWNER should fail to pay the CONTRACTOR any monies due him in accordance with the terms of the Contract Documents and within 60 days after presentation to the OWNER by the CONTRACTOR of a request therefor, unless within said 10-day period the OWNER shall have remedied the condition upon which the payment delay was based. In the event of such termination, the CONTRACTOR shall have no claims against the OWNER except for those claims specifically

enumerated in Paragraph 15.03, and as determined in accordance with the requirements of that paragraph.

ARTICLE 16 – NOTICE

16.01 GIVING NOTICE

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

16.02 TITLE TO MATERIALS FOUND ON THE WORK

- A. The OWNER reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from excavations and other operations connected with the WORK. Unless otherwise specified in the Contract Documents, neither the CONTRACTOR nor any Subcontractor shall have any right, title, or interest in or to any such materials. The CONTRACTOR will be permitted to use in the WORK, without charge, any such materials which meet the requirements of the Contract Documents.

16.03 RIGHT TO AUDIT

- A. If the CONTRACTOR submits a claim to the OWNER for additional compensation, the OWNER shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the CONTRACTOR's books. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the CONTRACTOR's plants, or such parts thereof, as may be or have been engaged in the performance of the WORK. The CONTRACTOR further agrees that the right to audit encompasses all subcontracts and is binding upon subcontractors. The right to examine and inspect herein provided for shall be exercisable through such representatives as the OWNER deems desirable during the CONTRACTOR's normal business hours at the office of the CONTRACTOR. The CONTRACTOR shall make available to the OWNER for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the OWNER.

16.04 HAZARDOUS MATERIALS

- A. If the CONTRACTOR during the course of work observes the existence of hazardous material, the CONTRACTOR shall promptly notify the OWNER and the ENGINEER. The OWNER shall consult with the ENGINEER regarding removal or encapsulation of the hazardous material and the CONTRACTOR shall not perform any work pertinent to the hazardous material prior to receipt or special instruction from the OWNER through the ENGINEER.

ARTICLE 17 – SUBCONTRACT LIMITATIONS

17.01 SUBCONTRACT LIMITATIONS

- A. In addition to the provisions of Paragraph 6.05 of the General Conditions, the CONTRACTOR shall perform not less than 20 percent of the WORK with its own forces (i.e., without subcontracting). The 20 percent requirement shall be understood to refer to the WORK, the value of which totals not less than 20 percent of the Contract Price.

ARTICLE 18 – PATENTS AND COPYRIGHTS

18.01 PATENTS AND COPYRIGHTS

The CONTRACTOR shall indemnify and save harmless the OWNER, the ENGINEER, and their officers, agents, and employees, against all claims or liability arising from the use of any patented or copyrighted design, device, material, or process by the CONTRACTOR or any of his subcontractors in the performance of the WORK.