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VOLUME I

GENERAL CONDITIONS FOR CONSTRUCTION

Revised October 12, 2012

CITY OF OCALA
VOLUME 1-
GENERAL CONDITIONS FOR CONSTRUCTION
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STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

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Changes to Original Document:

Strikethroughs are deletions: ~~example~~

Underlines are additions: example

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda* - Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the 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. *As Approved* – The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the OWNER in conformance with the CONTRACT DOCUMENTS.”

5. *As Shown, As Indicated* – The words “as shown” and “as indicated” shall be understood to be followed by the words “on the Drawings”.

6. *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 Occupations Safety and Health Administration.

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

8. *Bidder* – Any person or persons, partnership, firm, or corporation submitting a bid for the work contemplated.

9. *Bidding Documents* - The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

10. *Bidding Requirements* - The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

11. *Bonds* - Performance and payment bonds and other instruments of security.

12. *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.

13. *City* – City of Ocala, Marion County, Florida. The term “CITY” and “OWNER” are interchangeable and shall have the same meaning in the Contract Documents.

14. *City Council* – The governing body of the City of Ocala.

15. *City Engineer* – Florida registered professional ENGINEER who is the head of the City of Ocala Engineering Department and authorized to execute bid documents.

16. *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.

17. *Consultant Construction Engineering Inspection (CCEI)* - Consulting firm under contract to the Florida Department of Transportation for administration of construction engineering and inspection services.

18. *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.

19. *Contract Completion* – The “Contract Completion” is the date the OWNER accepts the entire work as being in compliance with the CONTRACT DOCUMENTS, or formally waives non-conforming work to the extent of non-conformity, and issues the final payment in accordance with the requirements set forth.

20. *Contract Documents* - The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents, CONTRACTOR’S Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER’S written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard

copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

21. *Contract Price* - The monies 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).

22. *Contract Times* - The number of (calendar) days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER'S written recommendation of final payment.

23. *Contractor* - The individual or entity with whom OWNER has entered into the Agreement.

24. *Cost of the Work* - See paragraph 11.01 for definition.

25. *Drawings* - That part of the Contract Documents prepared or approved by a registered Florida Professional 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.

26. *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.

27. *Engineer* - The term "ENGINEER" in the technical specifications sections (1) through (16) shall refer to the OWNER and the CITY ENGINEER, or City Staff Engineer/Project Manager, or Resident Project Management Representative licensed in the State of Florida.

28. *Engineer's Consultant* - An individual or entity having a contract with ENGINEER to furnish services as ENGINEER'S independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

29. *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.

30. *Float* - The amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the progress schedule.

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

32. *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 as defined by the Florida Department of Environmental Protection.

33. *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.

34. *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.

35. *Lien* - Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

36. *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.

37. *Modification* - (a) A written amendment to the CONTRACT DOCUMENTS signed by both parties, (b) a change order, (c) a written clarification or interpretation issued by the OWNER in accordance with Paragraph 9.04 of the General Conditions, and (d) a written order for a minor change or alteration in the work issued by the OWNER pursuant to Paragraph 9.05 of the General Conditions. A modification may only be issued after execution of the AGREEMENT.

38. *Notice* - The term "notice" or the requirement to notify, as used in the CONTRACT DOCUMENTS or applicable state or federal statutes, shall signify a written communication delivered by Certified or Registered Mail to the individual, or to a member of the firm, or to an officer of the corporation as indicated in the contract documents.

39. *Notice of Award* - The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

40. *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.

41. *Owner* - The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

42. *Partial Utilization* - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

43. *PCBs* - Polychlorinated biphenyls.

44. *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60° 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.

45. *Proposal* – The terms “Proposal” and “Bid” are interchangeable and shall have the same meaning in the Contract Documents.

46. *Project* - The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

47. *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.

48. *Punch List* – items requiring correction before project is at final completion. Punch list items shall be completed prior to Contract completion date. Liquidated damages will apply to items not completed by Contract completion date.

49. *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.

50. *Resident Project ~~Representative~~ Manager* - In lieu of the definition set forth in Paragraph 1.01A.37 of the General Conditions, the Resident Project Manager shall be the authorized representative of the OWNER, who may be assigned to the site or any part thereof.

51. *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.

52. *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.

53. *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.

54. *Specifications* - That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and Workmanship as

applied to the Work and certain administrative details applicable thereto.

55. *State* - State of Florida.

56. *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.

57. *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.

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

59. *Supplier* - A manufacturer, fabricator, supplier, distributor, material man, 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.

60. *Surety* – Any person, firm, or corporation that has executed, as Surety, and of the CONTRACTOR’S bonds securing the performance of the contract.

61. *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.

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

63. *Without Exception* – The term “without exception”, when used in the Contract Documents following the name of a supplier of a proprietary item of equipment, product, or material, shall mean that the sources of the product are limited to the listed suppliers or products and that no like, equivalent, or “or-equal” item and no substitution will be permitted.

64. *Work* - The entire completed 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.

65. *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 of 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.

66. *Written Amendment* - A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. *Intent of Certain Terms or Adjectives.*

1. Whenever in the Contract Documents the terms “as allowed,” “as approved,” or terms of like effect or import are used, or 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 action or determination will be solely to evaluate, in general, the completed 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 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 9.10 or any other provision of the Contract Documents.

B. *Day*

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

C. *Defective*

1. The word “defective”, when modifying the word “Work”, refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to 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).

D. *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.

E. 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*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR ~~up to ten copies either an electronic copy, or website address, whereby~~ either an electronic copy, or website address, whereby the Contract Documents can be viewed and or printed by the Contractor. Additional copies will be furnished upon request at the cost of reproduction. The City, at the pre-construction meeting, shall provide two full size copies of the drawings and all subsequent revised drawings.

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 90 days after the day of Bid opening or the thirtieth day~~

~~after the Effective Date of the Agreement, whichever date is earlier.~~

2.03 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.

2.04 Before Starting Construction

A. *CONTRACTOR'S Review of Contract Documents:* 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; however, 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. *Preliminary Schedules:* Within ten days, unless specified differently in the Special Provisions, after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (number 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 Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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 subdivide 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.
4. on projects where the contract period exceeds 90 calendar days, monthly schedule updates shall be provided with every pay application by the Contractor on a monthly basis.

C. *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.

2.05 Preconstruction Conference

A. Within 20 days, unless specified differently in the Special Provisions after the Contract Times start to run, but before any Work at the Site is started, a conference attended by 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 2.04.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.06 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten 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 2.04.B. CONTRACTOR shall have an additional ten 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 any specified Milestones and 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 there for.
2. CONTRACTOR'S schedule of Shop Drawing and Sample 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 called for in one is as binding as if called for 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 Section 9.

3.02 Reference Standings

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 manuals, codes, 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 for any such standard specification, manual or codes, 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, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER'S Consultant's, agents, or employees 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. 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 codes, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. 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; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy 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 provision 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 in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) 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: (i) a Field Order; (ii) ENGINEER'S approval of a shop drawing or sample; or (iii) ENGINEER'S written interpretation or clarification.

3.05 Reuse of Documents

A. The CONTRACTOR and any Subcontractor or supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with the OWNER: (i) shall not 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 the ENGINEER, including electronic media editions; and (ii) shall not reuse any such drawings, specifications, other documents, or copies thereof on extensions of the project or any other project without written consent of the OWNER and the ENGINEER and specific written verification or adaptation by the ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude the CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL 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 with 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 adjustments in the Contract Price or Contract Times, or both, as a result of any delay in OWNER'S furnishing the Site, CONTRACTOR may make a Claim therefore 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. CONTRACTOR shall provide written authorization from property owner for use of property. All expenses incurred for such use will be sole responsibility of the CONTRACTOR.

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.~~

~~In preparation of the Contract Documents, the following drawings of physical conditions in or relating to existing surface and subsurface structures (except underground facilities) which are at or contiguous to the Site of the Work were relied upon:~~

~~Drawing dated:~~

~~Prepared by: City of Ocala ENGINEERING Department~~

~~Titled:~~

A. *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, ENGINEER, or any of ENGINEER'S Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR 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.

B. Contractors should examine the Contract Documents and the site of the proposed work carefully before submitting a proposal for the work contemplated. Contractors should investigate the conditions to be encountered as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of all Contract Documents. The City does not guarantee the details pertaining to borings, as shown in the Plans, to be more than a general indication of the materials likely to be found adjacent to holes bored at the site of the work, approximately at the locations indicated. The Contractor shall examine boring data, where available, and make his own interpretation of the subsoil investigations and other preliminary data, and shall base his bid on his own opinion of the conditions likely to be encountered. The bidder's submission of a proposal is prima facie evidence that the bidder has made an examination as described in this Paragraph.

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 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 a 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 Time 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 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 9.08 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 in 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 making such final commitment; or

c. CONTRACTOR failed to give 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 therefore as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER'S Consultant shall not be liable to CONTRACTOR for any Claims, costs, losses, or damages (including but not limited to all fees and charges for

ENGINEERS, ENGINEER'S consultants, 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 are based on information and data furnished to the OWNER or CITY ENGINEER by the owners of such underground facilities, including the OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. The OWNER and the CITY 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 shall be included in the Contract Price and the 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 the 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, the 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 6.16A), identify the OWNER of such underground facility and give written notice to that owner and to the OWNER and the CITY ENGINEER. The CITY 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 of the underground facility. During such time, the CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If the CITY 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 of location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and the CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the OWNER and the 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, the OWNER or the CONTRACTOR may make a claim therefore 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.

B. CONTRACTOR shall provide station boards at a minimum of 100 foot intervals for road construction projects.

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 ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely on 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, ENGINEER or any ENGINEER'S Consultant with respect to:

1. the completeness of such reports and drawings for CONTRACTOR 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); 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 therefore 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 therefore as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER'S 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, ENGINEER, ENGINEER'S Consultants and the officers, directors, partners, employees, agents, other 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.E 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, ENGINEER, ENGINEER'S Consultant, and the elected officials, officers, directors, partners, employees, agents, other 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, ENGINEER'S consultants, 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 shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entities own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to 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. The 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 the CONTRACTOR'S obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or by the Contract Documents. The 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 such agent's authority to act.~~

~~C. If the surety on any bond furnished by the 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, the CONTRACTOR shall within twenty (20) days thereafter substitute another bond and surety, both of which shall comply with the requirements of paragraphs 5.01B and 5.02.~~

~~5.02 Licensed Sureties and Insurers~~

~~All Bonds and insurance required by the Contract Documents to be purchased and maintained by the OWNER or the 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 coverage 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. The CONTRACTOR shall deliver to the OWNER, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by the OWNER or any other additional insured) that the CONTRACTOR is required to purchase and maintain. The OWNER shall deliver to the CONTRACTOR, with copies to each additional insured, certificates of insurance (and other evidence of insurance requested by the CONTRACTOR or any other additional insured) that the OWNER is required to purchase and maintain.~~

~~B. Certificates of insurance shall be submitted on the forms included in the Contract Documents.~~

~~5.04 CONTRACTOR'S Liability Insurance~~

~~A. The 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 the CONTRACTOR'S performance of the Work and the CONTRACTOR'S other obligations under the Contract Documents, whether it is to be performed by the CONTRACTOR, and 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 the CONTRACTOR'S employees;~~

~~3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;~~

~~4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (ii) by any other person for any other reason;~~

~~5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from;~~

~~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; and~~

~~7. Claims for damages caused by negligent error, omission, or act for which the insured party is legally liable, arising out of the performance of specified professional design services.~~

~~B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:~~

~~1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect to professional liability) the OWNER, the CITY ENGINEER, and any other individuals listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;~~

~~2. Include at least the specific coverage and be written for not less than the limits of liability specified or required by laws or regulations, whichever is greater;~~

~~3. Include completed operations insurance;~~

~~4. Include contractual liability insurance covering the CONTRACTOR'S indemnity obligations under paragraphs 6.07, 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 thirty (30) days prior written notice has been given to the OWNER and the CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued (and~~

~~the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 shall so provide);~~

~~6. Remain in effect at least until final payment and at all times thereafter when the CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07;~~

~~7. With respect to completed operations insurance, and any insurance coverage written on a claims made basis, remain in effect for at least two (2) years after final payment (and the CONTRACTOR shall furnish the OWNER and each other additional insured to whom a certificate of insurance has been issued, evidence satisfactory to the OWNER and any such additional insured of continuation of such insurance at final payment and one (1) year thereafter);~~

~~8. Contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance; and~~

~~9. With respect to workers' compensation and employers' liability, comprehensive automobile liability, commercial general liability, and umbrella liability insurance, and all other liability insurance specified herein to be provided by the CONTRACTOR, the CONTRACTOR shall require its insurance carriers to waive all rights of subrogation against the OWNER, the CITY ENGINEER, and their respective officers, directors, partners, employees, and agents.~~

~~C. Worker's Compensation and Employer's Liability Insurance This insurance shall protect the CONTRACTOR against all claims under applicable workers' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. The CONTRACTOR shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" or "other states" endorsement.~~

~~Workers' Compensation — Statutory~~

~~Employers' liability — \$1,000,000 each occurrence~~

~~D. Comprehensive Automobile Liability Insurance This insurance shall be occurrence type, written in comprehensive form, and shall protect the CONTRACTOR, OWNER, and CITY ENGINEER as additional insureds, against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, either on or off the project site whether they are owned, non owned, or hired.~~

~~The liability limits shall be not less than:~~

Bodily injury and property damage \$1,000,000 Combined single limit for each occurrence

~~E.— Commercial General Liability Insurance—This insurance shall be occurrence type, written in comprehensive form, and shall protect the CONTRACTOR, OWNER, and CITY ENGINEER as additional insureds, against claims arising from injuries, sickness, disease, or death of any person or damage to property arising out of performance of the Work. The policy shall also include a per project aggregate limit endorsement, personal injury liability coverage, contractual liability coverage, completed operations and products liability coverage, and coverage for blasting, explosion, collapse of buildings, and damage to underground property.~~

~~—The liability limits shall be not less than:~~

Bodily injury and property damage \$1,000,000 Combined single limit for each occurrence

~~F.— Professional Liability Insurance—This insurance shall be required only in cases where the Contract Documents specifically required that the CONTRACTOR provide for design services to be performed by a professional ENGINEER with appropriate expertise in accordance with applicable laws and regulations, licensed or registered in the State of Florida, and that the shop drawings or other evidence of design bear the seal and signature of that professional engineer. This insurance shall provide protection against claims arising out of performance of professional design services and caused by a negligent error, omission, or act for which the insured party is legally liable; such professional liability insurance shall provide coverage in the amount of \$1,000,000 and shall be maintained throughout the duration of the project and for one year after Substantial Completion.~~

~~In the event that the professional design services are performed by an independent consultant or subcontractor engaged by the CONTRACTOR, this insurance shall be furnished and maintained by the independent consultant or subcontractor. In the event that the professional design services are performed by a member of the CONTRACTOR’S organization, this insurance shall be furnished and maintained by the CONTRACTOR.~~

~~A certificate of insurance for such professional liability insurance coverage, including the amount, duration, and name of the insured party, shall be delivered to the OWNER and the CITY ENGINEER.~~

5.05 *Property Insurance*

A. The CONTRACTOR, with sole liability for payment of premiums, shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof. This insurance shall:

1. Include the interests of the OWNER, CONTRACTOR, subcontractors, CITY ENGINEER, and

~~the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a named 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 cause 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, and such other perils or cause 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 the OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the OWNER or the CITY ENGINEER;~~

5. ~~Allow for partial utilization of the Work by the 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 CITY ENGINEER with 30 days written notice to each other named insured to whom a certificate of insurance has been issued.~~

~~B. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.05 shall 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 the OWNER and the CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued, and shall contain waive provisions in accordance with Paragraph 5.06~~

~~C. If the OWNER requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.05, the CONTRACTOR shall, if possible, included such insurance, and the cost thereof will be charged to the OWNER by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, the CONTRACTOR shall in writing advise the OWNER whether or not such other insurance has been procured by the CONTRACTOR.~~

~~5.06 Waiver of Rights~~

~~The OWNER and the CONTRACTOR intend that all policies purchased in accordance with paragraph 5.05 will protect the OWNER, CONTRACTOR, subcontractors, the CITY ENGINEER, (and the officers, public officials, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) 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 rights of recovery against any of the named insureds thereunder any policy so issued.~~

~~The insurance coverage limit required hereunder are mandatory minimums and neither the OWNER nor the CITY ENGINEER are representing that the insurance limits required by this agreement are adequate to protect the CONTRACTOR, or its officers, employees, agents or subcontractors. The CONTRACTOR remains legally responsible for all damages suffered by the OWNER for which the CONTRACTOR is legally responsible regardless of whether the insurance procured is adequate or not.~~

~~B. Any insurance policy covering any loss, damage, or consequential loss referred to in Paragraph 5.06B 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 the OWNER, CONTRACTOR, subcontractors, the CITY ENGINEER, or the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.~~

~~5.07 Receipt and Application of Insurance Proceeds~~

~~A. Any insured loss under the policies of insurance required by paragraph 5.05 will be adjusted with the OWNER and made payable to the OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.07. B. The 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 monies so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.~~

~~B. The 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 the OWNER'S exercise of this power. If such objection be made, the 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, the OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, the OWNER as fiduciary shall give bond for the proper performance of such duties.~~

~~5.08 Acceptance of Bonds and Insurance; Option to Replace~~

~~A. If either the OWNER or the 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 2.05.C. The OWNER and the CONTRACTOR shall 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.~~

~~5.09 Partial Utilization, Acknowledgement of Property Insurer~~

~~A. If the OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work 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. The CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but the CONTRACTOR shall not be responsible for the negligence of the OWNER or the 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. The CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.~~

~~B. At all times during the progress of the Work, the CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to the OWNER and the ENGINEER except~~

under extraordinary circumstances. The superintendent will be the CONTRACTOR'S representative at the Site and shall have authority to act on behalf of the CONTRACTOR. All communications given to or received from the superintendent shall be binding on the CONTRACTOR.

6.02 Labor; Working Hours

A. The CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. The 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, and the CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without the OWNER'S written consent (which will not be unreasonably withheld) given after prior written notice to the ENGINEER.

C. All work by CONTRACTOR shall be performed within the window of hours between 7:00 a.m. to within 30 minutes before Sunset, Monday through Friday, excluding City observed legal holidays. (Not to exceed 10 hours per day).

D. If the CONTRACTOR desires to work outside the regular working hours of the OWNER, the CONTRACTOR must make advance application to, and obtain approval from, the OWNER (allowing at least 48 hours prior to the time of such work) to enable satisfactory arrangements to be made for inspecting the work in progress and coordination with other city departments (However, emergency work may be done without prior permission).

E. Night Work may be undertaken, if required in the special provisions, as a regular procedure with the permission of the OWNER; such permission, however, may be revoked at anytime by the OWNER if the CONTRACTOR fails to maintain adequate equipment and supervision for the proper prosecution and control of the Work at night.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, the 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 warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the OWNER. If required by the ENGINEER, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. 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.

C. Until final completion of the Work is acknowledged by the OWNER, the CONTRACTOR shall have responsible charge and care of the Work and of all equipment and materials to be used herein, and shall bear the risk of injury, loss, or damage to any part thereof by action of the elements or from any other cause, whether arising from the execution or non-execution of the Work.

D. The CONTRACTOR shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the equipment or materials occasioned by any cause before completion and acceptance of the Work and shall bear the expense therefore. The CONTRACTOR shall, at no additional cost to the OWNER, provide suitable drainage and suitable structures as necessary to protect the Work or any portion thereof from damage.

E. Suspension of the Work or the granting of an extension of time for any cause whatever shall not relieve the CONTRACTOR of their responsibilities for the Work as specified.

6.04 Progress Schedule

A. The CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 and as it may be adjusted from time to time as provided below.

1. The CONTRACTOR shall submit to the 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 (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified 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 The ENGINEER for review under the circumstances described below.

1. *"Or-Equal" Items:* If in the ENGINEER'S sole discretion an item of material or equipment proposed by the 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 the ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in the 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 the ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed project as a functioning whole, and;

b. The CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items:

a. If in the ENGINEER'S sole discretion an item of material or equipment proposed by The CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

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

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

d. The CONTRACTOR shall first make

written application to the ENGINEER for review of a proposed substitute item of material or equipment that the CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice the CONTRACTOR'S achievement of Substantial Completion on time, 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 the OWNER for Work on the Project) to adapt the design to the proposed substitute item and 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. All variations of the proposed substitute item from that specified will be identified in the application, and available ENGINEERING, sales, maintenance, repair, and replacement services will be indicated. The application will also 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 the CONTRACTORS affected by any resulting change, all of which will be considered by the ENGINEER in evaluating the proposed substitute item. The ENGINEER may require the CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by the ENGINEER. The CONTRACTOR shall submit sufficient information to allow the ENGINEER, in the ENGINEER'S sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by the ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *The ENGINEER'S Evaluation:* The 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. The ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until the 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." The ENGINEER will advise the CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* The OWNER may require the

CONTRACTOR to furnish at the CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.

E. *The ENGINEER'S Cost Reimbursement:* The ENGINEER will record time required by the ENGINEER and the ENGINEER'S Consultant in evaluating substitute proposed or submitted by the CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with the OWNER for Work on the Project) occasioned thereby. Whether or not the ENGINEER approves a substitute item so proposed or submitted by the CONTRACTOR, the CONTRACTOR shall reimburse the OWNER for the charges of the ENGINEER and the ENGINEER'S Consultant for evaluating each such proposed substitute.

F. *The CONTRACTOR'S Expense:* The CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at the 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~~ Bidding Documents or the Contract Documents require the identity of certain subcontractors, suppliers, or other individuals or entities to be submitted to the OWNER in advance for acceptance by the OWNER by a specified date prior to the effective date of the agreement, and if the CONTRACTOR has submitted a list thereof in accordance with the Bidding Documents or Contract Documents, the OWNER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the 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. The 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 or written amendment signed. No acceptance by OWNER or CITY ENGINEER, of any such subcontractor, supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of the OWNER or the CITY 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 shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER to pay or to see to the payment of any monies due any such subcontractor, supplier, or other individual or entity except as may otherwise be required by Laws and Regulations. Particular consideration will be given to the qualification of each subcontractor proposed on the list of subcontractors. The use of subcontractors proposed by the Bidder and accepted by the OWNER prior to the Notice of Award will be required, in the performance of the Work, unless otherwise permitted or directed by the OWNER.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of subcontractors, suppliers, and other individuals or entities performing or furnish any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all subcontractors, supplies, 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 Specification 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, ENGINEER, ENGINEER'S consultants, 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, and other 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 required separate waiver forms to be signed by and subcontractor or supplier, CONTRACTOR will obtain the same.

6.07 *Patent Fees and Royalties*

A. The 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 the OWNER or the ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify and hold harmless, the OWNER, the ENGINEER, the ENGINEER'S consultants, and the officers, directors, partners, employees or agents, and other consultants 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 the 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*

The Contractor shall be responsible to obtain any permits referenced in the Bidding Documents.

~~A. Unless otherwise provided in the Supplementary Conditions, the CONTRACTOR shall obtain and pay for all construction permits and licenses. The OWNER shall assist the CONTRACTOR, when necessary, in obtaining such permits or licenses. The CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. The CONTRACTOR shall pay all charges of utility the OWNERS for connections to the Work, and the OWNER shall pay all charges of such utility the OWNERS for capital costs related thereto, such as plant investment fees.~~

~~B. The OWNER will obtain and pay for the following Permits:~~

- ~~1. Florida Department of Environment Protection (FDEP) Construction Permit.~~
- ~~2. Southwest Florida Water Management District (SWFWMD) Permit.~~

6.09 *Laws and Regulations*

A. The CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither the OWNER nor the ENGINEER shall be responsible for monitoring the CONTRACTOR'S compliance with any Laws or Regulations.

B. If The CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, the CONTRACTOR shall bear all Claims, costs, losses, and damages (including but not limited to all fees and charges of the 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 the CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve the CONTRACTOR of the 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 may be the subject of an adjustment in Contract Price or Contract Times. If the OWNER and the 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 therefore as provided in paragraph 10.05. The provisions of Paragraph 6.09C of the General Conditions shall not apply to any changes to prevailing wage rates. Changes to wage rates during the life of the Contract shall be the responsibility of the CONTRACTOR, and shall not be eligible for claims for changes to the Contract Price.

D. Work in Confined Spaces – The provisions of 29 CFR Section 1910.146, "Permit-Required Confined Spaces", have been adopted by the OWNER and shall apply to Work under this contract. The OWNER has established a confined-space entry program for its own use, and will be responsible for enforcement of the program for the OWNER'S personnel only.

The CONTRACTOR is hereby notified that manholes and other structures included under the confined-space definition of 29 CFR 1910.146, shall be considered as hazardous locations with hazardous atmospheric conditions. The structures may contain methane, hydrogen sulfide, carbon dioxide, and other gases which are dangerous to life or health. The CONTRACTOR shall allow its personnel or subcontractors to enter these confined spaces only through compliance with an entry permit program as specified herein.

The CONTRACTOR shall establish and maintain a confined-space entry program appropriate to the structures and conditions encountered. The program shall meet the requirements of 29 CFR 1910.146 and shall specifically address the provisions of Paragraph (d) therein. The CONTRACTOR shall enforce the requirements of Paragraphs (e) and (f), shall establish and conduct a training program in accordance with Paragraph (g), and shall comply with all other applicable requirements of the referenced regulation.

6.10 *Taxes*

A. The CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by The

CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work unless the City elects to direct purchase materials as specified in this contract documents.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. The 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. The 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, The 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.

1. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify and hold harmless the OWNER, the ENGINEER, the ENGINEER'S Consultant, and the officers, directors, partners, employees, agents, and other consultants against all Claims, costs, losses, and damages, (including but not limited to all fees and charges of the 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 the OWNER or occupant against the OWNER, the ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon the CONTRACTOR'S performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work the 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 the CONTRACTOR shall clean the Site and make it ready for utilization by the OWNER. At the completion of the Work the 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:* the CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the

CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. The **CONTRACTOR** shall maintain in a safe place at the Site construction office or in the possession of the project superintendent one (1) record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. If project documents noted as above are not readily accessible at the Project Site during work hours, the CONTRACTOR will be subject to a \$250.00 fine per incident. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to the ENGINEER for the OWNER.

6.13 Safety and Protection

A. The CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on 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. The 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. The CONTRACTOR shall notify the OWNERS of adjacent property and of Underground Facilities and other utility the OWNERS when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. 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 the 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 the CONTRACTOR (except damage or loss attributable to the fault of drawings or specifications or to the acts or omission of

the OWNER or the ENGINEER or the ENGINEER'S consultant, 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 the CONTRACTOR or any subcontractor, supplier, or other individual or entity directly or indirectly employed by any of them). The 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 the ENGINEER has issued a notice to the OWNER and the 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. The CONTRACTOR shall designate an OSHA qualified and experienced safety representative ~~at~~ for the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. The OWNER may stop work if CONTRACTOR is unresponsive to the OWNER'S requests to address safety concerns.

6.15 Hazard Communication Programs

A. The 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. The Contractor shall provide a 24/7 emergency contact number to the City at the pre-construction meeting. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, the CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. The CONTRACTOR shall give the ENGINEER prompt written notice if the 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 the ENGINEER determines that a change in the Contract Documents is required because of the action taken by the CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. The CONTRACTOR shall submit Shop Drawings to the ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as the ENGINEER may require, and in the number of copies specified in the General Requirements. The 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 the ENGINEER the services, materials, and equipment the CONTRACTOR

proposes to provide and to enable the ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. The CONTRACTOR shall also submit Samples to the ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as the ENGINEER may require to enable the ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as explicitly stated in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to the ENGINEER as required by paragraph 2.07, any related Work performed prior to the ENGINEER'S review and approval of the pertinent submittal will be at the sole expense and responsibility of the CONTRACTOR.

D. Submittal Procedures

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

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

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

d. The CONTRACTOR 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 indication that the CONTRACTOR has satisfied the CONTRACTOR'S obligations under the Contract Documents with respect to the CONTRACTOR'S review and approval of that submittal.

3. At the time of each submittal, the CONTRACTOR shall give the ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to

be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to the ENGINEER for review and approval of each such variation.

E. The Engineer's Review

1. The ENGINEER will timely review Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to the ENGINEER. The ENGINEER'S review 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. The ENGINEER'S review 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. The ENGINEER'S review of Shop Drawings of Samples shall not relieve the CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing called the ENGINEER'S attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and the ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by the ENGINEER relieve the CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

B. Re-submittal Procedures

1. The CONTRACTOR shall make corrections required by the ENGINEER and shall return the required number of corrected copies of shop drawings and submit as required new Samples for review and approval. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the ENGINEER on previous submittals.

6.18 Continuing the Work

A. The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as the OWNER and the CONTRACTOR may otherwise agree in

writing.

6.19 The Contractor's General Warranty and Guarantee

A. The CONTRACTOR warrants and guarantees to the OWNER, ENGINEER, and the ENGINEER'S Consultant that all Work will be in accordance with the Contract Documents and will not be defective. The CONTRACTOR'S warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance of operation by persons other than the CONTRACTOR, subcontractors, suppliers, or any other individual or entity for whom the CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. 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 the ENGINEER;
2. recommendation by the ENGINEER or final payment by OWNER of any progress or final payment;
3. the issuance of a Certificate of Substantial Completion by the ENGINEER or any payment related thereto by the OWNER;
4. use or occupancy of the work or any part thereof by the OWNER;
5. any acceptance by the OWNER or any failure to do so;
6. any review of a Shop Drawing or Sample submittal and the issuance of a notice of acceptability by the ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by the OWNER; or
9. any expiration of a correction period.

6.20 Indemnification

A. To the fullest extent permitted by laws and regulations, the CONTRACTOR shall defend, indemnify, and hold harmless the OWNER, ~~ENGINEER, ENGINEER'S consultants~~ and the CITY ENGINEER, and the officers, public officials, directors, partners, employees, agents, and other 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:

1. 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 there from; and

2. is caused in whole or in part by any negligent act or omission of the CONTRACTOR, subcontractor, and supplier, any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against the OWNER or the CITY ENGINEER, or any of their respective consultants, agents, officers, public officials, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of the CONTRACTOR, any subcontractor, any supplier, 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 6.20A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of the CONTRACTOR under Paragraph 6.20A shall not extend to the liability of the CITY ENGINEER ~~and ENGINEER'S Consultant~~ or to the officers, public officials, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them 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.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. The OWNER may perform other Work related to the project at the Site by the OWNER'S employees, or let other

direct contracts therefore, 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 the CONTRACTOR prior to starting any such other Work; and

2. if the OWNER and the 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 therefore as provided in paragraph 10.05.

B. The CONTRACTOR shall afford each other the CONTRACTOR who is a party to such a direct contract and each utility the OWNER (and OWNER, if the OWNER is performing the other Work with the OWNER'S employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other Work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, the 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. The CONTRACTOR shall not endanger any Work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their own Work with the written consent of the ENGINEER and the others whose work will be affected. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of such utility the OWNERS and other CONTRACTORS to the extent that there are comparable provision for the benefit of the CONTRACTOR in said direct contracts between the OWNER and such utility the OWNERS and other CONTRACTORS.

C. If the proper execution or results of any part of the CONTRACTOR'S Work depends upon Work performed by others under this Article 7, the CONTRACTOR shall inspect such other Work and promptly report to the 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 the CONTRACTOR'S Work. The CONTRACTOR'S failure to so report will constitute an acceptance of such other Work as fit and proper for integration with the CONTRACTOR'S Work except for latent defects and deficiencies in such other Work.

7.02 *Coordination*

A. If the 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 the 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, the OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 – The OWNER'S RESPONSIBILITIES

8.01 *Communications to the CONTRACTOR*

A. Except as otherwise provided in these General Conditions, the OWNER shall issue all communications to the CONTRACTOR through the ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of the ENGINEER, the OWNER shall appoint an ENGINEER to whom the CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

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

8.04 *Pay Promptly When Due*

A. The OWNER shall make payments to the CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. The OWNER'S duties with respect to providing lands and easements and providing Engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. paragraph 4.02 refers to the OWNER'S identifying and making available to the 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 the ENGINEER in preparing the Contract Documents.

8.06 *Insurance*

A. The 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. The OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. The OWNER'S responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 *Limitations on the OWNER'S Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

A. The OWNER'S responsibility with 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 the OWNER has agreed to furnish the CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy the OWNER'S obligations under the Contract Documents, the 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. The ENGINEER will be the OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of the ENGINEER as the OWNER'S representative during construction are set forth in the Contract Documents and will not be changed without written consent of the OWNER and the ENGINEER.

9.02 *Visits to Site*

A. The ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as the 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 the CONTRACTOR'S executed Work. Based on information obtained during such visits and observations, the ENGINEER for the benefit of the OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. The ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. The ENGINEER'S efforts will be directed toward providing for the 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, the ENGINEER will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against defective Work.

B. The ENGINEER'S visits and observations are subject to all the limitations on the ENGINEER'S authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of the ENGINEER'S visits or observations of the CONTRACTOR'S Work the ENGINEER will not supervise, direct, control, or have authority over or be responsible for the CONTRACTOR'S means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If the OWNER and the ENGINEER agree, the ENGINEER will furnish a Resident Project Representative to assist the ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If the OWNER designates another representative or agent to represent the OWNER at the Site who is not the 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 *Clarifications and Interpretations*

A. The ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on the OWNER and the CONTRACTOR. If the OWNER and the 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, that should be allowed as a result of a written clarification of interpretation, a Claim may be made therefore as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. The 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 The OWNER and also on the CONTRACTOR, who shall perform the Work involved promptly. If the OWNER and the 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, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. The ENGINEER will have authority to disapprove or reject Work which the ENGINEER believes to be defective, or that the 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. The 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.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with the ENGINEER'S authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with the ENGINEER'S authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with the ENGINEER'S authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

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

9.09 *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 insofar as the subject matter of any pertinent claim, dispute, or other matter falls within the realm of the technical expertise of the CITY ENGINEER. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to the ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision. The CITY ENGINEER shall not render any decision on any claims, disputes, or other matters which, at the CITY ENGINEER'S sole discretion,

requires legal, rather than technical interpretation.

B. When functioning as interpreter and judge under this paragraph 9.09, the ENGINEER will not show partiality to the OWNER or the CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by the OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on the ENGINEER'S Authority and Responsibilities*

A. Neither The ENGINEER'S authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by the 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 the ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by the ENGINEER to the CONTRACTOR, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

C. The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR or of any subcontractor, any supplier, or of any other individual or entity performing any of the Work.

D. The ENGINEER'S review of the final Application for Payment and accompanying documentation, final measurements, 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 9.10 shall also apply to the ENGINEER'S Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, the OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, the 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 the OWNER and the 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 therefore as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. The 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. The OWNER and the CONTRACTOR shall execute appropriate Change Orders recommended by the ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by the OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or the 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 the 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, the 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 the CONTRACTOR'S responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to the ENGINEER and the other party to the contract promptly (but in no event later than thirty (30) days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter 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 the ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). 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 the ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless the ENGINEER allows additional time).

B. The *ENGINEER'S Decision:* The ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. The ENGINEER'S written decision on such Claim, dispute, or other matter will be final and binding upon the OWNER and the CONTRACTOR unless:

1. an appeal from the ENGINEER'S decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from the ENGINEER'S written decision is delivered by the OWNER or the CONTRACTOR to the other and to the ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by the OWNER and the CONTRACTOR), to exercise such rights of remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable laws and regulations.

C. If the ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH 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 necessarily incurred and paid by the 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 the 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 the 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 the CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by the OWNER and the 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 the 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 the 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 the 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 the 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 the 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 the CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements approved by the OWNER with the advice of the 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 the CONTRACTOR is liable, imposed by Laws or Regulations. The unit prices an item

e. Deposits lost for causes other than negligence of the 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 the

CONTRACTOR in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence of the 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 the OWNER. No such losses, damages, and expenses shall be included in the cost of the Work for the purpose of determining the 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, expressage, and similar petty cash items in connection with the Work.

i. When the cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance the 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 the CONTRACTOR'S officers, executives, principals (of partnerships and sole proprietorships), general managers, the ENGINEERS, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the CONTRACTOR, whether at the Site or in the 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 the CONTRACTOR'S principal and branch offices other than the CONTRACTOR'S office at the Site.

3. Any part of the CONTRACTOR'S capital expenses, including interest on the CONTRACTOR'S capital employed for the Work and charges against the CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, and 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. The *CONTRACTOR'S Fee*: When all the Work is performed on the basis of cost-plus, the 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, the 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, the CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to the ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. It is understood that the 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 as may be acceptable to the OWNER and the ENGINEER. The CONTRACTOR agrees that:

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

2. The CONTRACTOR costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the 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.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by the ENGINEER to reflect actual amounts due the 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. 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. The OWNER reserves the right to delete, add, or adjust quantities prior to or after the bidding process. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR'S overhead and profit for each separately identified item.

C. The OWNER or the 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 the 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 to any other item of Work; and

3. if The CONTRACTOR believes that the CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or the OWNER believes that the 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 or by a Written Amendment. 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 upon 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 the CONTRACTOR'S fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *The 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 11.10.A.1 and 11.01.A.2 and that any higher tier subcontractor and the 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 the CONTRACTOR to the 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 the 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 the 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 (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) 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 (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

C. A claim for an extension of the Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float for the delayed activity at the time of the event giving rise to the claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the project participants.

D. The CONTRACTOR shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to the CITY ENGINEER.

12.03 *Delays Beyond the CONTRACTOR'S Control*

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

12.04 *Delays within the CONTRACTOR'S Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of the CONTRACTOR. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the CONTRACTOR.

12.05 *Delays Beyond the OWNER'S and CONTRACTOR'S Control*

A. Where the CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the OWNER and the CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be the CONTRACTOR'S sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall the OWNER or the ENGINEER be liable to the CONTRACTOR, any subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of the CONTRACTOR; or

2. delays beyond the control of both the OWNER and the CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility the OWNERS or other CONTRACTORS performing other Work as contemplated by Article 7.

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 the OWNER or the ENGINEER has actual knowledge will be given to the CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. The OWNER, ENGINEER, ENGINEER'S Consultants, other representatives and personnel of the 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. The CONTRACTOR shall provide them proper and safe conditions for such access and advise them of the CONTRACTOR'S Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

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

B. The 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.B; and

3. as otherwise specifically provided in the Contract Documents.

4. re-testing shall be paid by the Contractor. The City will notice the Contractor of the cost and deduct said cost from the next monthly draw.

C. If Laws and 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, the CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish the ENGINEER the required certificates of inspection or approval.

D. The CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the OWNER'S and the 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 the CONTRACTOR'S purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to the OWNER and the ENGINEER.

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

F. Uncovering Work as provided in paragraph 13.03.E shall be at the CONTRACTOR'S expense unless the CONTRACTOR has given the ENGINEER timely notice of the CONTRACTOR'S intention to cover the same and the 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 the ENGINEER, it must, if requested by the ENGINEER be uncovered for the ENGINEER'S observation and replaced at the CONTRACTOR'S expense.

B. If the ENGINEER considers it necessary or advisable that covered Work be observed by the ENGINEER or inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as the ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, the CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of the 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 the OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, the OWNER may make a Claim therefore as provided in paragraph 10.05. If, however, such Work is not found to be defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of Contract Times (or Milestones), 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, the CONTRACTOR may make a Claim therefore as provided in paragraph 10.05.

13.05 *The OWNER May Stop the Work*

A. If the Work is defective, or the 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, the OWNER may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the OWNER to stop the Work shall not give rise to any duty on the part of the OWNER to exercise this right for the benefit of the CONTRACTOR, 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. The CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the ENGINEER, remove it from the Project and replace it with Work that is not defective. The CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of the 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).

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 Laws or Regulations or 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 the CONTRACTOR'S use by the OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, The CONTRACTOR shall promptly, without cost to the OWNER and in accordance with the OWNER'S written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by the OWNER, remove it from the project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting there from. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of the 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 the CONTRACTOR.

B. 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 or by Written Amendment.

C. Where defective Work (and damage to other Work resulting there from) 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.

D. The 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.

E. Nothing in this Article 13 concerning the correction period shall establish a period of limitation with respect to any other obligation which the CONTRACTOR has under the Contract Documents. The establishment of time periods relates only to the specific obligations of the CONTRACTOR to correct the Work, and has no relationship to the time within which the CONTRACTOR'S obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR'S liability with respect to the CONTRACTOR'S obligations other than to specifically correct the Work.

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 recommendations 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 therefore 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, the OWNER may, after seven days written notice to the CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, the OWNER shall proceed expeditiously. In connection with such corrective and remedial action, the OWNER may exclude the CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend the CONTRACTOR'S services related thereto, take possession of the CONTRACTOR'S tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the OWNER, the OWNER'S representatives, the agents and the employees; the OWNER'S other CONTRACTORS, and ENGINEER and the ENGINEER'S Consultants access to the Site to enable the 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 the ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, the OWNER may make a Claim therefore 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. The CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the OWNER of the OWNER'S rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO THE CONTRACTOR 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 the 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 for each progress payment (but not more often than once a month), CONTRACTOR shall submit, after reviewing quantities with the ENGINEER'S representative, to ENGINEER for review an Application for Payment filled out and signed by the 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 the 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 the OWNER'S interest therein, all of which must be satisfactory to the OWNER.

2. Beginning with the second Application for Payment each Application shall include an affidavit of the CONTRACTOR stating that all previous progress payments received on account of the have been applied on account to discharge the 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. The 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 the OWNER or return the application to the CONTRACTOR indicating in writing the ENGINEER'S reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make necessary corrections and resubmit the Application.

2. The ENGINEER'S recommendation of any payment requested in an Application for Payment will constitute a representation by The ENGINEER to the OWNER, based on the ENGINEER'S observations on the Site of the executed Work as an experienced and qualified design professional and on the ENGINEER'S review of the Application for Payment and the accompanying data

and schedules, that to the best of the 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 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to the CONTRACTOR'S being entitled to such payment appear to have been fulfilled in so far as it is the ENGINEER'S responsibility to observe to Work.

3. By recommending any such payment the ENGINEER will not thereby be deemed to have represented that: (i) 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 the ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the OWNER or entitle the OWNER to withhold payment to the CONTRACTOR.

4. Neither the ENGINEER'S review of the CONTRACTOR Work for the purposes of recommending payments nor the ENGINEER'S recommendation of any payment, including final payment, will impose responsibility on the ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for the CONTRACTOR'S failure to comply with Laws and Regulations applicable to the CONTRACTOR'S performance of the Work. Additionally, said review or recommendation will not impose responsibility on the ENGINEER to make any examination to ascertain how or for what purposes the CONTRACTOR has used the monies paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to the OWNER free and clear of any Liens.

5. The ENGINEER may refuse to recommend the whole or any part of any payment if, in the ENGINEER'S opinion, it would be incorrect to make the representations to the OWNER referred to in paragraph 14.02.B.2. The 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 the ENGINEER'S opinion to protect the 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 Written Amendment or Change Orders;

c. the OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. The 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.

D. *Reduction in Payment*

1. The OWNER may refuse to make payment of the full amount recommended by the ENGINEER because:

a. Claims have been made against the OWNER on account of the CONTRACTOR'S performance or furnishing of the Work;

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

c. There are other items entitling the OWNER to a set-off against the amount recommended; or

d. The 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 the OWNER refuses to make payment of the full amount recommended by the ENGINEER, the OWNER must give the CONTRACTOR immediate written notice (with a copy to the ENGINEER) stating the reasons for such action and promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the OWNER and the CONTRACTOR, when the CONTRACTOR corrects to the OWNER'S satisfaction the reasons for such action.

3. If it is subsequently determined that the 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 *The CONTRACTOR'S Warranty of Title*

A. The 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 the OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When the CONTRACTOR considers the entire Work ready for its intended use the CONTRACTOR shall notify the OWNER and the ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, the OWNER, the CONTRACTOR, and the ENGINEER shall make an inspection of the Work to determine the status of completion. If the ENGINEER does not consider the Work substantially complete, the ENGINEER will notify the CONTRACTOR in writing giving the reasons therefore. If the ENGINEER considers the Work substantially complete, the ENGINEER will prepare and deliver to the 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. The OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to the ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, the ENGINEER concludes that the Work is not substantially complete, the ENGINEER will within 14 days after submission of the tentative certificate to the OWNER notify the CONTRACTOR in writing, stating the reasons therefore. If, after consideration of the OWNER'S objections, the ENGINEER considers the Work substantially complete, the ENGINEER will within said 14 days execute and deliver to the OWNER and the 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 the ENGINEER believes justified after consideration of any objections from the OWNER. At the time of delivery of the tentative certificate of Substantial Completion, the ENGINEER will deliver to the OWNER and the CONTRACTOR a written recommendation as to division of responsibilities pending final payment between the OWNER and the CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless the OWNER and the CONTRACTOR agree otherwise in writing and so inform the ENGINEER in writing prior to the ENGINEER issuing a definitive certificate of Substantial Completion, the ENGINEER'S aforesaid recommendation will be binding on the OWNER and the CONTRACTOR until final payment.

1. "Substantial Completion" means that the project was conducted satisfactory to the OWNER and the CITY ENGINEER.

2. To be considered substantially complete, the Work must be operational and ready for the use for which it is intended, with only corrective items remaining.

B. The OWNER shall have the right to exclude the CONTRACTOR from the Site after the date of Substantial Completion, but the OWNER shall allow the CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by the OWNER at the OWNER'S option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which the OWNER, the ENGINEER, and the CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by the OWNER for its intended purpose without significant interference with the CONTRACTOR'S performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. The OWNER at any time may request the CONTRACTOR in writing to permit the OWNER to use any such part of the Work which the OWNER believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees that such part of the Work is substantially complete, the CONTRACTOR will certify to the OWNER and the ENGINEER that such part of the Work is substantially complete and request the ENGINEER to issue a certificate of Substantial Completion for that part of the Work. The CONTRACTOR at any time may notify the OWNER and the ENGINEER in writing that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request the ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the OWNER, the CONTRACTOR, and the ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If the ENGINEER does not consider that part of the Work to be substantially complete, the ENGINEER will notify the OWNER and the CONTRACTOR in writing giving the reasons therefore. If the 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.

2. No occupancy or separate operation or 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 the CONTRACTOR that

the entire Work or an agreed portion thereof is complete, the ENGINEER will promptly make a final inspection with the OWNER and the CONTRACTOR and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The 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 the CONTRACTOR has, in the opinion of the 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), final measurements, and other documents, the 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: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to the OWNER) of all Lien rights arising out of or Liens filed in connection with the Work. Consent of the surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the surety.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by the OWNER, the CONTRACTOR may furnish receipts or releases in full and an affidavit of the 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 the OWNER or the 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, the CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify the OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of the ENGINEER'S observation of the Work during construction and final inspection, and the ENGINEER'S review of the final Application for Payment and accompanying documentation as required by the Contract Documents, the ENGINEER is satisfied that the Work has been completed and the CONTRACTOR'S other obligations under the Contract Documents have

been fulfilled, the ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing the ENGINEER'S recommendation for payment and present the Application for Payment to the OWNER for payment. At the same time the ENGINEER will also give written notice to the OWNER and the CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, the ENGINEER will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to the OWNER of the Application for Payment and accompanying documentation, the amount recommended by the ENGINEER will become due and, when due, will be paid by the OWNER to the CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of the CONTRACTOR, final completion of the Work is significantly delayed, and if the ENGINEER so confirms, the OWNER shall, upon receipt of the CONTRACTOR'S final Application for Payment and recommendation of the ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the 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 the CONTRACTOR to the 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 the OWNER against the 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 the CONTRACTOR'S continuing obligations under the Contract Documents; and

2. a waiver of all Claims by the CONTRACTOR against the OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *The OWNER May Suspend Work*

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

15.02 *The OWNER May Terminate for Cause*

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

1. The 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. The CONTRACTOR'S disregard of Laws or Regulations of any public body having jurisdiction;

3. The CONTRACTOR'S disregard of the authority of the ENGINEER; or

4. The CONTRACTOR'S violation in any substantial way of any provision of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, the OWNER may, after giving the CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the Site, and take possession of the Work and of all the CONTRACTOR'S tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the OWNER may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. 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 the ENGINEERS, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by the OWNER arising out of or relating to completing the Work, such excess will be paid to

the CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. Such claims, costs, losses, and damages incurred by the OWNER will be reviewed by the ENGINEER, and incorporated in a Change Order. When exercising any rights or remedies under this paragraph the OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where the CONTRACTOR'S services have been so terminated by the OWNER, the termination will not affect any rights or remedies of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies due the CONTRACTOR by the OWNER will not release the CONTRACTOR from liability.

15.03 *The OWNER May Terminate for Convenience*

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

1. for 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 of such Work;

2. for 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. for all claims, costs, losses, and damages (including but not limited to all fees and charges of the 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. for reasonable expenses directly attributable to termination.

B. The 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 *The CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of the CONTRACTOR, the Work is suspended for more than 90 consecutive days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or the OWNER fails for 30 days to pay the CONTRACTOR any sum finally determined to be due, then the CONTRACTOR may, upon seven days written notice to the OWNER and the ENGINEER, and

provided the OWNER or the ENGINEER do not remedy such suspension or failure within that time, terminate the contract and recover from the OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the contract and without prejudice to any other right or remedy, if the ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or the OWNER has failed for 30 days to pay the CONTRACTOR any sum finally determined to be due, the CONTRACTOR may, seven days after written notice to the OWNER and the ENGINEER, stop the Work until payment is made of all such amounts due to the CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude the 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 the CONTRACTOR'S stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

~~A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents of by Laws and Regulations in respect of any dispute.~~

A. Neither mediation nor arbitration will be acceptable as a means for settling claims, disputes, or other matters. Claims and disputes between the OWNER and the CONTRACTOR, which cannot be resolved to the satisfaction of both parties, shall be filed in the Circuit Court, Marion County, Florida.

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 delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

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, and 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 Agreement.

B. The CONTRACTOR shall obtain from all suppliers and manufacturers any and all warranties and guarantees of such suppliers and manufacturers, whether or not specifically required by the specifications, and shall assign such warranties and guarantees to the OWNER. With respect thereto, the CONTRACTOR shall render reasonable assistance to the OWNER when requested, in order to enable the OWNER to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the correction period or any other provisions of these Contract Documents.

17.05 *Controlling Law*

A. This contract is to be governed by the law of the state in which the project is located.