This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD

GENERAL CONDITIONS

OF THE

#### CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By

  

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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# **GENERAL CONDITIONS**

# ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

## 1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda--*Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement--*The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompa­nied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos--*Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupa­tional Safety and Health Administration.

5. *Bid--*The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents--*The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements--*The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order--*A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim--*A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract--*The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract super­sedes prior negotiations, representations, or agree­ments, whether written or oral.

12. *Contract Documents--* Those items so designated in the Agree­ment. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor’s submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price--*The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Docu­ments as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times--*The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substan­tial Completion; and (iii) com­plete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final pay­ment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agree­ment.

16. *Cost of the Work--*See Paragraph 11.01.A for definition.

17. *Drawings--*That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and charac­ter of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. *Effective Date of the Agreement--*The date indicat­ed in the Agreement on which it becomes effec­tive, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order--*A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements--*Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifica­tions.

22. *Hazardous Environmental Condition--*The presence at the Site of Asbestos, PCBs, Petro­leum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste--*The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regula­t­ions--*Any and all applicable laws, rules, regulations, ordinanc­es, codes, and orders of any and all govern­men­tal bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens--*Charges, security interests, or encumbrances upon Project funds, real property, or personal proper­ty.

26. *Milestone--*A principal event specified in the Contract Documents relating to an intermediate com­ple­tion date or time prior to Substantial Comple­tion of all the Work.

27. *Notice of Award--*The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed--*A written notice given by Owner to Contractor fixing the date on which the Con­tract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs--*Polychlorinated biphenyls.

31. *Petroleum--*Petroleum, including crude oil or any fraction thereof which is liquid at stan­dard condi­tions of temperature and pressure (60 degrees Fahren­heit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non‑Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

33. *Project--*The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual--*The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material--*Source, special nucle­ar, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amend­ed from time to time.

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative--*The autho­rized representative of Engineer who may be assigned to the Site or any part thereof.

38. *Samples--*Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

41. *Shop Drawings--*All drawings, diagrams, illustra­tions, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

42. *Site--*Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are desig­nated for the use of Contractor.

43. *Specifications--*That part of the Con­tract Documents consisting of written requirements for materials, equipment, systems, stan­dards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

44. *Subcontractor--*An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion--*The time at which the Work (or a speci­fied part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially com­pleted” as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions--*That part of the Contract Documents which amends or supplements these General Conditions.

48. *Supplier--*A manufacturer, fabricator, suppli­er, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcon­trac­tor to furnish materials or equipment to be incorporat­ed in the Work by Contractor or any Subcontrac­tor.

49. *Underground Facilities--*All underground pipelines, con­duits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasemen­ts containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communica­tions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work--*The entire construction or the various separately identifiable parts thereof re­quired to be provided under the Contract Docu­ments. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construc­tion, and furnishing, installing, and incorporating all materials and equip­ment into such construction, all as required by the Contract Docu­ments.

52. *Work Change Directive--*A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recom­mended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergen­cies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subse­quently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 *Terminology*

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered”, “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the require­ments of and information in the Contract Documents and confor­mance with the design concept of the com­pleted Project as a function­ing whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to 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 Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents, or

b. does not meet the require­ments of any applicable inspection, reference standard, test, or approval referred to in the Contract Docu­ments, or

c. has been damaged prior to Engineer’s ­recommendation of final payment (unless responsi­bility for the protection thereof has been assumed by Owner at Substantial Completion in accor­dance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connec­tion with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connec­tion with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connec­tion with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “pro­vide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Docu­ments, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

# ARTICLE 2 - PRELIMINARY MATTERS

## 2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the execut­ed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insur­ance (and other evidence of insur­ance which either of them or any additional insured may reason­ably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

## 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the ­Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

## 2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agree­ment or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Pro­ceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times com­mence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichev­er date is earlier.

## 2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times com­mence to run. No Work shall be done at the Site prior to the date on which the Contract Times com­mence to run.

## 2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise speci­fied in the General Requirements), Contractor shall submit to Engineer for timely review**:**

1. a preliminary Progress Schedule; indicat­ing the times (numbers of days or dates) for start­ing and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdi­vides the Work into compo­nent parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, proce­dures for handling Shop Drawings and other submittals, processing Applica­tions for Payment, and maintaining required records.

## 2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropri­ate will be held to review for acceptability to Engineer as provid­ed below the schedules submit­ted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the sched­ules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be accept­able to Engineer if it provides an orderly progression of the Work to comple­tion within the Contract Times. Such accep­tance will not impose on Engineer responsibil­ity for the Progress Schedule, for sequenc­ing, schedul­ing, or progress of the Work nor interfere with or relieve Contractor from Contractor’s full respon­si­bility therefor.

2. Contractor’s Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor’s Schedule of Values will be accept­able to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

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

## 3.01 *Intent*

A. The Contract Documents are comple­mentary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part there­of) to be constructed in accordance with the Contract Docu­ments. Any labor, documentation, services, materials, or equip­ment that may reasonably be inferred from the Contract Docu­ments or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

## 3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations.

1. Reference to standards, specifica­tions, manuals, or codes of any technical society, organiza­tion, or association, or to Laws or Regulations, whether such refer­ence be specific or by implica­tion, shall mean the stan­dard, specification, manual, code, or Laws or Regula­tions in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consul­tants, agents, or employ­ees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or author­ity to supervise or direct the perfor­mance of the Work or any duty or authority to undertake respon­sibility inconsistent with the provi­sions of ­the Con­tract Documents.

## 3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor’s Review of Contract Documents Before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify perti­nent figures therein and all applicable field measure­ments. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor’s Review of Contract Documents During Performance of Work*: If, during the performance of the Work, Contractor discovers any conflict, error, ambi­gu­ity, or discrepancy within the Con­tract Documents or between the Contract Docu­ments and any provi­sion of any Law or Regulation applicable to the perfor­mance of the Work or of any standard, specifica­tion, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supple­ment to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambigu­ity, or dis­crepancy in the Contract Documents unless Contractor knew or reason­ably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Con­tract Documents, the provi­sions of the Contract Documents shall take precedence in resolving any conflict, error, ambigu­ity, or discrepan­cy between the provisions of the Con­tract Docu­ments and:

a. the provisions of any stan­dard, specification, manual, code, or instruc­tion (whether or not specifi­cally incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provi­sions of the Contract Documents would result in viola­tion of such Law or Regulation).

## 3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Con­tract Documents may be supplemented, and minor variations and deviations in the Work may be autho­rized, by one or more of the following ways:

1. A Field Order;

2. Engineer’s approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer’s written interpretation or clarification.

## 3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer’s consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

## 3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data’s creator.

# ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDI­TIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

## 4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or perma­nent changes in existing facilities. If Contractor and Owner are unable to agree on entitle­ment to or on the amount or extent, if any, of any adjust­ment in the Contract Price or Contract Times, or both, as a result of any delay in Owner’s furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reason­able written request, Owner shall furnish Contractor with a current statement of record legal title and legal descrip­tion of the lands upon which the Work is to be per­formed and Owner’s interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regula­tions.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equip­ment.

## 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Docu­ments; and

2. those draw­ings of physical conditions in or relat­ing to existing surface or subsurface struc­tures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Autho­rized:* Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Docu­ments. Such “techni­cal data” is identi­fied in the Supplementa­ry Conditions. Except for such reli­ance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, includ­ing, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precau­tions and programs incident thereto; or

2. other data, interpretations, opin­ions, and information contained in such reports or shown or indicated in such draw­ings; or

3. any Contractor inter­preta­tion of or conclusion drawn from any "technical data" or any such other data, interpre­tations, opinions, or infor­mation.

## 4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsur­face or physical condition at or contiguous to the Site that is uncovered or re­vealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Docu­ments; or

3. differs materially from that shown or indicated in the Contract Docu­ments; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inher­ent in work of the character provid­ed for in the Contract Docu­ments;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connec­tion therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connec­tion therewith (except as afore­said) until receipt of written order to do so.

B. *Engineer’s Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condi­tion, deter­mine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. Possible Price and Times Adjust­ments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an in­crease or decrease in Contractor’s cost of, or time required for, perfor­mance of the Work; subject, however, to the follow­ing:

a. such condition must meet any one or more of the categories de­scribed in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjust­ment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be enti­tled to any adjustment in the Con­tract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commit­ment to Owner with respect to Contract Price and Con­tract Times by the submis­sion of a Bid or becoming bound under a negotiat­ed contract; or

b. the existence of such condi­tion could reasonably have been discovered or revealed as a result of any examination, inves­tigation, explo­ration, test, or study of the Site and contiguous areas required by the Bid­ding Requirements or Contract Docu­ments to be conducted by or for Contractor prior to Contractor's making such final com­mitment; or

c. Contractor failed to give the written notice as re­quired by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

## 4.04 *Underground Facilities*

A. *Shown or Indicated:* The informa­tion and data shown or indicated in the Contract Docu­ments with respect to existing Underground Facili­ties at or contiguous to the Site is based on infor­mation and data furnished to Owner or Engineer by the owners of such Under­ground Facili­ties, including Owner, or by others. Unless it is otherwise expressly provided in the Sup­plementary Condi­tions:

1. Owner and Engineer shall not be responsible for the accuracy or com­pleteness of any such information or data; and

2. the cost of all of the fol­lowing will be included in the Contract Price, and Contractor shall have full responsibility for:

a. review­ing and check­ing all such informa­tion and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordi­nation of the Work with the owners of such Un­derground Facili­ties, including Owner, during construc­tion, and

d. the safety and protection of all such Under­ground Facili­ties and repair­ing any damage thereto result­ing from the Work.

B. *Not Shown or Indicated*

1. If an Under­ground Facility is uncovered or revealed at or contig­uous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, prompt­ly after becom­ing aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Under­ground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Under­ground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Under­ground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and docu­ment such conse­quences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

## 4.05 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer’s judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or reloca­tions without the prior written approval of Owner. Contractor shall report to Engineer whenev­er any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

## 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or re­vealed at the Site which was not shown or indicated in Drawings or Specifi­cations or identi­fied in the Contract Docu­ments to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materi­als brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immedi­ately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emer­gency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall prompt­ly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condi­tion or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has ob­tained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resump­tion of Work; or (ii) specify­ing any special condi­tions under which such Work may be re­sumed safely. If Owner and Contractor cannot agree as to entitle­ment to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stop­page or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provid­ed in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special condi­tions, then Owner may order the portion of the Work that is in the area affected by such condi­tion to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accor­dance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontrac­tors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazard­ous Environmental Condi­tion, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Draw­ings or Specifications or identified in the Contract Docu­ments to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obli­gate Owner to indemni­fy any individual or entity from and against the conse­quences of that individual’s or entity’s own negli­gence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negli­gence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

# ARTICLE 5 - BONDS AND INSURANCE

## 5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful perfor­mance and payment of all of Contractor’s obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided other­wise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Compa­nies” as pub­lished in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent’s authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

## 5.02 *Licensed Sureties and Insurers*

A. All bonds and insurance required by the Contract Documents to be purchased and main­tained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insur­ance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such addi­tional requirements and qualifications as may be provided in the Supple­mentary Conditions.

## 5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identi­fied in the Supple­mentary Conditions, certificates of insur­ance (and other evidence of insurance request­ed by Owner or any other additional insured) which Contractor is required to purchase and main­tain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supple­mentary Condi­tions, certificates of insurance (and other evi­dence of insur­ance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

## 5.04 *Contractor’s Liability Insurance*

A. Contractor shall purchase and main­tain such liability and other insurance as is appro­priate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor’s performance of the Work and Contractor’s other obligations under the Contract Documents, whether it is to be per­formed by Contractor, any Subcon­tractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers’ compensa­tion, disability benefits, and other similar employ­ee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sus­tained:

a. by any person as a result of an offense directly or indirectly related to the em­ploy­ment of such person by Contractor, or

b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruc­tion of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, mainte­nance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance re­quired by Paragraphs 5.04.A.3 through 5.04.A.6 inclu­sive, include as additional insured (subject to any customary exclu­sion regarding profession­al liability) Owner and Engineer, and any other individuals or entities identified in the Supple­men­tary Condi­tions, all of whom shall be listed as addi­tional insureds, and include coverage for the respec­tive officers, directors, partners, employ­ees, agents, consultants and subcontractors of each and any of all such addi­tional insureds, and the insurance afforded to these addi­tional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provid­ed in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor’s indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorse­ment that the coverage afforded will not be canceled, materi­ally changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other addi­tional insured identified in the Supplementary Conditions to whom a certifi­cate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replac­ing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed opera­tions insur­ance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supple­mentary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continua­tion of such insurance at final payment and one year thereafter.

## 5.05 *Owner’s Liability Insurance*

A. In addition to the insurance required to be provid­ed by Contractor under Paragraph 5.04, Owner, at Owner’s option, may purchase and maintain at Owner’s expense Owner’s own liability insurance as will protect Owner against claims which may arise from operations under the Contract Docu­ments.

## 5.06 *Property Insurance*

A. Unless otherwise provided in the Supple­menta­ry Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provid­ed in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identi­fied in the Supplementary Condi­tions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insur­able interest and shall be listed as an insured or additional insured;

2. be written on a Builder’s Risk “all‑risk” or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, tempo­rary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandal­ism and malicious mischief, earthquake, collapse, debris remov­al, demolition occasioned by en­forcement of Laws and Regulations, water dam­age, (other than caused by flood) and such other perils or causes of loss as may be specifi­cal­ly required by the Supplementa­ry Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and archi­tects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equip­ment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final pay­ment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other addi­tional insured to whom a certifi­cate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insur­ance as may be required by the Supplementary Condi­tions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insur­able interest and shall be listed as an insured or addi­tional insured.

C. All the policies of insurance (and the certifi­cates or other evidence thereof) required to be pur­chased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accor­dance with Paragraph 5.07.

D. Owner shall not be responsible for purchas­ing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontrac­tors, or others in the Work to the extent of any deductible amounts that are identified in the Supple­mentary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance cover­age within the limits of such amounts, each may purchase and maintain it at the purchaser’s own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropri­ate Change Order. Prior to com­mencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

## 5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accor­dance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identi­fied in the Supple­mentary Condi­tions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary cover­age for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recov­ery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applica­ble to the Work; and, in addi­tion, waive all such rights against Subcontrac­tors, and Engineer, and all other individuals or entities identified in the Supple­men­tary Condi­tions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the pro­ceeds of insurance held by Owner as trustee or other­wise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontrac­tors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business inter­ruption, loss of use, or other consequential loss extending be­yond direct physical loss or damage to Owner’s property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the com­pleted Pro­ject or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance main­tained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substan­tial Com­pletion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner cover­ing any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Sub­contrac­tors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.

## 5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agree­ment as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or re­placed, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order .

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner’s exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

## 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provi­sions of the bonds or insurance required to be purchased and maintained by the other party in accor­dance with Article 5 on the basis of non‑conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Con­tract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equiva­lent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

## 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Sub­stan­tial Completion of all the Work as provided in Paragraph 14.05, no such use or occu­pancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in cover­age necessitated thereby. The insurers providing the proper­ty insurance shall consent by endorse­ment on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupan­cy.

# ARTICLE 6 - CONTRACTOR’S RE­SPONSIBILITIES

## 6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devot­ing such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and proce­dures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, tech­nique, sequence, or proce­dure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superin­tendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superinten­dent will be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superin­tendent shall be binding on Contractor.

## 6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Docu­ments. Contractor shall at all times maintain good disci­pline and order at the Site.

B. Except as other­wise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as other­wise stated in the Contract Docu­ments, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

## 6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machin­ery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start‑up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Docu­ments. All special warranties and guaran­tees required by the Specifica­tions shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equip­ment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Docu­ments.

## 6.04 *Progress Schedule*

A. Contractor shall adhere to the Prog­ress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indi­cated in Paragraph 2.07) proposed adjustments in the Prog­ress Schedule that will not result in changing the Contract Times. Such adjust­ments will comply with any provi­sions of the General Re­quirements applicable there­to.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

## 6.05 *Substitutes and “Or‑Equals”*

A. Whenever an item of material or equip­ment is specified or described in the Con­tract Docu­ments by using the name of a propri­etary item or the name of a particular Supplier, the specifica­tion or description is intended to establish the type, func­tion, appearance, and quality required. Unless the specifica­tion or description con­tains or is followed by words reading that no like, equivalent, or “or‑equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppli­ers may be submitted to Engineer for review under the circum­stances described below.

1. *“Or‑Equal” Items:* If in Engineer’s sole discre­tion an item of material or equip­ment pro­posed by Contractor is function­ally equal to that named and sufficiently similar so that no change in related Work will be required, it may be con­sidered by Engineer as an “or‑equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discre­tion, be accom­plished without compliance with some or all of the require­ments for approval of proposed substi­tute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer’s sole discretion an item of materi­al or equipment pro­posed by Contractor does not qualify as an “or‑equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit suffi­cient infor­ma­tion as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equiva­lent to that named and an accept­able substitute therefor. Re­quests for review of proposed substitute items of materi­al or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written applica­tion to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substi­tute item will:

a) perform ade­quately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the pro­posed substitute item will preju­dice Contractor’s achievement of Substan­tial Comple­tion on time;

b) whether or not use of the proposed substitute item in the Work will re­quire a change in any of the Contract Docu­ments (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the de­sign to the proposed substi­tute item; and

c) whether or not incorporation or use of the proposed substi­tute item in con­nection with the Work is sub­ject to payment of any license fee or royalty;

3) will identify:

a) all variations of the pro­posed substitute item from that specified , and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized esti­mate of all costs or credits that will result directly or indi­rectly from use of such substitute item, including costs of rede­sign and claims of other con­tractors affected by any resulting change,

B. *Substitute Construction Methods or Proce­dures:* If a specific means, method, technique, se­quence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, meth­od, technique, sequence, or procedure of con­struction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer’s sole discre­tion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Docu­ments. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer’s Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each propos­al or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the pro­posed substitute item. Engineer will be the sole judge of accept­abili­ty. No “or equal” or substitute will be or­dered, installed or utilized until Engineer’s review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” Engineer will advise Contractor in writing of any negative determination.

D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor’s ex­pense a special performance guarantee or other surety with respect to any substitute.

E. *Engineer’s Cost Reimbursement*: Engineer will record Engineer’s costs in evalu­ating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B Whether or not Engineer approves a substitute item so pro­posed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluat­ing each such proposed substi­tute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. *Contractor’s Expense*: Contractor shall provide all data ­in support of any pro­posed substitute or “or‑equal” at Contractor’s expense.

## 6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not em­ploy any Subcon­tractor, Supplier, or other individual or entity (includ­ing those acceptable to Owner as indicated in Paragraph 6.06.B), wheth­er initially or as a replacement, against whom Owner may have reason­able objection. Contractor shall not be required to employ any Sub­contractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reason­able objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submit­ted to Owner in advance for acceptance by Owner by a speci­fied date prior to the Effec­tive Date of the Agree­ment, and if Contractor has submit­ted a list thereof in accor­dance with the Supple­mentary Conditions, Owner’s acceptance (either in writing or by failing to make written objec­tion thereto by the date indicated for acceptance or objection in the Bidding Documents or the Con­tract Documents) of any such Subcon­tractor, Supplier, or other individual or entity so identified may be revoked on the basis of reason­able objection after due investigation. Contractor shall submit an accept­able replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the differ­ence in the cost occasioned by such replacement, and an appropriate Change Order will be issued . No accep­tance by Owner of any such Subcon­tractor, Supplier, or other individual or entity, whether initial­ly or as a replacement, shall consti­tute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully respon­si­ble to Owner and Engineer for all acts and omis­sions of the Subcontractors, Suppli­ers, and other individuals or entities perform­ing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Noth­ing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contrac­tual relation­ship be­tween Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcon­tractor, Supplier, or other individual or entity except as may otherwise be re­quired by Laws and Regula­tions.

D. Contractor shall be solely respon­sible for scheduling and coordinating the Work of Sub­con­tractors, Suppliers, and other individuals or entities perform­ing or furnish­ing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcon­trac­tors, Suppliers, and such other individuals or entities per­forming or furnish­ing any of the Work to com­mu­nicate with Engineer through Contractor.

F. The divisions and sections of the Specifica­tions and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcon­tractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appro­priate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insur­ance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontrac­tor or Supplier waives all rights against Owner, Contractor, and Engineer,, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

## 6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Docu­ments for use in the performance of the Work and if to the actual knowledge of Owner or 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 such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regula­tions, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consul­tants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to 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.

## 6.08 *Permits*

A. Unless otherwise provided in the Supple­mentary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtain­ing such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

## 6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regula­tions applica­ble to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitor­ing Contractor’s compli­ance with any Laws or Regulations.

B. If Contractor per­forms any Work know­ing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor’s primary responsibility to make certain that the Specifica­tions and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor’s obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

## 6.10 *Taxes*

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

## 6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equip­ment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regu­lations, and shall not unreasonably encumber the Site and other areas with construc­tion equipment or other materi­als or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regula­tions, Contractor shall indemnify and hold harmless Owner and Engineer, and the offi­cers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equita­ble, brought by any such owner or occu­pant against Owner, Engineer, or any other party indemni­fied hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accu­mula­tions of waste materials, rubbish, and other debris. Removal and disposal of such waste materi­als, rubbish, and other debris shall con­form to applica­ble Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the com­pletion of the Work Contractor shall remove from the Site all tools, appliances, construc­tion equipment and machinery, and surplus materi­als and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent proper­ty to stresses or pressures that will endanger it.

## 6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifica­tions, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpreta­tions and clarifications in good order and annotated to show changes made during construc­tion. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engi­neer for reference. Upon comple­tion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engi­neer for Owner.

## 6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precau­tions and programs in connection with the Work. 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 the Site or who may be affected by the Work;

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, utilities, and Under­ground Facili­ties not designated for removal, reloca­tion, or replacement in the course of construc­tion.

B. Contractor shall comply with all applica­ble Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and main­tain all necessary safeguards for such safety and protec­tion. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, remov­al, relocation, and replacement of their property.

C. All damage, injury, or loss to any proper­ty referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcon­tractor, Supplier, or any other individual or entity directly or indirect­ly em­ployed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw­ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly em­ployed by any of them).

D. Contractor’s duties and responsibil­ities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is accept­able (except as otherwise ex­pressly provided in connection with Substantial Comple­tion).

## 6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

## 6.15 *Hazard Communication Programs*

A. Contractor shall be responsible for coordi­nating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged be­tween or among employers at the Site in accordance with Laws or Regulations.

## 6.16 *Emergencies*

A. In emergencies affecting the safety or protec­tion of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened dam­age, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required be­cause of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

## 6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Draw­ings and Samples to Engineer for review and approval in accor­dance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quan­tities, dimen­sions, speci­fied perfor­mance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the informa­tion for the limited purposes required by Paragraph 6.17.D.

2. *Samples:* Contractor shall also submit Samples to Engineer for review and approval in accor­dance with the acceptable sched­ule of Shop Draw­ings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, perti­nent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is re­quired by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer’s review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and veri­fied:

a. all field measurements, quantities, dimen­sions, specified perfor­mance and design criteria, installation require­ments, materials, catalog numbers, and similar information with respect thereto;

b. the suitability of all materials with respect to intend­ed use, fabrication, shipping, han­dling, storage, assem­bly, and installation pertaining to the perfor­mance of the Work;

c. all information relative to Contractor’s responsibilities for means, meth­ods, tech­niques, sequences, and proce­dures of construc­tion, and safety precau­tions and programs inci­dent thereto; and

d. shall also have reviewed and coordi­nat­ed each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Docu­ments.

2. Each submittal shall bear a stamp or specif­ic written certification that Contractor has satis­fied Contractor’s obligations under the Contract Documents with respect to Contractor’s review and approv­al of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Draw­ing or Sample may have from the require­ments of the Contract Documents. This notice shall be both a written com­munication separate from the Shop Drawing’s or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample sub­mit­ted to Engineer for review and approval of each such variation.

D. *Engineer’s Review*

1. Engineer will provide timely review of Shop Draw­ings and Samples in accordance with the Sched­ule of Submittals acceptable to Engineer. Engineer’s review and approval will be only to deter­mine if the items covered by the submittals will, after installation or incorporation in the Work, con­form to the information given in the Contract Docu­ments and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Docu­ments.

2. Engineer’s review and approv­al will not extend to means, meth­ods, tech­niques, sequences, or procedures of construc­tion (except where a particu­lar means, method, technique, sequence, or proce­dure of con­struction is specifically and ex­pressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer’s review and approval shall not relieve Contractor from responsibility for any variation from the require­ments of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such varia­tion by specific written notation thereof incorporated in or accompany­ing the Shop Drawing or Sample. Engineer’s review and approval shall not relieve Contractor from responsibility for complying with the require­ments of Paragraph 6.17.C.1.

E. *Resubmittal Procedures*

1. Contractor shall make correc­tions required by Engineer and shall return the required number of cor­rected copies of Shop Drawings and sub­mit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previ­ous submittals.

## 6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all dis­putes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

## 6.19 *Contractor’s General Warranty and Guar­an­tee*

A. Contractor warrants and guaran­tees to Owner that all Work will be in accordance with the Contract Docu­ments and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor’s warranty and guarantee.

B. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper main­tenance or operation by persons other than Contractor, Sub­contractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor’s obliga­tion to per­form and complete the Work in accordance with the Con­tract Documents shall be absolute. None of the follow­ing will consti­tute an acceptance of Work that is not in accor­dance with the Contract Documents or a release of Contractor’s obligation to perform the Work in accordance with the Contract Docu­ments:

1. observations by Engineer;

2. recommendation by Engineer or pay­ment by Owner of any progress or final payment;

3. the issuance of a certificate of Sub­stantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Draw­ing or Sample submittal or the issu­ance of a notice of accept­abil­ity by Engineer;

6. any inspection, test, or ap­proval by others; or

7. any correction of defective Work by Owner.

## 6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regula­tions, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the perfor­mance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), includ­ing the loss of use resulting therefrom but only to the extent caused by any negli­gent act or omission of Contractor, any Subcontrac­tor, any Supplier, or any individual or entity directly or indirect­ly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employ­ee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirect­ly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Suppli­er, or other individual or entity under workers’ compen­sation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer’s officers, directors, partners, employ­ees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifica­tions; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

## 6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

# ARTICLE 7 - OTHER WORK AT THE SITE

## 7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner’s employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Con­tract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made there­for as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is per­forming other work with Owner’s employ­ees, proper and safe access to the Site, a reason­able opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavat­ing, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affect­ed. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor’s Work depends upon work per­formed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficien­cies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.

## 7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Condi­tions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsi­bili­ties will be provided.

B. Unless otherwise provided in the Supplementary Condi­tions, Owner shall have sole authority and respon­sibil­ity for such coordination.

## 7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor’s actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor’s action or inactions.

# ARTICLE 8 - OWNER’S RESPONSIBILITIES

## 8.01 *Communications to Contractor*

A. Except as other­wise provided in these General Condi­tions, Owner shall issue all communi­cations to Contractor through Engineer.

## 8.02 *Replacement of Engineer*

A. In case of termina­tion of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

## 8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

## 8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

## 8.05 *Lands and Easements; Reports and Tests*

A. Owner’s duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explora­tions and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contigu­ous to the Site that have been utilized by Engineer in preparing the Contract Documents.

## 8.06 *Insurance*

A. Owner’s responsibilities, if any, in respect to pur­chasing and maintaining liability and property insur­ance are set forth in Article 5.

## 8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

## 8.08 *Inspections, Tests, and Approvals*

A. Owner’s responsibility in respect to certain inspec­tions, tests, and approvals is set forth in Paragraph 13.03.B.

## 8.09 *Limitations on Owner’s Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, se­quences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applica­ble to the perfor­mance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

## 8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner’s responsibility in respect to an undis­closed Hazard­ous Environmental Condition is set forth in Paragraph 4.06.

## 8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evi­dence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents, Owner’s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

# ARTICLE 9 - ENGINEER’S STATUS DURING CONSTRUCTION

## 9.01 *Owner’s Representative*

A. Engineer will be Owner’s representa­tive during the construction period. The duties and responsi­bilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

## 9.02 *Visits to Site*

A. Engineer will make visits to the Site at inter­vals appropriate to the various stages of construc­tion as Engineer deems necessary in order to observe as an experienced and qualified design profes­sional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on informa­tion obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Con­tract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward provid­ing for Owner a greater degree of confidence that the completed Work will conform generally to the Con­tract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeav­or to guard Owner against defective Work.

B. Engineer’s visits and obser­vations are subject to all the limitations on Engineer’s authori­ty and responsibility set forth in Paragraph 9.09. Particu­larly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, meth­ods, techniques, sequences, or procedures of construc­tion, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

## 9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another represen­tative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or em­ployee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provid­ed in the Supple­men­tary Conditions.

## 9.04 *Authorized Variations in Work*

A. Engineer may authorize minor varia­tions in the Work from the requirements of the Contract Documents which do not involve an adjust­ment in the Contract Price or the Contract Times and are compat­i­ble with the design concept of the com­pleted Project as a functioning whole as indicated by the Contract Docu­ments. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work in­volved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment , a Claim may be made therefor as provided in Paragraph 10.05.

## 9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integri­ty of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspec­tion or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

## 9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer’s authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer’s authority as to Applications for Payment, see Article 14.

## 9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quanti­ties and classifications of Unit Price Work per­formed by Contractor. Engineer will review with Contractor the Engineer’s preliminary determina­tions on such matters before rendering a written deci­sion thereon (by recommendation of an Application for Pay­ment or otherwise). Engineer’s written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

## 9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial inter­preter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer’s decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer’s written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

## 9.09 *Limitations on Engineer’s Authority and Responsibilities*

A. Neither Engineer’s authority or respon­sibility under this Article 9 or under any other provi­sion of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exer­cise such authority or respon­sibility or the undertak­ing, exercise, or performance of any authority or respon­sibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcon­tractor, any Supplier, any other individual or entity, or to any surety for or employ­ee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, meth­ods, techniques, se­quences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the perfor­mance of the Work. Engineer will not be respon­sible for Contractor’s failure to perform the Work in accor­dance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontrac­tor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer’s review of the final Applica­tion for Payment and accompanying documentation and all mainte­nance and operat­ing instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documen­tation required to be delivered by Paragraph 14.07.A will only be to determine gener­ally that their content complies with the require­ments of, and in the case of certificates of in­spections, tests, and approvals that the results certified indicate compli­ance with the Contract Documents.

E. The limitations upon authority and responsi­bil­i­ty set forth in this Paragraph 9.09 shall also apply to, the Resident Project Repre­sentative, if any, and assistants, if any.

# ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

## 10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjust­ment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

## 10.02 *Unauthorized Changes in the Work*

A.Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work per­formed that is not required by the Contract Docu­ments as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emer­gency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

## 10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropri­ate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) re­quired because of acceptance of defective Work under Paragraph 13.08.A or Owner’s correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such deci­sion in accor­dance with the provisions of the Contract Documents and applicable Laws and Regula­tions, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

## 10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor’s responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## 10.05 *Claims*

A. *Engineer’s Decision Required*: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accu­rate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accom­panied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant’s last submittal (unless Engineer allows additional time).

C. *Engineer’s Action*: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer’s sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer’s written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

# ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

## 11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of Contractor in the perfor­mance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superin­ten­dents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be appor­tioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unem­ployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay appli­ca­ble thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment fur­nished and incorporated in the Work, includ­ing costs of transportation and storage thereof, and Suppliers’ field services required in connec­tion therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make pay­ments, in which case the cash discounts shall accrue to Owner. All trade dis­counts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competi­tive bids from subcontrac­tors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract pro­vides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor’s Cost of the Work and fee shall be determined in the same manner as Contractor’s Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing labora­to­ries, surveyors, attorneys, and accoun­tants) em­ployed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary trans­portation, travel, and subsistence ex­penses of Contractor’s employees incurred in dis­charge of duties connected with the Work.

b. Cost, including transporta­tion and main­te­nance, of all materials, supplies, equip­ment, machinery, appliances, office, and tempo­rary facili­ties at the Site, and hand tools not owned by the workers, which are consumed in the perfor­mance of the Work, and cost, less market value, of such items used but not con­sumed which remain the property of Contractor.

c. Rentals of all construction equip­ment and machinery, and the parts thereof wheth­er rented from Contractor or others in accor­dance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unload­ing, assembly, dismantling, and removal there­of. All such costs shall be in accordance with the terms of said rental agree­ments. The rental of any such equip­ment, ma­chinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regu­lations.

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensat­ed by insurance or otherwise, sus­tained by Contractor in connection with the per­for­mance of the Work (except losses and damages within the deduct­ible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negli­gence of Contractor, any Subcontractor, or anyone directly or indi­rectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be includ­ed in the Cost of the Work for the purpose of determining Contractor’s fee.

g. The cost of utilities, fuel, and sani­tary facilities at the Site.

h. Minor expenses such as tele­grams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor’s officers, executives, princi­pals (of partnerships and sole proprietorships), general manag­ers, safety managers, engineers, architects, estima­tors, attor­neys, audi­tors, accountants, purchasing and con­tracting agents, expedit­ers, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s princi­pal or branch office for general administration of the Work and not specifical­ly included in the agreed upon schedule of job classifica­tions referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor’s fee.

2. Expenses of Contractor’s princi­pal and branch offices other than Contractor’s office at the Site.

3. Any part of Contractor’s capital expens­es, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent pay­ments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indi­rectly employed by any of them or for whose acts any of them may be liable, includ­ing but not limited to, the correction of defective Work, disposal of materi­als or equipment wrong­ly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. *Contractor’s Fee:* When all the Work is performed on the basis of cost-plus, Contractor’s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor’s fee shall be determined as set forth in Paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain re­cords thereof in accordance with generally accepted ac­count­ing practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

## 11.02 *Allowances*

A. It is understood that Contractor has in­clud­ed in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materi­als and equipment required by the allowanc­es to be delivered at the Site, and all applicable taxes; and

b. Contractor’s costs for unloading and handling on the Site, labor, installation , over­head, profit, and other expenses contemplat­ed for the cash allow­ances have been included in the Contract Price and not in the allowances, and no demand for addi­tional payment on account of any of the forego­ing will be valid.

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Con­tract Price shall be correspondingly adjusted.

## 11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimat­ed quantity of each item as indicat­ed in the Agree­ment.

B. The esti­mated quantities of items of Unit Price Work are not guaran­teed and are solely for the purpose of comparison of Bids and determining an initial Con­tract Price. Deter­mina­tions of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accor­dance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs mate­rially and signifi­cantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjust­ment with respect any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred addi­tional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

# ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

## 12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accor­dance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by applica­tion of such unit prices to the quanti­ties of the items involved (subject to the provi­sions of Paragraph 11.03); or

2. where the Work involved is not cov­ered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessari­ly in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not cov­ered by unit prices contained in the Contract Documents and agree­ment to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor’s fee for over­head and profit (deter­mined as provided in Paragraph 12.01.C).

C. *Contractor’s Fee:* The Contractor’s fee ­­for overhead and profit shall be deter­mined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor’s fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor’s fee shall be five percent;

c. where one or more tiers of sub­con­tracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcon­tractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcon­tractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcon­tractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be al­lowed by Contractor to Owner for any change which results in a net de­crease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor’s fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are in­volved in any one change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclu­sive.

## 12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors perform­ing other work as contemplat­ed by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times , or both. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

C If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor’s ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

# ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

## 13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

## 13.02 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and govern­mental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their obser­vation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor’s Site safety procedures and programs so that they may comply therewith as applicable.

## 13.03 *Tests and Inspections*

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Con­tract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or ap­proved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspec­tions, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspec­tion or approval.

D. Contractor shall be respon­sible for arranging and obtaining and shall pay all costs in connec­tion with any inspections, tests, or approv­als required for Owner’s and Engineer’s accep­tance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor’s purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations accept­able to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncov­ered for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor’s expense unless Contractor has given Engineer timely notice of Contractor’s intention to cover the same and Engineer has not acted with reasonable prompt­ness in response to such notice.

## 13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer’s observation and replaced at Contractor’s expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspect­ed or tested by others, Contractor, at Engineer’s request, shall uncover, expose, or otherwise make available for observation, inspec­tion, or testing as Engineer may require, that portion of the Work in question, furnishing all neces­sary labor, materi­al, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to ­such uncovering, exposure, observa­tion, inspec­tion, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attribut­able to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

## 13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been elimi­nated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

## 13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Work.

## 13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee re­quired by the Contract Documents) or by any specific provi­sion of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor’s use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall prompt­ly, without cost to Owner and in accordance with Owner’s written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfac­torily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there­from.

B. If Contractor does not promptly comply with the terms of Owner’s written instruc­tions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defect­ive Work corrected or repaired or may have the rejected Work re­moved and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replace­ment (including but not limited to all costs of repair or replace­ment of work of others) will be paid by Contractor.

C. In special circumstances where a particu­lar item of equipment is placed in continu­ous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so pro­vided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and re­placement has been satisfactorily complet­ed.

E. Contractor’s obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

## 13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or remov­al and replacement of defective Work, Owner (and, prior to Engineer’s recommendation of final pay­ment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer’s recom­men­dation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

## 13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reason­able time after written notice from Engineer to correct defective Work or to remove and replace reject­ed Work as required by Engineer in accor­dance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accor­dance with the Contract Documents, or if Contractor fails to comply with any other provi­sion of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expedi­tiously. In connection with such correc­tive or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor’s services related thereto, take posses­sion of Contractor’s tools, appliances, con­struction equipment and machinery at the Site, and incor­po­rate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner’s representatives, agents and employ­ees, Owner’s other contractors, and Engineer and Engineer’s consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorpo­rating the necessary revisions in the Contract Docu­ments with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replace­ment of Contractor’s defective Work.

D. Contractor shall not be allowed an exten­sion of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner’s rights and remedies under this Paragraph 13.09.

# ARTICLE 14 - PAYMENTS TOCONTRACTOR AND COMPLETION

## 14.01 *Schedule of Values*

A. The Schedule of Values established as provid­ed in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Applica­tion for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

## 14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date estab­lished in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such sup­porting documentation as is required by the Con­tract Docu­ments. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Applica­tion for Payment shall also be accompanied by a bill of sale, invoice, or other docu­men­tation warranting that Owner has received the materi­als and equip­ment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrange­ments to protect Owner’s interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor’s legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress pay­ments will be as stipulated in the Agreement.

B. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Applica­tion to Contractor indicating in writing Engineer’s reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer’s recommendation of any pay­ment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer’s observa­tions on the Site of the executed Work as an experienced and quali­fied design profession­al and on Engineer's review of the Appli­cation for Payment and the accompanying data and schedules, that to the best of Engineer’s knowledge, information and belief:

a. the Work has progressed to the point indicat­ed;

b. the quality of the Work is generally in accor­dance with the Contract Documents (sub­ject to an evaluation of the Work as a function­ing whole prior to or upon Substantial Comple­tion, to the results of any subsequent tests called for in the Contract Documents, to a final deter­mination of quantities and classifica­tions for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommenda­tion); and

c. the conditions precedent to Contractor’s being entitled to such pay­ment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represent­ed that:

a. inspec­tions made to check the quality or the quantity of the Work as it has been performed have been exhaus­tive, extended to every aspect of the Work in progress, or involved de­tailed inspec­tions of the Work beyond the responsi­bilities specifi­cally as­signed to Engineer in the Contract Docu­ments; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid addition­ally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer’s review of Contractor’s Work for the purposes of recom­mending payments nor Engineer’s recom­men­da­tion of any pay­ment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, meth­ods, techniques, sequences, or proce­dures of construction, or the safety precautions and pro­grams incident thereto, or

c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, mate­rials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recom­mend the whole or any part of any payment if, in Engineer’s opinion, it would be incorrect to make the representa­tions to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recom­mend any such pay­ment or, because of subse­quently discovered evidence or the results of subse­quent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be neces­sary in Engineer’s opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replace­ment;

b. the Contract Price has been re­duced by Change Orders;

c. Owner has been required to correct defect­ive Work or complete Work in accor­dance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumer­ated in Paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Applica­tion for Payment to Owner with Engineer’s recom­menda­tion, the amount recom­mended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. *Reduction in Payment*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor’s perfor­mance or fur­nish­ing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set‑off against the amount recommend­ed; or

d. Owner has actual knowledge of the occur­rence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immedi­ate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so with­held, or any adjust­ment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner’s satisfaction the reasons for such action.

3. If it is subsequently determined that Owner’s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

## 14.03 *Contractor’s Warranty of Title*

A. Contractor warrants and guaran­tees that title to all Work, materials, and equipment cov­ered by any Application for Payment, whether incor­porated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

## 14.04 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incom­plete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor’s notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially com­plete, Engineer will deliver to Owner a tenta­tive certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certifi­cate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substan­tially complete, Engineer will within 14 days after submission of the tentative certifi­cate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner’s objections, Engineer considers the Work substan­tial­ly complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Sub­stantial Comple­tion (with a revised tentative list of items to be completed or correct­ed) reflecting such changes from the tenta­tive certificate as Engineer believes justified after consider­ation of any objections from Owner.

D. At the time of delivery of the tenta­tive certificate of Substantial Comple­tion, Engineer will deliver to Owner and Contractor a written recommen­dation as to division of responsi­bili­ties pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guaran­tees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer’s issuing the definitive certificate of Substantial Comple­tion, Engineer’s aforesaid recom­mendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substan­tial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

## 14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Docu­ments, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor’s performance of the remainder of the Work, subject to the following condi­tions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Com­ple­tion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substan­tially complete and request Engineer to issue a certifi­cate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be sub­stan­tially com­plete, Engineer will notify Owner and Contractor in writing giving the reasons there­for. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certifi­cation of Substantial Com­pletion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

## 14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particu­lars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

## 14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Docu­ments, all main­tenance and operating instructions, schedules, guaran­tees, bonds, certificates or other evidence of insur­ance certificates of inspec­tion, marked‑up record docu­ments (as provid­ed in Paragraph 6.12), and other documents, Contractor may make application for final payment follow­ing the procedure for progress pay­ments.

2. The final Application for Payment shall be accom­panied (except as previously delivered) by:

a. all documenta­tion called for in the Contract Docu­ments, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. con­sent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satis­fied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer’s Review of Application and Acceptance*

1. If, on the basis of Engineer’s obser­va­tion of the Work during construction and final inspec­tion, and Engineer’s review of the final Applica­tion for Payment and accompanying docu­men­tation as re­quired by the Contract Documents, Engineer is satisfied that the Work has been complet­ed and Contractor’s other obligations under the Con­tract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Appli­ca­tion for Payment, indicate in writing Engineer’s recommen­dation of payment and present the Applica­tion for Payment to Owner for pay­ment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provi­sions of Paragraph 14.09. Other­wise, Engineer will return the Application for Payment to Contractor, indicat­ing in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying docu­mentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer’s recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

## 14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor’s final Applica­tion for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminat­ing the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and condi­tions governing final payment, except that it shall not constitute a waiver of Claims.

## 14.09 *Waiver of Claims*

A. The making and acceptance of final pay­ment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appear­ing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor’s continuing obligations under the Contract Docu­ments; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

# ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

## 15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjust­ment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

## 15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor’s persis­tent failure to per­form the Work in accordance with the Con­tract Documents (including, but not limited to, failure to supply suffi­cient skilled workers or suitable materi­als or equip­ment or failure to adhere to the Prog­ress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor’s disregard of Laws or Regula­tions of any public body having jurisdic­tion;

3. Contractor’s disregard of the author­i­ty of Engineer; or

4. Contractor’s violation in any substantial way of any provisions of the Contract Docu­ments.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety ) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor’s tools, appliances, construction equip­ment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (with­out liability to Contractor for trespass or conver­sion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor’s services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereaf­ter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

## 15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplica­tion of any items):

1. completed and acceptable Work execut­ed in accordance with the Contract Docu­ments prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and fur­nish­ing labor, materials, or equip­ment as re­quired by the Contract Documents in connection with uncom­pleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damag­es (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) in­curred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other eco­nomic loss arising out of or resulting from such termina­tion.

## 15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally deter­mined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspen­sion or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminat­ing the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provi­sions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or other­wise for expenses or damage directly attributable to Contractor’s stopping the Work as permitted by this Paragraph.

# ARTICLE 16 - DISPUTE RESOLUTION

## 16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer’s action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

# ARTICLE 17 - MISCELLANEOUS

## 17.01 *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:

1. 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

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

## 17.02 *Computation of Times*

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

## 17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies avail­able hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limita­tion of, any rights and remedies avail­able to any or all of them which are otherwise im­posed or available by Laws or Regula­tions, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifical­ly in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they ap­ply.

## 17.04 *Survival of Obligations*

A. All representations, indemnifications, war­ran­ties, and guarantees made in, required by, or given in accor­dance with the Contract Documents, as well as all continu­ing obligations indicated in the Contract Docu­ments, will survive final payment, completion, and acceptance of the Work or termina­tion or comple­tion of the Contract or termination of the services of Contractor.

## 17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

## 17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.