

City of Leander

Bagdad Road Sidewalk Improvements
Crystal Falls to Eagles Way

JULY 2015



Prepared by:

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ENGINEERS

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Table of Contents

	<u>Page</u>
<u>CONTRACT DOCUMENTS</u>	
Notice to Bidders	NB-1
Instructions to Bidders	IB-1
Statement of Qualifications of Bidders	SQ-1
Bid Bond	BB-1
Bid Proposal	PR-1
Notice of Award	NA-1
Agreement – City of Leander Standard Form of Agreement	SF-1
Performance Bond	PB-1
Payment Bond	PB-3
Separation of Materials Form	SM-1
Certification of Insurance	IC-1
Notice to Proceed	NP-1
<u>GENERAL CONDITIONS</u>	1
<u>SUPPLEMENTARY CONDITIONS</u>	SC-1
<u>TECHNICAL SPECIFICATIONS</u>	
General 01000	
01010 Summary of Work	01010-1
01019 Contract Considerations	01019-1
01027 Applications for Payment	01027-1
01039 Coordination and Meetings	01039-1
01040 Project Administration	01040-1
01041 Job Management	01041-1
01090 Reference Standards	01090-1
01200 Unit Bid Items	01200-1
01300 Submittals	01300-1
01400 Quality Control	01400-1
01410 Testing Services	01410-1
01500 Construction Facilities and temporary Controls	01500-1
01550 Barricades Signs and Traffic Handling	01550-1
01552 Stormwater Pollution Prevention	01552-1
01568 Erosion and Sediment Control During Construction	01568-1
01600 Material and Equipment	01600-1
01700 Contract Closeout	01700-1
Site Work 02000	
02220 Trench and Excavation Safety System	02220-1
02240 Care of Water During Construction	02240-1
TxDOT Specifications	
Tx100MOD Modifications to Item Tx100	Tx100MOD-1
Tx100 Preparing of Right of Way	Tx100-1
Tx104MOD Modifications to Item Tx104	Tx104MOD-1
Tx104 Removing Concrete	Tx104-1

Table of Contents

		<u>Page</u>
Tx105MOD	Modifications to Item Tx105.....	Tx105MOD-1
Tx105	Removing Stabilized Base and Asphalt Pavement.....	Tx105-1
Tx110MOD	Modifications to Item Tx110.....	Tx110MOD-1
Tx110	Excavation.....	Tx110-1
Tx132MOD	Modifications to Item Tx132.....	Tx132MOD-1
Tx132	Embankment.....	Tx132-1
Tx162MOD	Modifications to Item Tx162.....	Tx162MOD-1
Tx162	Sodding for Erosion Control.....	Tx162-1
Tx420MOD	Modifications to Item Tx420.....	Tx420MOD-1
Tx420	Concrete Structures.....	Tx420-1
Tx464MOD	Modifications to Item Tx464.....	Tx464MOD-1
Tx464	Reinforced Concrete Pipe.....	Tx464-1
Tx465MOD	Modifications to Item Tx465.....	Tx465MOD-1
Tx465	Manholes and Inlets.....	Tx465-1
Tx467MOD	Modifications to Item Tx467.....	Tx467MOD-1
Tx467	Safety End Treatments.....	Tx467-1
Tx479MOD	Modifications to Item Tx479.....	Tx479MOD-1
Tx479	Adjusting Manholes and Inlets.....	Tx479-1
Tx500	Mobilization.....	Tx500-1
Tx502	Barricades, Signs, and Traffic Handling.....	Tx502-1
Tx506MOD	Modifications to Item Tx506.....	Tx506MOD-1
Tx506	Temporary Erosion, Sedimentation, and Environmental Controls.....	Tx506-1
Tx530MOD	Modifications to Item Tx530.....	Tx530MOD-1
Tx530	Intersections, Driveways, and Turnouts.....	Tx530-1
Tx531MOD	Modifications to Item Tx531.....	Tx531MOD-1
Tx531	Sidewalks.....	Tx531-1
Tx644MOD	Modifications to Item Tx644.....	Tx644MOD-1
Tx644	Small Roadside Sign Support and Assemblies.....	Tx644-1
Tx666MOD	Modifications to Item Tx666.....	Tx666MOD-1
Tx666	Reflectorized Pavement Markings.....	Tx666-1

Special Specifications

LEAN-01	Pedestrian Bridge.....	LEAN-01-1
LEAN-02	Limestone Faced Concrete Wall.....	LEAN-02-1

TECHNICAL SPECIFICATION REFERENCES

The technical specifications included herein were prepared from the following sources:

- General specifications (01000) prepared by the Engineer
- Site Work specifications (02000) prepared by the Engineer
- Special specifications (LEAN-00) prepared by the Engineer
- Texas Department of Transportation specifications (Tx###) from *TxDOT Standard Specifications for Construction and Maintenance of Highway, Streets, and Bridges*, 2004 Edition.

The technical specifications may have a modification sheet preceding the specification that modifies, amplifies, or amends the technical specification and plans. The modification sheet takes precedence over the plans and technical specifications. It is the contractor's responsibility to read and understand the requirements of the project specifications and modifications.

The specifications from *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges* includes reference specifications that supplement the actual specification, and Departmental Material Specification's (DMS) that are NOT included herein. Furthermore, it is the responsibility of the Contractor to procure, read and understand the applicable reference specifications and DMS's. The reference specifications and DMS's are applicable to this project and are required by these documents, as referred to in the technical specification, even though they are not included herein.

NOTICE TO BIDDERS

The City of Leander, Texas is soliciting bids from qualified contractors for the following work:

Bagdad Road Sidewalk Improvements Crystal Falls to Eagles Way

Bid Opening: Thursday, August 6, 2015, 2:00 pm

Bids must be returned to the City of Leander: Attention: Joy Simonton, Purchasing Agent, P.O. Box 319, Leander, TX 78646-0319 or 200 W. Willis Street, Leander by the stated deadline, at which time they will be opened and read. All bids must be sealed and plainly marked with the project name. **No faxes will be accepted.**

Bids should include costs for labor, supplies and supervision necessary for construction in accordance with plans and specifications. The scope of work includes approximately 4,400 linear feet of sidewalks, limestone block retaining walls, drainage facilities, and associated improvements.

SPECIFICATIONS may be examined without charge at the City of Leander. Contract documents including bid proposal forms, plans sheets, and specifications may be viewed and downloaded free of charge (with the option to purchase hard copies) at www.civcastusa.com on or after **July 23, 2015**. Scanned plans and specifications are available on CD for a non-refundable price of \$25.00 from KSA Engineers, Inc., 4833 Spicewood Springs Road, Suite 204, Austin, Texas 78759, 512-342-6868. Printed copies may also be viewed at the KSA office.

Please submit questions for this project no later than 72 hours prior to bid opening through www.civcastusa.com in the Q&A portal.

A CERTIFIED CHECK or an acceptable Bid Bond for not less than five percent (5%) of the total bid shall accompany each bid.

A NON-MANDATORY PRE-BID CONFERENCE will be held on Thursday, July 30, 2015 at 2:00 pm at 406 Municipal Drive, Leander, TX.

BIDDERS should inspect the site and be knowledgeable of all conditions. Time of completion shall be **120** calendar days including weekends and holidays.

THE SUCCESSFUL BIDDER will be required to furnish Performance and Payment Bonds in the amount of the contract.

NO BID may be withdrawn after the scheduled opening for at least ninety (90) calendar days.

THE CITY reserves the right to reject any or all bids, waive formalities and award the bid to the lowest responsive bidder.

INSTRUCTIONS TO BIDDERS

INDEX

	<u>Page No.</u>
Defined Terms	IB-1
Items To Be Submitted with Bid	IB-1
Items To Be Submitted By Successful Bidder	IB-1
Copies of Bidding Documents	IB-2
Qualifications of Bidders	IB-2
Examination of Contract Documents and Site	IB-2
Availability of Lands for Work	IB-4
Interpretations and Addenda	IB-4
Bid Security	IB-4
Contract Time	IB-4
Liquidated Damages	IB-4
Substitute or "Or Equal" Items	IB-4
Subcontractors, Suppliers and Others	IB-5
Bid Form	IB-5
Submission of Bids	IB-6
Modification and Withdrawal of Bids	IB-6
Opening of Bids	IB-6
Bids to Remain Subject to Acceptance	IB-6
Award of Contract	IB-6
Contract Security	IB-7
Signing of Agreement	IB-8
Prebid Conference	IB-8
Sales and Use Taxes	IB-8
Retainage	IB-8
Contracts to be Assigned	IB-8
Wage Rates	IB-8

INSTRUCTIONS TO BIDDERS

1. Defined Terms:

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 Edition) have the meanings assigned to them in the General Conditions.

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

- 1.1 Bidder - one who submits a Bid directly to Owner as distinct from a sub-bidder, who submits a bid to a Bidder.
- 1.2 Issuing Office - the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- 1.3 Successful Bidder - the lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. Items To Be Submitted With Bid:

The following forms in the Contract Documents shall be fully completed by the Bidder and submitted at Bid Time:

- 1) Certified and Cashier's check or Bid Bond
- 2) Bid Form

3. Items To Be Submitted By Successful Bidder:

Items which will be required of the successful bidder prior to contract approval shall include, but not be limited to, the following:

- 1) Performance, Payment and Maintenance Bonds (each in the amount of the contract)
- 2) Certificate of Insurance
- 3) Separation of Materials Form
- 4) Breakdown of Bid (for payment purposes)

4. Copies of Bidding Documents:

- 4.1. Complete sets of Bidding Documents in the number and for the deposit sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from Issuing Office. A portion of the deposit will be refunded to each document holder of record who returns a complete set of Bidding Documents in good condition within five days after opening Bids, as stated in the Advertisement or Invitation to Bid.
- 4.2. Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 4.3. Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids on the Work and do not confer a license or grant for any other use.

5. Qualifications of Bidders

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit at the time of the Bid Opening written evidence, such as financial data, previous experience, present commitments and other such data as may be called for below (or in the Supplementary Instructions). Each bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract.

6. Examination of Contract Documents and Site:

- 6.1. It is the responsibility of each Bidder before submitting a Bid:
 - 6.1.1 To examine the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);
 - 6.1.2 To visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work,
 - 6.1.3 To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work,
 - 6.1.4 To study and carefully correlate Bidder's observations with the Contract Documents and such other related data; and
 - 6.1.5 To promptly notify Engineer of all conflicts, error ambiguities or discrepancies in the Contract Documents and such other related documents.
- 6.2. Reference is made to the Supplementary Conditions for identification of:
 - 6.2.1. Those reports of explorations and tests of subsurface conditions at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the accuracy of the "technical data" contained in such reports but not upon other data, interpretations, opinions or information contained in such reports or otherwise relating to the subsurface conditions at the site, nor upon the completeness thereof for the purposes of bidding or construction.

6.2.2. Those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site which have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of the "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraphs 4.2 of the General Conditions has been identified and established in Paragraph SC-4.2 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

- 6.3. Information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.
- 6.4. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing conditions appear in Paragraphs 4.2., 4.3, and 4.4. of the General Conditions.
- 6.5. Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 6.6. On request in advance, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations and tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes, clean up and restore the site to its former conditions upon completion of such explorations, investigations, tests and studies.
- 6.7. Reference is made to the Supplementary Conditions for the identification of the general nature of work that is to be performed at the site by Owner or others (such as utilities and other prime contractors) that relates to the work for which a Bid is to be submitted. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such work.
- 6.8. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to

indicate and convey understanding of all terms and conditions for performing and furnishing of the Work.

- 6.9 The provisions of 4.1 through 4.4, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.5 of the General Conditions.

7. Availability of Lands for Work, etc.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

8. Interpretations and Addenda:

- 8.1. All questions about the meaning or intent of the Contract Documents are to be directed to Engineer. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 8.2. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

9. Bid Security:

- 9.1. Each Bid must be accompanied by Bid security made payable to Owner in an amount of five percent of the Bidder's maximum Bid price and in the form of a certified or bank check of Texas, payable to "City of Leander" or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of Paragraph 5.1. of the General Conditions.
- 9.2. The Bid security of the Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the ninety-first day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.

10. Contract Time:

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Times" is defined in paragraph 1.12 of the General Conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

11. Liquidated Damages:

Provisions for liquidated damages, if any, are set forth in Special Provision 000-1002.

12. Substitute or "Or-Equal" Items:

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings, specified in the Specifications or allowed in a written Addendum without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraph 6.7 of the General Conditions and may be supplemented in the General Requirements. (See Section M1, Paragraph 17).

13. Subcontractors, Suppliers, and Others:

13.1. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers and other persons and organizations (including those who are to furnish the principal items of material and equipment) to be submitted to Owner in advance of the specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after the Bid opening submit to Owner a list of all such Subcontractors, Suppliers and other persons or organizations proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by Owner. An Owner or Engineer who after due investigation has reasonable objection to any proposed Subcontractor, Supplier or other person or organization, either may before the Notice of Award is given request the apparent Successful Bidder to submit an acceptable substitute in which case the apparent Successful Bidder shall submit an acceptable substitute, that Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution and Owner may consider such price adjustment in evaluating Bids and making the contract award.

If apparent Successful Bidder declines to make any such substitution, Owner may award the contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any Bidder. Any Subcontractor, Supplier, other person or organization listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice to Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.8 of the General Conditions.

13.2. No Contractor shall be required to employ any Subcontractor, Supplier, other person or organization against whom Contractor has reasonable objection.

14. Bid Form:

14.1. The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the Issuing Office).

14.2. All blanks on the Bid Form must be completed in ink or by typewriter.

14.3. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the

corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.

- 14.4. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 14.5. All names must be typed or printed below the signature.
- 14.6. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 14.7. The address and telephone number for communications regarding the Bid must be shown.
- 14.8. Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 3 above. State contractor license number, if any, must also be shown.

15. Submission of Bids:

Bids shall be submitted at the time and place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted) and name and address of the Bidder and accompanied by the Bid security and other required documents. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

16. Modification and Withdrawal of Bids:

- 16.1. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- 16.2. If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid and the Bid security will be returned. Thereafter, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

17. Opening of Bids:

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted. Non-responsive bids include failure to provide Bid Bond, lack of acknowledgment of addenda, and/or incomplete or blank unit prices for Bid Items in the Proposal. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of Bids.

18. Bids to Remain Subject to Acceptance:

All Bids will remain subject to acceptance for ninety days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to that date.

19. Award of Contract:

- 19.1. Owner reserves the right to reject any and all Bids, including without limitation the rights to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids and to reject

the Bid of any Bidder, whether because the Bid is not responsive or the Bidder is unqualified or doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

- 19.2. In evaluating Bids, Owner will consider the qualifications of the Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.3. Owner may consider the qualifications and experience of Subcontractor, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted as provided in the Supplementary Conditions. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to Notice of Award.
- 19.4. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, Suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- 19.5. If the contract is to be awarded, it will be awarded to the lowest responsive and responsible Bidder. The lowest bid will be determined from the total of all Base Bid schedules. All bid items and alternates must be bid for the bid to be considered responsive. The owner reserves the right to award a contract to the identified low bidder consisting of the Base Bid or alternates listed on the bid form. A detail breakdown for all deductive alternates shall be provided to the Owner and Engineer by the identified low bidder prior to award of a contract for consideration. The breakdown shall be similar to that required for Change Orders as detailed in the General Conditions. Reference is hereby made to Article 11 of the General Conditions for the nature of the required cost breakdown including, but necessarily limited to, detailed information for labor, equipment, and subcontractor costs.
- 19.6. If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within ninety days after the day of the Bid opening.

20. Contract Security:

Paragraph 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

21. Signing of Agreement:

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen days thereafter Contractor shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

22. Prebid Conference:

~~A prebid conference will be held at the time and location indicated on the Notice to Bidders. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.~~

23. Sales and Use Taxes:

Owner is exempt from Texas State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. Refer to Supplementary Conditions SC-6.10 for additional Information.

24. Retainage:

Provisions concerning retainage are set forth in the Agreement.

25. Contracts to be Assigned:

None

26. Wage Rates:

Local prevailing wage rates shall be used for this project.

STATEMENT OF QUALIFICATIONS

_____ Bidder

_____ Address

Similar Projects Completed by Bidder:

1. NAME OF PROJECT: _____

OWNER: _____ ADDRESS: _____

DATE STARTED: _____ DATE COMPLETED: _____

APPROX. QUANTITIES OF MAJOR ITEMS: _____

VALUE OF CONTRACT: _____

2. NAME OF PROJECT: _____

OWNER: _____ ADDRESS: _____

DATE STARTED: _____ DATE COMPLETED: _____

APPROX. QUANTITIES OF MAJOR ITEMS: _____

VALUE OF CONTRACT: _____

3. NAME OF PROJECT: _____

OWNER: _____ ADDRESS: _____

DATE STARTED: _____ DATE COMPLETED: _____

APPROX. QUANTITIES OF MAJOR ITEMS: _____

VALUE OF CONTRACT: _____

4. OTHER PROJECT REFERENCES: _____

BID BOND

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

City of Leander
200 W. Willis Street

Leander, TX 78641

BID

BID DUE DATE: _____

PROJECT (Brief Description Including Location):

City of Leander
Bagdad Road Sidewalk Improvements – Crystal Falls to Eagles Way

BOND

BOND NUMBER: _____

DATE: (Not later than Bid Due Date): _____

PENAL SUM: _____

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

(Seal)
Bidder's Name and Corporate Seal

(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.
(2) Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder any difference between the total amount of Bidder's bid and the total amount of the bid of the next lowest, responsible and responsive bidder as determined by Owner for the Work required by the Contract Documents, provided that:
 - 1.1 If there is no such lowest, responsible and responsive bidder, and Owner does not abandon the Project, then Bidder and Surety shall pay to Owner the penal sum set forth on the face of this Bond, and
 - 1.2 If no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents .
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's bid and bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents and Contract Documents, or
 - 3.2 All bids are rejected by Owner, or
 - 3.3 Owner fails to issue a notice of award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue a notice of award agreed to in writing by Owner and Bidder, provided that the total time for issuing notice of award including extensions shall not in the aggregate exceed 120 days from Bid Due Date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid Due Date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby,
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable provision of any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "bid" as used herein includes a bid, offer or proposal as applicable.

PROJECT IDENTIFICATION:

City of Leander
Bagdad Road Sidewalk Improvements – Crystal Falls to Eagles Way

CONTRACT IDENTIFICATION AND NUMBER:

City of Leander
Bagdad Road Sidewalk Improvements – Crystal Falls to Eagles Way

Engineer Project Number: LEAN.004

THIS BID IS SUBMITTED TO:

The Honorable Christopher Fielder, Mayor
City of Leander
200 W. Willis Street
Leander, TX 78641

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in the Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ninety days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER's Notice of Award.
3. In submitting this Bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined and carefully studied the Bidding Documents and the following Addenda receipt of all which is hereby acknowledged: (List Addenda by Addendum Number and Date)

- (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
- (c) BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions. BIDDER accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent to the

"technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 4.2 of the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDERS purposes. BIDDER acknowledges that OWNER and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereto. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.

- (e) BIDDER is aware of the general nature of Work to be performed by Owner and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
 - (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
 - (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
 - (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.
4. BIDDER agrees that the Work will be substantially complete within **120 calendar days** after the date when the Contract Times commences to run as provided in paragraph 2.3 of the General Conditions.
5. The following documents are attached to and made a condition of this Bid:
- (a) Required Bid Security in the form of 5 percent.
 - (b) A tabulation of Subcontractors, Suppliers and other persons and organizations required to be identified in this Bid. Identification of other involved parties is subject to submission to the Owner within five (5) days after the Bid opening as provided in the Instructions to Bidders – Paragraph 13 (page IB-5).
 - (c) Required BIDDERS Qualification Statement with supporting data (submitted prior to bid).
 - (d) (Add other documents as pertinent.) Not applicable.

6. Communications concerning this Bid shall be addressed to:

The address of BIDDER indicated below.

Address: _____

Phone: _____ Fax: _____

Email: _____

7. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

SUBMITTED on _____, 20_____.

State Contractor License No. _____.

8. The BIDDER will complete the Work for the price(s) indicated in the Bid Schedule (page PR-6).

City of Leander
Bagdad Road Sidewalk Improvements
Crystal Falls to Eagles Way
Bid Schedule

Spec No.	Item No.	Quantity	Unit	Description (with unit price in words)	Unit Price	Total Price
BASE BID						
100-2002	1.01	4,175	LF	PREPARING ROW at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
104-2015	1.02	9	SY	REMOVING CONC, SIDEWALK at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
162-2002	1.03	5,900	SY	BLOCK SODDING (BERMUDA), INCL WATER at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
420-2001	1.04	165	SY	CL A CONC, CHANNEL at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
420-0000	1.05	4	EA	CL C CONC, BRIDGE ABUTMENTS at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
LEAN-01	1.06	2	EA	50' PED BRIDGE, PREFAB H SEC TRUSS at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
LEAN-02	1.07	2,060	LF	LIMESTONE FACED CONC WALL (HEIGHT VARIES) at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
432-2042	1.08	90	SY	RIRPRAP, STONE TY R, GROUT, 12 IN at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
432-2035	1.09	274	SY	RIRPRAP, CONC, 6 IN at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
460-PLAN	1.10	4	EA	MOD EX CMP CULVERT, CONNECT TO JUNCT BOX at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
465-PLAN	1.11	3	EA	PRECAST JUNCT BOX, 3'X3', GRATE COVER at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
465-PLAN	1.12	4	EA	PRECAST JUNCT BOX, 3'X3', ACCESS COVER at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		

City of Leander
Bagdad Road Sidewalk Improvements
Crystal Falls to Eagles Way
Bid Schedule

Spec No.	Item No.	Quantity	Unit	Description (with unit price in words)	Unit Price	Total Price
464-2001	1.13	20	LF	RC PIPE, CL III, 12 IN at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
464-2003	1.14	550	LF	RC PIPE, CL III, 18 IN at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
464-2004	1.15	80	LF	RC PIPE, CL III, 21 IN at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
467-2222	1.16	1	EA	SET, TY 2, 18", RCP, 4:1, C at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
467-2235	1.17	4	EA	SET, TY 2, 24", RCP, 4:1, C at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
479-2004	1.18	4	EA	ADJ MANHOLE/VALVE TO GRADE, BLOCK OUT at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
502-2001	1.19	4	MO	BARRICADES, SIGNS AND TRAFFIC HANDLING at _____ Dollars and _____ Cents \$ _____ \$ _____ per month		
506-2034	1.20	320	LF	SILT FENCE at _____ Dollars and _____ Cents \$ _____ \$ _____ per linear foot		
530-6005	1.21	90	SY	DRIVEWAYS, ASPH REPAIR at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
531-2010	1.22	15	EA	CURB RAMP, TY 7 at _____ Dollars and _____ Cents \$ _____ \$ _____ per each		
531-2004	1.23	70	SY	CONC SIDEWALKS, 6" at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		
531-2015	1.24	3,615	SY	CONC SIDEWALKS, 4" at _____ Dollars and _____ Cents \$ _____ \$ _____ per square yard		

City of Leander
Bagdad Road Sidewalk Improvements
Crystal Falls to Eagles Way
Bid Schedule

Spec No.	Item No.	Quantity	Unit	Description (with unit price in words)	Unit Price	Total Price
531-6032	1.25	69	SY	CONC SIDEWALK, ELEVATED PER DETAIL at _____ Dollars and _____ Cents per square yard	\$ _____	\$ _____
644-2059	1.26	2	EA	RELOCATE SM RD SN SUP & AM TY TWT at _____ Dollars and _____ Cents per each	\$ _____	\$ _____
666-2042	1.27	780	LF	REF PAV MRK, TY I, W, 12", SLD, 100MIL at _____ Dollars and _____ Cents per linear foot	\$ _____	\$ _____
500-2001	1.28	1	LS	MOBILIZATION at _____ Dollars and _____ Cents per lump sum	\$ _____	\$ _____

TOTAL AMOUNT BASE BID: \$ _____

BID SUMMARY

BID SCHEDULE NO.:

1

TOTAL AMOUNT BASE BID: \$ _____

It is understood the quantities of work to be done at unit prices are approximate and are intended for bidding purposes only. Amounts are to be shown in both words and figures. In case of discrepancy the amount shown in words shall govern.

Reference is hereby made to the Measurement and Payment Section of the Technical Specifications for further descriptions of all Bid Schedule work items.

Owner reserves the right to delete certain items of work via a change order at the time of award of the contract to delete bid item quantities to reduce project cost within available funding at the time of award and execution of the contract.

Owner reserves the right to reject total of Bid Schedules for the Contract.

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's Name)

doing business as _____

Business address: _____

Phone No.: _____

A Partnership

By _____ (SEAL)
(Firm Name)

(general partner)

Business address: _____

Phone No.: _____

A Corporation

By _____
(Corporation)

(state of incorporation)

By _____
(name of person authorized to sign)

(Title)

(Corporate Seal)

Attest _____
(Secretary)

Business address: _____

Phone No.: _____

A Joint Venture

By _____
(Name)

(Address)

By _____
(Name)

(Address)

(Each joint venturer must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

NOTICE OF AWARD

Dated: _____

TO: _____
(BIDDER)

ADDRESS: _____

OWNER'S PROJECT NO.: LEAN.004

PROJECT: City of Leander – Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way

OWNER'S CONTRACT NO.: LEAN.004

PROJECT: City of Leander – Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way

You are notified that your Bid dated _____, 2015 for the above Contract has been considered. You are the apparent successful bidder and an award has been made to your firm for the Base Bid work items as listed in the Bid Form.

The Contract Price of your contract is _____ (\$_____).

Four (4) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Four (4) sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions within fifteen days of the date of this Notice of Award, that is by _____, 2015.

1. You must deliver to the OWNER four (4) fully executed counterparts of the Agreement including all the Contract Documents.
2. You must deliver along with the executed Agreement the Contract Security (Bonds) as specified in the instructions to Bidders (paragraph 20), General Conditions (paragraph 5.1) and Supplementary Conditions (paragraph SC-5.1).
3. Other conditions:
 - a. Please forward Insurance Certificates as specified in the General Conditions (paragraphs 5.3 and 5.4) and Supplementary Conditions (paragraphs SC-5.4 and SC-5.6) with your executed contracts.
 - b. Supply the Engineer with the Separation of Materials Form for Tax purposes as specified in the Supplementary Conditions, SC-6.10.

c. Provide the Engineer with a breakdown of all lump sum prices (for payment purposes).

d. Provide the Engineer with a Project Schedule.

e. Provide the Engineer with a schedule of Anticipated Payments.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

By: _____

City of Leander

Acceptance of Notice

Receipt of the above Notice of Award is hereby acknowledged

By _____

this _____ day of _____, 2015

By _____

Title _____

THE STATE OF TEXAS

§
§
§

KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON

THIS AGREEMENT is made and entered into on this ____ day of the month of _____, 2015, by and between the City of Leander, Texas, a home-rule city and municipal corporation with principal offices located at 200 W. Willis Street, Leander, Williamson and Travis Counties, Texas, 78641 (hereinafter referred to as "Owner" or the "City"), and _____, with principal offices located at _____, (hereinafter referred to as "Contractor").

That, for and in consideration of the mutual terms, conditions and covenants of this Agreement and the accompanying documents between Owner and Contractor and for and in consideration of payments as set forth therein, Contractor hereby agrees to commence and complete the following Project: **Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way**, consisting of furnishing all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to construct and complete the **Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way**, together with any and all extra work as described in the drawings, maps, plans, and specifications (the "Project" or "Work"), in accordance with Instructions to Bidders, the Notices to Bidders, the General Conditions, the Bid Proposal, technical specifications, maps and plans, Performance bond, Payment bond, and other drawings and printed or written explanatory matter thereof, and the addenda thereof, all as prepared by Land Design Partners and approved by the Owner, all of which are made a part hereof and collectively evidence and constitute the entire contract (the "Contract Documents").

Contractor hereby agrees to commence Work within ten (10) calendar days following the date contained in the Notice to Proceed issued by Owner, and Contractor hereby agrees to substantially complete same within one hundred and twenty (120) calendar days after the date contained in the Notice to Proceed.

Waiver of any breach of this Agreement shall not constitute waiver of any subsequent breach.

Owner agrees to pay Contractor from available funds for satisfactory performance of this Agreement the price or prices as shown in the approved Bid Proposal submitted by the Contractor for the Project, which forms a part of this contract and has been approved by the Owner, in the total amount of _____ (*amount expressed in numerals*) _____, (*amount expressed in words*), subject to proper additions and deductions (the "Contract Amount"), all as provided in the General Conditions of this Agreement, and Owner agrees to make payments on account thereof as provided therein. The financial obligations of the City under this Agreement shall be paid from current funds and shall be subject to funds being appropriated and budgeted in sufficient amounts to satisfy such obligations.

Although drawn by Owner, both parties hereto expressly agree and assert that in the event of any dispute over its meaning or application, this Agreement shall be interpreted reasonably and fairly, and neither more strongly for nor against either party.

IN WITNESS WHEREOF, both parties have caused this Agreement to be signed in their respective corporate names by duly authorized representatives, and the parties hereby bind themselves, their successors and assigns for the faithful and full performance of the terms and provisions hereof.

EXECUTED on the latest date of the signatories indicated below.

CITY OF LEANDER

CONTRACTOR

By: _____
Kent Cable, City Manager

By: _____
Name & Title: _____

Date: _____

ATTESTED: _____, City Secretary

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

Prepared by

ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A practice division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

CONSTRUCTION SPECIFICATIONS INSTITUTE

This document has been approved and endorsed by
The Associated General Contractors of America

**EJDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is dated as of the _____ in the year 2015 by and between the City of Leander and _____ (hereinafter called CONTRACTOR). OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

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

**City of Leander
Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way**

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**City of Leander
Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way**

ARTICLE 2. ENGINEER.

The Project has been designed by:

KSA Engineers, Inc.
4833 Spicewood Springs Road, Suite 204
Austin, Texas 78759 (512-342-6868)

who is hereinafter called the ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

- 3.1. The Work will be substantially completed within **120 days** from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions. All work required for final completion and acceptance by the Owner, including but not necessarily limited to all final inspection items, shall be completed within 60 days from the date of substantial completion.
- 3.2. **Liquidated Damages.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Five Hundred DOLLARS (\$500.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete.

ARTICLE 4. CONTRACT PRICE.

Owner shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in an amount in current funds equal to the prices or prices shown in the proposal included with this form.

This project is being funded by the City of Leander. The Contractor will look solely to Owner for payment of all sums due under this contract.

As provided in paragraph 11.3 of the General Conditions, estimated unit price quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.8 of the General Conditions. Unit prices have been computed as provided in paragraph 11.3 of the General Conditions.

ARTICLE 5. PAYMENT PROCEDURES.

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

5.1. **Progress Payments; Retainage.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1 Progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or Owner may withhold, in accordance with paragraph 14.2 of the General Conditions.

In making progress payments, 5 percent of the estimated amount shall be retained until final completion and acceptance of the contract work.

5.2. **Final Payment.** Upon final completion and acceptance of the Work in accordance with paragraph 14.12 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.12.

ARTICLE 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work.

7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

- 7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.5. CONTRACTOR is aware of the general nature of the work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 5, inclusive).
- 8.2. Performance Bonds and Payment Bonds, identified as exhibits PB1 - PB4, consisting of 2 pages
- 8.3. Notice of Award
- 8.4. Notice to Proceed
- 8.5. Certificate of Insurance
- 8.6. Separation of Materials Form
- 8.7. General Conditions
- 8.8. Supplementary Conditions

- 8.9 Contract Conditions
- 8.10 Technical Specifications bearing the title of City of Leander, Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way
- 8.11 Drawings bearing the title City of Leander, Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way
- 8.12 Addendum _____
- 8.13 CONTRACTOR'S Bid (pages PR-1 through PR-8) plus Bid Schedule, inclusive).
- 8.14 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.5 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.5 of the General Conditions.

ARTICLE 9. MISCELLANEOUS.

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement for four (4) originals. One counterpart each has been delivered to OWNER, CONTRACTOR (2), and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, 2015.

OWNER:
City of Leander _____

CONTRACTOR:

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

200 W. Willis Street _____

Leander, Texas 78641 _____

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No.: _____

Agent for service of process: _____

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

PERFORMANCE BOND

THE STATE OF TEXAS § BOND NO. _____

COUNTY OF _____ §

KNOW ALL BY THESE PRESENTS, THAT :
_of the City of _____, County of _____, and State
of _____, as PRINCIPAL, and _____, a corporation organized and
existing under the laws of _____ and authorized under the laws of the State of Texas to act as
SURETY on bonds for PRINCIPALS, are held and firmly bound unto the City of Leander, Texas (OWNER), in the
penal sum of _____ Dollars (\$
_____) for the payment whereof, the said PRINCIPAL and SURETY bind themselves and their heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, the PRINCIPAL has entered into a certain written Contract with the OWNER, dated the ___ day of
_____, 2009, for the construction of the Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way to
which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length
herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said PRINCIPAL shall
faithfully perform the work in accordance with the plans, specifications and under said Contract and shall in all
respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by
said Contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true
intent and meaning of said Contract and the Plans and Specifications thereto annexed, then this obligation shall be void;
otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Texas Gov't Code Chapter 2253 as
amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the
same extent as if it were copied at length herein.

OWNER may draw on any part or all of the total amount of this bond by submitting a written request for a draw from
the OWNER'S Public Works Director or designee to SURETY'S Attorney-in fact.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the
terms of the Contract, or to the work performed thereunder, or the Plans, specifications or drawings accompanying the
same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension
of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this ___ day
of _____, 20__.

Principal By: _____ Title: _____ Address: _____
Surety By: _____ Title: _____ Address: _____

The name and address of the Resident Agent of Surety is:
(Seal)

PAYMENT BOND

THE STATE OF TEXAS

§
§
§

Bond No. _____

KNOW ALL BY THESE PRESENTS:

COUNTY OF WILLIAMSON

That _____, of the City of _____, County of _____, and State of _____ as Principal, and _____ authorized under the laws of the State of Texas to act as Surety on Bonds for Principals, are held and firmly bound unto **THE CITY OF LEANDER, (Owner)**, and all subcontractors, workers, laborers, mechanics and suppliers as their interest may appear, all of whom shall have the right to sue upon this bond, in the penal sum of _____ Dollars (\$ _____) for the payment whereof, well and truly be made the said Principal and Surety bind themselves and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, dated the _____ day of _____, 20____, for the construction of the Bagdad Road Sidewalk Improvements, Crystal Falls to Eagles Way to which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall well and truly pay all subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of the improvements of said Contract, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253, Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said Chapter 2253 to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work performed thereunder, or the plans, specifications or drawings accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20__.

Principal

Surety

Name & Title

Name & Title

By: _____

By: _____

Address: _____

Address: _____

Resident Agent of Surety:

Signature

Printed Name

Address: _____

SECTION SM - SEPARATION OF MATERIALS FORM

The successful Bidder shall prepare an itemized list of materials (including his prices to Owner) which are to be incorporated into the project and/or furnished to the Owner uninstalled. Consumable materials including motor fuel are excluded from this list.

This is a list of materials which, for sales tax purposes, are considered sold by the Contractor to the owner who is a sales tax exempt entity. Such materials are thus exempt from any sales taxes, either on the Contractor's purchase of the materials for resale or on his resale to the Owner.

The level of detail in this breakdown is at the discretion of the Contractor, with the understanding that the Contractor is responsible for furnishing required documentation to the State Comptroller. Major material purchases should be included to ensure their tax exempt status.

Material quantities in this breakdown should be limited to the amounts reasonably necessary for completion of the project. Excess materials which are used on another project may become subject to sales tax if not properly documented.

The Contractor's material prices to the Owner must be no less than his purchase price and may include transportation and handling costs plus a reasonable profit.

The total material price in the required breakdown must equal the total material price listed below. The breakdown must be mathematically correct before it will be approved by the Engineer and incorporated into the contract documents as sales tax exempt.

The material price breakdown shall be submitted with this form before execution of the contract documents. Otherwise, the Contractor may risk losing his sales tax exemption for this project.

- | | | |
|----|--|----------|
| 1. | TOTAL CONTRACT AMOUNT
(As Awarded) | \$ _____ |
| 2. | SALES TAX EXEMPT MATERIALS
(All materials which are (a)
furnished by Contractor and
incorporated into completed
project or (b) furnished
uninstalled by Contractor
to Owner) | \$ _____ |
| 3. | OTHER COSTS
(Including installation
and consumable materials) | \$ _____ |

- NOTES:
1. Line 1 = contract price as awarded.
 2. Line 2 + Line 3 must equal Line 1.
 3. Line 2 must be not less than Contractor's anticipated invoice price for all sales tax exempt materials.

CERTIFICATE OF INSURANCE

TO: _____ Date: _____

Project No.: LEAN.004

Owner

Type of Project: City of Leander
Bagdad Road Sidewalk Improvements, Crystal Falls
To Eagles Way

Address: City of Leander
200 W. Willis Street
Leander, TX 78641

THIS IS TO CERTIFY THAT: _____
 (Name and address of insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

	Policy No.	Effective	Expires	Limits of Liability
Workmen's Compensation				
Public Liability				1 Person \$ 1 Accident
Contingent Liability				1 Person \$ 1 Accident
Property Damage				
Builder's Risk				
Automobile				
Other				

The foregoing Policies (do) (do not) cover all sub-contractors.

Locations Covered: _____

Descriptions of Operations Covered: _____

Additional Insured: **City of Leander and KSA Engineers, Inc.**

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or canceled by the insurer in less than ten days after the insured has received written notice of such change or cancellation.

Where applicable local laws or regulations require more than ten days actual notice of change or cancellation to the assured, the above policies contains such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

 (Name of Insurer)

By _____

Title _____

NOTICE TO PROCEED

Dated _____ 2015

TO: _____
(CONTRACTOR)

ADDRESS: _____

OWNER'S PROJECT NO.: LEAN.004

PROJECT: City of Leander – Bagdad Road Sidewalk Improvements, Crystal Falls To Eagles Way

You are notified that the Contract Times under the above contract will commence to run on:
_____.

By that date, you are to start performing your obligations under the Contract Documents. In accordance with Paragraphs 1.38 and 14.13 of the General Conditions the dates of Substantial Completion and completion and readiness for final payment is _____.

Before you may start any Work at the site, Paragraphs 2.5, 2.6, and 2.7 of the General Conditions provides, in part, that the Contractor must deliver to the Owner (with copies to ENGINEER and other identified additional insureds) certificates of insurance which Contractor is required to purchase and maintain in accordance with the General Provisions.

Also before you may start any Work at the site, you must:

ACCEPTANCE OF NOTICE

City of Leander
OWNER

CONTRACTOR

By: _____
(AUTHORIZED SIGNATURE)
Kent Cagle
City Manager

By: _____
(AUTHORIZED SIGNATURE)

Date: _____

Title: _____

Date: _____

STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

Prepared by

Engineers Joint Contract Documents Committee

and Issued and Published by

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

CONSTRUCTION SPECIFICATIONS INSTITUTE

This document has been approved and endorsed by
The Associated General Contractors of America

TABLE OF CONTENTS OF GENERAL CONDITIONS

Article or Paragraph Number & Title	Page Number	Article or Paragraph Number & Title	Page Number
1. DEFINITIONS	13	3.1-3.2 Intent.....	15
Addenda	13	3.3 Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies	15
1.2 Agreement.....	13	3.4 Intent of Certain Terms or Adjectives	16
1.3 Application for Payment.....	13	3.5 Amending Contract Documents.....	16
1.4 Asbestos.....	13	3.6 Supplementing Contract Documents	16
1.5 Bid.....	13	3.7 Reuse of Documents.....	16
1.6 Bidding Documents	13		
1.7 Bidding Requirements	13	4. AVAILABILITY OF LANDS: SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS.....	16
1.8 Bonds	13	4.1 Availability of Lands	16
1.9 Change Order.....	13	4.2 Subsurface and Physical Conditions	16
1.10 Contract Documents.....	13	4.2.1 Reports and Drawings.....	16
1.11 Contract Price.....	13	4.2.2 Limited Reliance by CONTRACTOR Authorized; Technical Data	17
1.12 Contract Times	13	4.2.3 Notice of Differing Subsurface or Physical Conditions	17
1.13 CONTRACTOR	13	4.2.4 ENGINEER's Review	17
1.14 defective.....	13	4.2.5 Possible Contract Documents Change.....	17
1.15 Drawings.....	13	4.2.6 Possible Price and Times Adjustments	17
1.16 Effective Date of the Agreement.....	13	4.3 Physical Conditions-Underground Facilities.....	17
1.17 ENGINEER.....	13	4.3.1 Shown or Indicated.....	18
1.18 ENGINEER's Consultant	13	4.3.2 Not Shown or Indicated	18
1.19 Field Order.....	13	4.4 Reference Points.....	18
1.20 General Requirements.....	13	4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material.....	18
1.21 Hazardous Waste.....	13		
1.22 Laws and Regulations; Laws or Regulations.....	13	5. BONDS AND INSURANCE.....	18
1.23 Liens.....	13	5.1-5.2 Performance, Payment and Other Bonds.....	18
1.24 Milestone	13	5.3 Licensed Sureties and Insurers; Certificates of Insurance.....	19
1.25 Notice of Award	13	5.4 CONTRACTOR's Liability Insurance	19
1.26 Notice to Proceed	14	5.5 OWNER's Liability Insurance	19
1.27 OWNER	14	5.6 Property Insurance.....	19
1.28 Partial Utilization.....	14	5.7 Boiler and Machinery or Additional Property Insurance	20
1.29 PCBs	14	5.8 Notice of Cancellation Provisions	20
1.30 Petroleum	14	5.9 CONTRACTOR's Responsibility for Deductible Amounts.....	20
1.31 Project	14	5.10 Other Special Insurance.....	20
1.32 Radioactive Material	14		
1.33 Resident Project Representative.....	14		
1.34 Samples	14		
1.35 Shop Drawings	14		
1.36 Specifications	14		
1.37 Subcontractor	14		
1.38 Substantial Completion.....	14		
1.39 Supplementary Conditions.....	14		
1.40 Supplier	14		
1.41 Underground Facilities	14		
1.42 Unit Price Work	14		
1.43 Work.....	14		
1.44 Work Change Directive.....	14		
1.45 Written Amendment.....	14		
2. PRELIMINARY MATTERS	14		
2.1 Delivery of Bonds.....	14		
2.2 Copies of Documents	15		
2.3 Commencement of Contract Times; Notice to Proceed	15		
2.4 Starting the Work.....	15		
2.5-2.7 Before Starting Construction; CONTRACTOR's Responsibility to Report; Preliminary Schedules; Delivery of Certificates of Insurance.....	15		
2.8 Preconstruction Conference	15		
2.9 Initially Acceptable Schedules	15		
3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE.....	15		

Article or Paragraph Number & Title	Page Number	Article or Paragraph Number & Title	Page Number
5.11 Waiver of Rights	20	8.4 Lands and Easements; Reports and Tests	26
5.12-5.13 Receipt and Application of Insurance Proceeds	20	8.5 Insurance	26
5.14 Acceptance of Bonds and Insurance; Option to Replace	21	8.6 Change Orders	26
5.15 Partial Utilization-Property Insurance	21	8.7 Inspections, Tests and Approvals	26
6. CONTRACTOR'S RESPONSIBILITIES	21	8.8 Stop or Suspend Work; Terminate CONTRACTOR'S Services	27
6.1-6.2 Supervision and Superintendence	21	8.9 Limitations on OWNER'S Responsibilities	27
6.3-6.5 Labor, Materials and Equipment	21	8.10 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material	27
6.6 Progress Schedule	21	8.11 Evidence of Financial Arrangements	27
6.7 Substitutes and "Or-Equal" Items; CONTRACTOR'S Expense; Substitute Construction Methods or Procedures; ENGINEER'S Evaluation	21	9. ENGINEER'S STATUS DURING CONSTRUCTION	27
6.8-6.11 Concerning Subcontractors, Suppliers and Others; Waiver of Rights	22	9.1 OWNER'S Representative	27
6.12 Patent Fees and Royalties	22	9.2 Visits to Site	27
6.13 Permits	23	9.3 Project Representative	27
6.14 Laws and Regulations	23	9.4 Clarifications and Interpretations	27
6.15 Taxes	23	9.5 Authorized Variations In Work	27
6.16 Use of Premises	23	9.6 Rejecting Defective Work	27
6.17 Site Cleanliness	23	9.7-9.9 Shop Drawings; Change Orders and Payments	27
6.18 Safe Structural Loading	24	9.10 Determinations for Unit Prices	28
6.19 Record Documents	24	9.11-9.12 Decisions on Disputes; ENGINEER as Initial Interpreter	28
6.20 Safety and Protection	24	9.13 Limitations on ENGINEER'S Authority and Responsibilities	28
6.21 Safety Representative	24	10. CHANGES IN THE WORK	28
6.22 Hazard Communication Programs	24	10.1 OWNER Ordered Change	28
6.23 Emergencies	24	10.2 Claim for Adjustment	29
6.24 Shop Drawings and Samples	24	10.3 Work Not Required by Contract Documents	29
6.25 Submittal procedures; CONTRACTOR'S Review Prior to Shop Drawing or Sample Submittal	25	10.4 Change Orders	29
6.26 Shop Drawing & Sample Submittals Review by ENGINEER	25	10.5 Notification of Surety	29
6.27 Responsibility for Variation From Contract Documents	25	11. CHANGE OF CONTRACT PRICE	29
6.28 Related Work Performed Prior to ENGINEER'S Review and Approval of Required Submittals	25	11.1-11.3 Contract Price; Claim for Adjustment; Value of the Work	29
6.29 Continuing the Work	25	11.4 Cost of the Work	29
6.30 CONTRACTOR'S General Warranty and Guarantee	25	11.5 Exclusions to Cost of the Work	30
6.31-6.33 Indemnification	25	11.6 CONTRACTOR'S Fee	30
6.34 Survival of Obligations	26	11.7 Cost Records	31
7. OTHER WORK	26	11.8 Cash Allowances	31
7.1-7.3 Related Work at Site	26	11.9 Unit Price Work	31
7.4 Coordination	26	12. CHANGE OF CONTRACT TIMES	31
8. OWNER'S RESPONSIBILITIES	26	12.1 Claim for Adjustment	31
8.1 Communications to Contractor	26	12.2 Time of the Essence	31
8.2 Replacement of ENGINEER	26	12.3 Delays Beyond CONTRACTOR'S Control	32
8.3 Furnish Data and Pay Promptly When Due	26	12.4 Delays Beyond OWNER'S and CONTRACTOR'S Control	32

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK	32
13.1 Notice of Defects.....	32
13.2 Access to the Work.....	32
13.3 Tests and Inspections; Contractor's Cooperation	32
13.4 OWNER's Responsibilities; Independent Testing Laboratory.....	32
13.5 CONTRACTOR's Responsibilities.....	32
13.6-13.7 Covering Work Prior to Inspection, Testing or Approval.....	32
13.8-13.9 Uncovering Work at ENGINEER's Request	32
13.10 OWNER May Stop the Work.....	32
13.11 Correction or Removal of Defective Work	33
13.12 Correction Period	33
13.13 Acceptance of Defective Work.....	33
13.14 OWNER May Correct Defective Work	33
14. PAYMENTS TO CONTRACTOR AND COMPLETION	33
14.1 Schedule of Values	33

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
14.2 Application for Progress Payment	33
14.3 CONTRACTOR's Warranty of Title	34
14.4-14.7 Review of Applications for Progress Payments	34
14.8-14.9 Substantial Completion.....	34
14.10 Partial Utilization.....	35
14.11 Final Inspection	35
14.12 Final Application for Payment.....	35
14.13-14.14 Final Payment and Acceptance	35
14.15 Waiver of Claims	36
15. SUSPENSION OF WORK AND TERMINATION.....	36
15.1 OWNER May Suspend Work	36
15.2-15.4 OWNER May Terminate.....	36
15.5 CONTRACTOR May Stop Work or Terminate.....	36
16. DISPUTE RESOLUTION	37
17. MISCELLANEOUS.....	37
17.1 Giving Notice	37
17.2 Computation of Times	37
17.3 Notice of Claim.....	37
17.4 Cumulative Remedies	37
17.5 Professional Fees and Court Costs Included.....	37

INDEX TO GENERAL CONDITIONS

	Article or Paragraph Number
Acceptance of-	
Bonds and Insurance.....	5.14
defective Work.....	10.4.1, 13.13, 13.15
final payment	9.12, 14.15
insurance	5.14
other Work, by CONTRACTOR	7.3
Substitutes and "Or-Equal" Items	6.7.1
Work by OWNER.....	2.5, 6.30, 6.34
Access to the-	
Lands, OWNER and CONTRACTOR	
responsibilities	4.1
site, related work.....	7.2
Work	13.2, 13.14, 14.9
Acts or Omissions-, Acts and Omissions-	
CONTRACTOR.....	6.9.1, 9.13.3
ENGINEER	6.20, 9.13.3
OWNER.....	6.20, 8.9
Addenda-definition of (also see definition of Specifications)	(1.6, 1.10, 6.19) 1.1
Additional Property Insurance.....	5.7
Adjustments	
Contract Price or Contract	
Times	1.5, 3.5, 4.1, 4.3.2, 4.5.2, 4.5.3, 9.4, 9.5, 10.2-10.4, 11, 12, 14.8, 15.1
progress schedule	6.6
Agreement-	
definition of	1.2
All risk Insurance, policy form	5.6.2
Allowances, Cash	11.8
Amending Contract Documents	3.5
Amendment, Written-	
in general.....	1.10, 1.45, 3.5, 5.10, 5.12, 6.6.2, 6.8.2, 6.19, 10.1, 10.4, 11.2, 12.1, 13.12.2, 14.7.2
Appeal, OWNER, or CONTRACTOR	
intent to	9.10, 9.11, 10.4, 16.2, 16.5
Application for Payment-	
definition of	1.3
ENGINEER's Responsibility	9.9
final payment	9.13.4, 9.13.5, 14.12-14.15
in general.....	2.8, 2.9, 5.6.4, 9.10, 15.5
progress payment.....	14.1, 14.7
review of.....	14.4-14.7
Asbestos-	
claims pursuant thereto	4.5.2, 4.5.3
CONTRACTOR authorized to stop Work.....	4.5.2
definition of	1.4
OWNER responsibility for	4.5.1, 8.10
possible price and times change	4.5.2
Authorized Variations in Work	3.6, 6.25, 6.27, 9.5
Availability of Lands	4.1, 8.4
Award, Notice of--defined	1.25
Before Starting Construction.....	2.5-2.8
Bid--definition of.....	1.5
(1.1, 1.10, 2.3, 3.3, 4.2.6.4, 6.13, 11.4.3, 11.9.1)	
Bidding Documents--definition of.....	1.6 (6.8.2)
Bidding Requirements--definitions of.....	1.7 (1.1, 4.2.6.2)
Bonds-	
acceptance of	5.14
additional bonds.....	10.5, 11.4.5.9
Cost of the Work.....	11.5.4
definition of	1.8
delivery of	2.1, 5.1
final application for payment.....	14.12-14.14
general.....	1.10, 5.1-5.3, 5.13, 9.13, 10.5, 14.7.6
performance, Payment and Other.....	5.1-5.2
Bonds and Insurance--in general.....	5
Builder's risk "all risk" policy form.....	5.6.2
Cancellation Provisions, Insurance.....	5.4.11, 5.8, 5.15
Cash Allowances	11.8
Certificate of Substantial Completion.....	1.38, 6.30, 2.3, 14.8, 14.10
Certificates of Inspection.....	9.13.4, 13.5, 14.12
Certificates of Insurance	2.7, 5.3, 5.4.11, 5.4.13, 5.6.5, 5.8, 5.14, 9.13.4, 14.12
Change in Contract Price--	
Cash Allowances	11.8
claim for price adjustment.....	4.1, 4.2.6, 4.5, 5.15, 6.8.2, 9.4, 9.5, 9.11, 10.2, 10.5, 11.2, 13.9, 13.13, 13.14, 15.1, 15.5
CONTRACTOR's fee	11.6
Cost of the Work	
general.....	11.4-11.7
Exclusions to.....	11.5
Cost Records	11.7
in general.....	1.19, 1.44, 9.11, 10.4.2, 10.4.3, 11
Lump Sum Pricing	11.3.2
Notification of Surety.....	10.5
Scope of.....	10.3-10.4
Testing and Inspection, Uncovering the Work.....	13.9
Unit Price Work.....	11.9
Value of Work	11.3
Change in Contract Times-	
Claim for times adjustment	4.1, 4.2.6, 4.5, 5.15, 6.8.2, 9.4, 9.5, 9.11, 10.2, 10.5, 12.1, 13.9, 13.13, 13.14, 14.7, 15.1, 15.5
Contractual time limits	12.2
Delays beyond CONTRACTOR's control.....	12.3
Delays beyond OWNER's and CONTRACTOR's control.....	12.4
Notification of surety	10.5
Scope of change.....	10.3-10.4
Change Orders-	
Acceptance of Defective Work	13.13
Amending Contract Documents	3.5
Cash Allowances	11.8
Change of Contract Price	11
Change of Contract Times	12
Changes in the Work	10
CONTRACTOR's fee	11.6
Cost of the Work.....	11.4-11.7
Cost Records	11.7
definition of	1.9
emergencies	6.23
ENGINEER's responsibility.....	9.8, 10.4, 11.2, 12.1
execution of	10.4
Indemnification.....	6.12, 6.16, 6.31, 6.33
Insurance, Bonds and	5.10, 5.13, 10.5
OWNER may terminate	15.2-15.4
OWNER's Responsibility	8.6, 10.4
Physical Conditions-	
Subsurface and,.....	4.2
Underground Facilities.....	4.3.2
Record Documents	6.19

Scope of Change 10.3-10.4
 Substitutes 6.7.3-6.8.2
 Unit Price Work 11.9
 value of Work, covered by 11.3
 Changes in the Work 10
 Notification of surety 10.5
 OWNER's and CONTRACTOR's responsibilities 10.4
 Right to an adjustment 10.2
 Scope of change 10.3-10.4
 Claims-
 against CONTRACTOR 6.16
 against ENGINEER 6.32
 against OWNER 6.32
 Change of Contract Price 9.4, 11.2
 Change of Contract Times 9.4, 12.1
 CONTRACTOR's 4, 7.1, 9.4, 9.5, 9.11, 10.2
 11.2, 11.9, 12.1, 14.8, 15.1, 15.5, 17.3
 CONTRACTOR's Fee 11.6
 CONTRACTOR's liability 5.4, 6.12, 6.16, 6.31
 Cost of the Work 11.4, 11.5
 Decisions on Disputes 9.11, 9.12
 Dispute Resolution 16.1
 Dispute Resolution Agreement 16.1-16.6
 ENGINEER as initial interpreter 9.11
 Lump Sum Pricing 11.3.2
 Notice of 17.3
 OWNER's 9.4, 9.5, 9.11, 10.2, 11.2, 11.9, 12.1,
 13.9, 13.13, 13.14, 17.3
 OWNER's liability 5.5
 OWNER may refuse to make payment 14.7
 Professional Fees and Court Costs Included 17.5
 request for formal decision on 9.11
 Substitute Items 6.7.1.2
 Time Extension 12.1
 Time requirements 9.11, 12.1
 Unit Price Work 11.9.3
 Value of 11.3
 Waiver of-on Final Payment 14.14, 14.15
 Work Change Directive 10.2
 written notice required 9.11, 11.2, 12.1
 Clarifications and Interpretations 3.6.3, 9.4, 9.11
 Clean Site 6.17
 Codes of Technical Society, Organization or
 Association 3.3.3
 Commencement of Contract Times 2.3
 Communications-
 general 6.2, 6.9.2, 8.1
 Hazard Communication Programs 6.22
 Completion-
 Final Application for Payment 14.12
 Final Inspection 14.11
 Final Payment and Acceptance 14.13-14.14
 Partial Utilization 14.10
 Substantial Completion 1.38, 14.8-14.9
 Waiver of Claims 14.15
 Computation of Times 17.2.1-17.2.2
 Concerning Subcontractors,
 Suppliers and Others 6.8-6.11
 Conferences-
 initially acceptable schedules 2.9
 preconstruction 2.8
 Conflict, Error, Ambiguity, Discrepancy-
 CONTRACTOR to Report 2.5, 3.3.2
 Construction, before starting by CONTRACTOR 2.5-2.7

Construction Machinery, Equipment, etc. 6.4
 Continuing the Work 6.29, 10.4
 Contract Documents-
 Amending 3.5
 Bonds 5.1
 Cash Allowances 11.8
 Change of Contract Price 11
 Change of Contract Times 12
 Changes in the Work 10.4-10.5
 check and verify 2.5
 Clarifications and Interpretations 3.2, 3.6, 9.4, 9.11
 definition of 1.10
 ENGINEER as initial interpreter of 9.11
 ENGINEER as OWNER's representative 9.1
 general 3
 Insurance 5.3
 Intent 3.1-3.4
 minor variations in the Work 3.6
 OWNER's responsibility to furnish data 8.3
 OWNER's responsibility to make
 prompt payment 8.3, 14.4, 14.13
 precedence 3.1, 3.3.3
 Record Documents 6.19
 Reference to Standards and Specifications
 of Technical Societies 3.3
 Related Work 7.2
 Reporting and Resolving Discrepancies 2.5, 3.3
 Reuse of 3.7
 Supplementing 3.6
 Termination of ENGINEER's Employment 8.2
 Unit Price Work 11.9
 variations 3.6, 6.23, 6.27
 Visits to Site, ENGINEER's 9.2
 Contract Price-
 adjustment of 3.5, 4.1, 9.4 10.3 11.2-11.3
 Change of 11
 Decision on Disputes 9.11
 definition of 1.11
 Contract Times-
 adjustment of 3.5, 4.1, 9.4, 10.3, 12
 Change of 12.1-12.4
 Commencement of 2.3
 definition of 1.12
 CONTRACTOR-
 Acceptance of Insurance 5.14
 Limited Reliance on Technical Data Authorized 4.2.2
 Communications 6.2, 6.9.2
 Continue Work 6.29, 10.4
 coordination and scheduling 6.9.2
 definition of 1.13
 May Stop Work or Terminate 15.5
 provide site access to others 7.2, 13.2
 Safety and Protection 4.3.1.2, 6.16, 6.18, 6.21-6.23,
 7.2, 13.2
 Shop Drawing and Sample Review Prior
 to Submittal 6.25
 Stop Work requirements 4.5.2
 CONTRACTOR's-
 Compensation 11.1-11.2
 Continuing Obligation 14.15
 Defective Work 9.6, 13.10-13.14
 Duty to correct defective Work 13.11
 Duty to Report-
 Changes in the Work caused by

Article or Paragraph
Number

Article or Paragraph
Number

Emergency..... 6.23
 Defects in Work of Others 7.3
 Differing conditions 4.2.3
 Discrepancy in Documents 2.5, 3.3.2,6.14.2
 Underground Facilities not indicated 4.3.2
 Emergencies..... 6.23
 Equipment and Machinery Rental, Cost
 of the Work 11.4.5.3
 Fee-Cost-Plus 11.4.5.6, 11.5.1, 11.6
 General Warranty and Guarantee 6.30
 Hazard Communication Programs..... 6.22
 Indemnification..... 6.12, 6.16, 6.31-6.33
 Inspection of the Work 7.3, 13.4
 Labor, Materials and Equipment..... 6.3-6.5
 Laws and Regulations, Compliance by..... 6.14.1
 Liability Insurance..... 5.4
 Notice of Intent to Appeal 9.10, 10.4
 obligation to perform and complete the Work..... 6.30
 Patent Fees and Royalties, paid for by 6.12
 Performance and Other Bonds 5.1
 Permits, obtained and paid for by 6.13
 Progress Schedule 2.6, 2.8, 2.9 6.6, 6.29, 10.4,
 15.2.1
 Request for formal decision on disputes..... 9.11
 Responsibilities-
 Changes in the Work 10.1
 Concerning Subcontractors, Suppliers and
 Others 6.8- 6.11
 Continuing the Work 6.29, 10.4
 CONTRACTOR's expense..... 6.7.1
 CONTRACTOR's General Warranty and
 Guarantee..... 6.30
 CONTRACTOR's review prior to Shop Drawing
 or Sample submittal 6.25
 Coordination of Work 6.9.2
 Emergencies..... 6.23
 ENGINEER's evaluation, Substitutes
 or "Or-Equal" Items 6.7.3
 For Acts and Omissions of Others 6.9.1-6.9.2,9.13
 for deductible amounts, insurance..... 5.9
 general..... 6, 7.2, 7.3, 8.9
 Hazardous Communication Programs 6.22
 Indemnification..... 6.31-6.33
 Labor, Materials and Equipment..... 6.3-6.5
 Laws and Regulations 6.14
 Liability Insurance 5.4
 Notice of variation from Contract Documents 6.27
 Patent Fees and Royalties..... 6.12
 Permits..... 6.13
 Progress Schedule 6.6
 Record Documents 6.19
 related Work performed prior to ENGINEER's
 approval of required submittals..... 6.28
 safe structural loading..... 6.18
 Safety and Protection 6.20, 7.2, 13.2
 Safety Representative 6.21
 Scheduling the Work 6.9.2
 Shop Drawings and Samples..... 6.24
 Shop Drawings and Samples Review
 by ENGINEER 6.26
 Site Cleanliness 6.17
 Submittal Procedures 6.25
 Substitute Construction Methods and
 Procedures 6.7.2

Substitutes and "Or-Equal" Items 6.7.1
 Superintendence 6.2
 Supervision 6.1
 Survival of Obligations 6.34
 Taxes 6.15
 Tests and Inspections 13.5
 To Report..... 2.5
 Use of Premises 6.16-6.18, 6.30.2.4
 Review Prior to Shop Drawing or Sample Submittal 6.25
 Right to adjustment for changes in the Work 10.2
 right to claim 4, 7.1, 9.4, 9.5, 9.11, 10.2, 11.2,
 11.9, 12.1, 13.9, 14.8, 15.1, 15.5, 17.3
 Safety and Protection 6.20-6.22, 7.2, 13.2
 Safety Representative 6.21
 Shop Drawings and Samples Submittals 6.24-6.28
 Special Consultants..... 11.4.4
 Substitute Construction Methods and Procedures 6.7
 Substitutes and "Or-Equal" Items, Expense 6.7.1, 6.7.2
 Subcontractors, Suppliers and Others 6.8-6.11
 Supervision and Superintendence 6.1, 6.2, 6.21
 Taxes, Payment by..... 6.15
 Use of Premises 6.16-6.18
 Warranties and guarantees 6.30, 6.5
 Warranty of Title 14.3
 Written Notice Required-
 CONTRACTOR stop Work or terminate 15.5
 Reports of Differing Subsurface and Physical
 Conditions 4.2.3
 Substantial Completion..... 14.8
 CONTRACTORS--other 7
 Contractual Liability Insurance 5.4.10
 Contractual Time Limits..... 12.2
 Coordination
 CONTRACTOR's responsibility 6.9.2
 Copies of Documents 2.2
 Correction Period 13.12
 Correction, Removal or Acceptance of
 Defective Work
 in general 10.4.1, 13.10-13.14
 Acceptance of Defective Work 13.13
 Correction or Removal of Defective Work 6.30, 13.11
 Correction Period..... 13.12
 OWNER May Correct Defective Work 13.14
 OWNER May Stop Work 13.10
 Cost--
 of Tests and Inspections..... 13.4
 Records 11.7
 Cost of the Work--
 Bonds and insurance, additional..... 11.4.5.9
 Cash Discounts..... 11.4.2
 CONTRACTOR's Fee 11.6
 Employee Expenses 11.4.5.1
 Exclusions to 11.5
 General 11.4-11.5
 Home office and overhead expenses 11.5
 Losses and damages 11.4.5.6
 Materials and equipment 11.4.2
 Minor expenses..... 11.4.5.8
 Payroll costs on changes..... 11.4.1
 performed by Subcontractors 11.4.3
 Records 11.7
 Rentals of construction equipment and
 machinery 11.4.5.3

Royalty payments, permits and license fees	11.4.5.5	Clarifications and Interpretations	3.6.3, 9.4
Site office and temporary facilities	11.4.5.2	Decisions on disputes	9.11-9.12
Special Consultants, CONTRACTOR's	11.4.4	defective Work, notice of	13.1
Supplemental	11.4.5	Evaluation of Substitute Items	6.7.3
Taxes related to the Work	11.4.5.4	Liability	6.32, 9.12
Tests and Inspection	13.4	Notice Work is Acceptable	14.13
Trade Discounts	11.4.2	Observations 6.30.2, 9.2	
Utilities, fuel and sanitary facilities	11.4.5.7	OWNER's Representative	9.1
Work after regular hours	11.4.1	Payments to the CONTRACTOR,	
Covering Work	13.6-13.7	Responsibility for	9.9, 14
Cumulative Remedies	17.4-17.5	Recommendation of Payment	14.4, 14.13
Cutting, fitting and patching	7.2	Responsibilities--	
Data, to be furnished by OWNER	8.3	Limitations on	9.11-9.13
Day--definition of	17.2.2	Review of Reports on Differing Subsurface	
Decisions on Disputes	9.11, 9.12	and Physical Conditions	4.2.4
defective --definition of	1.14	Shop Drawings and Samples, review	
defective Work--		responsibility	6.26
Acceptance of	10.4.1, 13.13	Status During Construction--	
Correction or Removal of	10.4.1, 13.11	authorized variations in the Work	9.5
Correction Period	13.12	Clarifications and Interpretations	9.4
in general	13, 14.7, 14.11	Decisions on Disputes	9.11-9.12
Observation by ENGINEER	9.2	Determinations on Unit Price	9.10
OWNER May Stop Work	13.10	ENGINEER as Initial Interpreter	9.11-9.12
Prompt Notice of Defects	13.1	ENGINEER's Responsibilities	9.1-9.12
Rejecting	9.6	Limitations on ENGINEER'S Authority and	
Uncovering the Work	13.8	Responsibilities	9.13
Definitions	1	OWNER's Representative	9.1
Delays	4.1, 6.29, 12.3-12.4	Project Representative	9.3
Delivery of Bonds	2.1	Rejecting Defective Work	9.6
Delivery of certificate of insurance	2.7	Shop Drawings, Change Orders and	
Determinations for Unit Prices	9.10	Payments	9.7-9.9
Differing Subsurface or	Physical Conditions	Visits to Site	9.2
Notice of	4.2.3	Unit Price Determinations	9.10
ENGINEER's Review	4.2.4	Visits to Site	9.2
Possible Contract Documents Change	4.2.5	Written consent required	7.2, 9.1
Possible Price and Times Adjustments	4.2.6	Equipment, Labor, Materials and	6.3-6.5
Discrepancies-Reporting and Resolving	2.5, 3.3.2, 6.14.2	Equipment rental, Cost of the Work	11.4.5.3
Dispute Resolution--		Equivalent Materials and Equipment	6.7
Agreement	16.1-16.6	Errors or omissions	6.33
Arbitration	16.1-16.5	Evidence of Financial Arrangements	8.11
general	16	Explorations of physical conditions	4.2.1
Mediation	16.6	Fee, CONTRACTOR's-Costs-Plus	11.6
Dispute Resolution Agreement	16.1-16.6	Field Order-	
Disputes, Decisions by ENGINEER	9.11-9.12	definition of 1.19	
Documents--		issued by ENGINEER	3.6.1, 9.5
Copies of	2.2	Final Application for Payment	14.12
Record	6.19	Final Inspection	14.11
Reuse of	3.7	Final Payment-	
Drawings--definition of	1.15	and Acceptance	14.13-14.14
Easements	4.1	Prior to, for cash allowances	11.8
Effective date of Agreement--definition of	1.16	General Provisions	17.3-17.4
Emergencies	6.23	General Requirements-	
ENGINEER--		definition of	1.20
as initial interpreter on disputes	9.11-9.12	principal references to	2.6, 6.4, 6.6-6.7, 6.24
definition of	1.17	Giving Notice	17.1
Limitations on authority and		Guarantee of Work-by	
responsibilities	9.13	CONTRACTOR	6.30, 14.12
Replacement of	8.2	Hazard Communication Programs	6.22
Resident Project Representative	9.3	Hazardous Waste-	
ENGINEER's Consultant--definition of	1.18	definition of	1.21
ENGINEER's--		general	4.5
authority and responsibility, limitations on	9.13	Owner's responsibility for	8.10
Authorized Variations in the Work	9.5	Indemnification 6.12, 6.16, 6.31-6.33	
Change Orders, responsibility for	9.7, 10, 11, 12	Initially Acceptable Schedules	2.9

Article or Paragraph
Number

Article or Paragraph
Number

Inspection-
 Certificates of 9.13.4, 13.5, 14.12
 Final 14.11
 Special, required by ENGINEER 9.6
 Tests and Approval 8.7, 13.3-13.4
 Insurance-
 Acceptance of, by OWNER 5.14
 Additional, required by changes
 in the Work 11.4.5.9
 Before starting the Work 2.7
 Bonds and-in general 5
 Cancellation Provisions 5.8
 Certificates of 2.7, 5, 5.3, 5.4.11, 5.4.13, 5.6.5, 5.8,
 5.14, 9.13.4, 14.12
 completed operations 5.4.13
 CONTRACTOR's Liability 5.4
 CONTRACTOR's objection to coverage 5.14
 Contractual Liability 5.4.10
 deductible amounts, CONTRACTOR's
 responsibility 5.9
 Final Application for Payment 14.12
 Licensed Insurers 5.3
 Notice requirements, material changes 5.8, 10.50
 Option to Replace 5.14
 other special insurances 5.10
 OWNER as fiduciary for insureds 5.12-5.13
 OWNER's Liability 5.5
 OWNER's Responsibility 8.5
 Partial Utilization, Property Insurance 5.15
 Property 5.6-5.10
 Receipt and Application of Insurance
 Proceeds 5.12-5.13
 Special Insurance 5.10
 Waiver of Rights 5.11
 Intent of Contract Documents 3.1-3.4
 Interpretations and Clarifications 3.6.3, 9.4
 Investigations of physical conditions 4.2
 Labor, Materials and Equipment 6.3-6.5
 Lands-
 and Easements 8.4
 Availability of 4.1, 8.4
 Reports & Tests 8.4
 Laws and Regulations-Laws or Regulations-
 Bonds 5.1-5.2
 Changes in the Work 10.4
 Contract Documents 3.1
 CONTRACTOR's Responsibilities 6.14
 Correction Period, defective Work 13.12
 Cost of the Work, taxes 11.4.5.4
 definition of 1.22
 general 6.14
 Indemnification 6.31-6.33
 Insurance 5.3
 Precedence 3.1, 3.3.3
 Reference to 3.3.1
 Safety and Protection 6.20, 13.2
 Subcontractors, Suppliers and Others 6.8-6.11
 Tests and Inspections 13.5
 Use of Premises 6.16
 Visits to Site 9.2
 Liability Insurance-
 CONTRACTOR's 5.4
 OWNER's 5.5
 Licensed Sureties and Insurers 5.3

Liens-
 Application for Progress Payment 14.2
 Contractor's Warranty of Title 14.3
 Final Application for Payment 14.12
 definition of 1.23
 Waiver of Claims 14.15
 Limitations on ENGINEER's authority and
 responsibilities 9.13
 Limited Reliance by CONTRACTOR Authorized 4.2.2
 Maintenance and Operating Manuals-
 Final Application for Payment 14.12
 Manuals (of others)-
 Precedence 3.3.3.1
 Reference to in Contract Documents 3.3.1
 Materials and equipment-
 furnished by CONTRACTOR 6.3
 not incorporated in Work 14.2
 Materials or equipment-equivalent 6.7
 Mediation (Optional) 16.7
 Milestones-definition of 1.24
 Miscellaneous-
 Computation of Times 17.2
 Cumulative Remedies 17.4
 Giving Notice 17.1
 Notice of Claim 17.3
 Professional Fees and Court Costs Included 17.5
 Multi-prime contracts 7
 Not Shown or Indicated 4.3.2
 Notice of-
 Acceptability of Project 14.13
 Award, definition of 1.25
 Claim 17.3
 Defects, 13.1
 Differing Subsurface or Physical Conditions 4.2.3
 Giving 17.1
 Tests and Inspections 13.3
 Variation, Shop Drawing and Sample 6.27
 Notice to Proceed-
 definition of 1.26
 giving of 2.3
 Notification to Surety 10.5
 Observations, by ENGINEER 6.30, 9.2
 Occupancy of the Work 5.15, 6.30.2.4, 14.10
 Omissions or acts by CONTRACTOR 6.9, 9.13
 "Open peril" policy form, Insurance 5.6.2
 Option to Replace 5.14
 "Or Equal" Items 6.7
 Other work 7
 Overtime Work-prohibition of 6.3
 OWNER-
 Acceptance of defective Work 13.13
 appoint an ENGINEER 8.2
 as fiduciary 5.12-5.13
 Availability of Lands, responsibility 4.1
 definition of 1.27
 data, furnish 8.3
 May Correct Defective Work 13.14
 May refuse to make payment 14.7
 May Stop the Work 13.10
 may suspend work,
 terminate 8.8, 13.10, 15.1-15.4
 Payment, make prompt 8.3, 14.4, 14.13
 performance of other Work 7.1
 permits and licenses, requirements 6.13

<i>Article or Paragraph Number</i>	
	purchased insurance requirements 5.6-5.10
OWNER's-	
Acceptance of the Work 6.30.2.5	
Change Orders, obligation to	
execute 8.6, 10.4	
Communications 8.1	
Coordination of the Work 7.4	
Disputes, request for decision 9.11	
Inspections, tests and approvals 8.7, 13.4	
Liability Insurance 5.5	
Notice of Defects 13.1	
Representative-During Construction,	
ENGINEER's Status 9.1	
Responsibilities-	
Asbestos, PCB's, Petroleum, Hazardous	
Waste on Radioactive Material 8.10	
Change Orders 8.6	
Changes in the Work 10.1	
communications 8.1	
CONTRACTOR's responsibilities 8.9	
evidence of financial arrangements 8.11	
inspections, tests and approvals 8.7	
Insurance 8.5	
lands and easements 8.4	
prompt payment by 8.3	
replacement of ENGINEER 8.2	
reports and tests 8.4	
stop or suspend Work 8.8, 13.10, 15.1	
terminate CONTRACTOR's services 8.8, 15.2	
separate representative at site 9.3	
independent testing 13.4	
use or occupancy of the	
Work 5.15, 14.10	
written consent or approval	
required 9.1, 6.3, 11.4	
written notice	
required 7.1, 9.4, 9.11, 11.2, 11.9, 14.7, 15.4	
PCBs-	
definition of 1.29	
general 4.5	
OWNER's responsibility for 8.10	
Partial Utilization-	
definition of 1.28	
general 6.30.2.4, 14.10	
Property Insurance 5.15	
Patent Fees and Royalties 6.12	
Payment Bonds 5.1-5.2	
Payments, Recommendation of 14.4-14.7, 14.13	
Payments to CONTRACTOR and Completion-	
Application for Progress Payments 14.2	
CONTRACTOR's Warranty of Title 14.3	
Final Application for Payment 14.12	
Final Inspection 14.11	
Final Payment and Acceptance 14.13-14.14	
general 8.3, 14	
Partial Utilization 14.10	
Retainage 14.2	
Review of Applications for Progress	
Payments 14.4-14.7	
prompt payment 8.3	
Schedule of Values 14.1	
Substantial Completion 14.8-14.9	
Waiver of Claims 14.15	
when payments due 14.4, 14.13	

	<i>Article or Paragraph Number</i>
withholding payment 14.7	
Performance Bonds 5.1-5.2	
Permits 6.13	
Petroleum-	
definition of 1.30	
general 4.5	
OWNER's responsibility for 8.10	
Physical Conditions-	
Drawings of, in or relating to 4.2.1.2	
ENGINEER's review 4.2.4	
existing structures 4.2.2	
general 4.2.1.2	
Subsurface and, 4.2	
Subsurface Conditions 4.2.1.1	
Underground Facilities 4.3	
Possible Contract Documents Change 4.2.5	
Possible Price and Times Adjustments 4.2.6	
Reports and Drawings 4.2.1	
Notice of Differing Subsurface or, 4.2.3	
Subsurface and 4.2	
Subsurface Conditions 4.2.1.1	
Technical Data, Limited Reliance by	
CONTRACTOR Authorized 4.2.2	
Underground Facilities-	
general 4.3	
Not Shown or Indicated 4.3.2	
Protection of 4.3, 6.20	
Shown or Indicated 4.3.1	
Technical Data 4.2.2	
Preconstruction Conference 2.8	
Preliminary Matters 2	
Preliminary Schedules 2.6	
Premises, Use of 6.16-6.18	
Price, Change of Contract 11	
Price, Contract-definition of 1.11	
Progress Payment, Applications for 14.2	
Progress payment-retainage 14.2	
Progress schedule, CONTRACTOR's 2.6, 2.8, 2.9, 6.6, 6.29, 10.4, 15.2.1	
Project-definition of 1.31	
Project Representative-	
ENGINEER's Status During Construction 9.3	
Project Representative, Resident	
-definition of 1.33	
prompt payment by OWNER 8.3	
Property Insurance	
Additional 5.7	
general 5.6-5.10	
Partial Utilization 5.15, 14.10.2	
receipt and application of	
proceeds 5.12-5.13	
Protection, Safety and 6.20-6.21, 13.2	
Punch list 14.11	
Radioactive Material-	
definition 1.32	
general 4.5	
OWNER's responsibility for 8.10	
Recommendation of Payment 14.4, 14.5, 14.13	
Record Documents 6.19, 14.12	
Records, procedures for maintaining 2.8	
Reference Points 4.4	
Reference to Standards and Specifications	
of Technical Societies 3.3	
Regulations, laws and (or) 6.14	

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Rejecting Defective Work.....	9.6
Related Work-	
at Site.....	7.1-7.3
Performed prior to Shop Drawings and Samples submittals review	6.28
Remedies, cumulative.....	17.4, 17.5
Removal or Correction of Defective Work	13.11
rental agreements, OWNER approval required	11.4.5.3
replacement of ENGINEER, by OWNER	8.2
Reporting and Resolving Discrepancies	2.5, 3.3.2, 6.14.2
Reports-	
and Drawings	4.2.1
and Tests, OWNER's responsibility.....	8.4
Resident Project Representative-	
definition of	1.33
provision for	9.3
Resident Superintendent, CONTRACTOR's	6.2
Responsibilities-	
CONTRACTOR's-in general	6
ENGINEER's-in general.....	9
Limitations on.....	9.13
OWNER's-in general	8
Retainage	14.2
Reuse of Documents.....	3.7
Review by CONTRACTOR: Shop Drawings and Samples Prior to Submittal.....	6.25
Review of applications for Progress Payments	14.4-14.7
Right to an adjustment	10.2
Rights of Way.....	4.1
Royalties, Patent Fees and	6.12
Safe Structural Loading.....	6.18
Safety-	
and Protection.....	4.3.2, 6.16, 6.18, 6.20-6.21, 7.2,13.2
general.....	6.20-6.23
Representative, CONTRACTOR's.....	6.21
Samples-	
definition of	1.34
general.....	6.24-6.28
Review by CONTRACTOR	6.25
Review by ENGINEER.....	6.26, 6.27
related Work	6.28
submittal of	6.24.2
submittal procedures	6.25
Schedule of progress	2.6, 2.8-2.9, 6.6, 6.29, 10.4, 15.2.1
Schedule of Shop Drawing and Sample Submittals 2.6, 2.8-2.9, 6.24-6.28	
Schedule of Values	2.6, 2.8-2.9, 14.1
Schedules-	
Adherence to 15.2.1	
Adjusting 6.6	
Change of Contract Times	10.4
Initially Acceptable.....	2.8-2.9
Preliminary	2.6
Scope of Changes.....	10.3-10.4
Subsurface Conditions	4.2.1.1
Shop Drawings--	
and Samples, general.....	6.24-6.28
Change Orders & Applications for Payments, and.....	9.7-9.9
definition of	1.35
ENGINEER	's approval of 3.6.2
ENGINEER's responsibility for review	9.7, 6.24-6.28
related Work	6.28
review procedures.....	2.8, 6.24-6.28
submittal required	6.24.1
Submittal Procedures	6.25
use to approve substitutions	6.7.3
Shown or Indicated.....	4.3.1
Site Access.....	7.2, 13.2
Site Cleanliness.....	6.17
Site, Visits to--	
by ENGINEER	9.2, 13.2
by others	13.2
"Special causes of loss" policy form, insurance	5.6.2
Specifications--	
definition of	1.36
of Technical Societies, reference to.....	3.3.1
precedence	3.3.3
Standards and Specifications of Technical Societies.....	3.3
Starting Construction, Before	2.5-2.8
Starting the Work	2.4
Stop or Suspend Work--	
by CONTRACTOR.....	15.5
by OWNER	8.8, 13.10,15.1
Storage of materials and equipment	4.1, 7.2
Structural Loading, Safety	6.18
Subcontractor--	
Concerning	6.8-6.11
definition of	1.37
delays	12.3
waiver of rights.....	6.11
Subcontractors--in general	6.8-6.11
Subcontract--required provisions	5.11, 6.11, 11.4.3
Submittals--	
Applications for Payment	14.2
Maintenance and Operation Manuals	14.12
Procedures	6.25
Progress Schedules.....	2.6, 2.9
Samples.....	6.24-6.28
Schedule of Values.....	2.6, 14.1
Schedule of Shop Drawings and Samples Submissions	2.6, 2.8-2.9
Shop Drawings.....	6.24-6.28
Substantial Completion--	
Certification of.....	6.30.2.3, 14.8-14.9
definition of	1.38
Substitute Construction Methods or Procedures	6.7.2
Substitutes and "Or Equal" Items	6.7
CONTRACTOR's EXPENSE	6.7.1.3
ENGINEER's Evaluation.....	6.7.3
"Or-Equal"	6.7.1
Substitute Construction Methods of Procedures.....	6.7.2
Substitute Items	6.7.1.2
Subsurface and Physical Conditions--	
Drawings of, in or relating to	4.2.1.2
ENGINEER's Review.....	4.2.4
general.....	4.2
Limited Reliance by CONTRACTOR Authorized	4.2.2
Notice of Differing Subsurface or Physical Conditions	4.2.3
Physical Conditions	4.2.1.2
Possible Contract Documents Change	4.2.5

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Possible Price and Times Adjustments	4.2.6
Reports and Drawings	4.2.1
Subsurface and	4.2
Subsurface Conditions at the Site	4.2.1.1
Technical Data	4.2.2
Supervision-	
CONTRACTOR's responsibility	6.1
OWNER shall not supervise	8.9
ENGINEER shall not supervise	9.2, 9.13.2
Superintendence	6.2
Superintendent, CONTRACTOR's resident	6.2
Supplemental costs	11.4.5
Supplementary Conditions-	
definition of	1.39
principal reference to	1.10, 1.18, 2.2, 2.7, 4.2, 4.3, 5.1, 5.3, 5.4, 5.6-5.9, 5.11, 6.8, 6.13, 7.4, 8.11, 9.3, 9.10
Supplementing Contract Documents	3.6
Supplier-	
definition of	1.40
principal references to	3.7, 6.5, 6.8-6.11, 6.20, 6.24, 9.13, 14.12
Waiver of Rights	6.11
Surety-	
consent to final payment	14.12, 14.14
ENGINEER has no duty to	9.13
Notification of	10.1, 10.5, 15.2
qualification of	5.1-5.3
Survival of Obligations	6.34
Suspend Work, OWNER May	13.10, 15.1
Suspension of Work and Termination-	15
CONTRACTOR May Stop Work or Terminate	15.5
OWNER May Suspend Work	15.1
OWNER May Terminate	15.2-15.4
Taxes-Payment by CONTRACTOR	6.15
Technical Data-	
Limited Reliance by CONTRACTOR	4.2.2
Possible Price and Times Adjustments	4.2.6
Reports of Differing Subsurface and Physical Conditions	4.2.3
Temporary construction facilities	4.1
Termination-	
by CONTRACTOR	15.5
By OWNER	8.8, 15.1-15.4
of ENGINEER's employment	8.2
Suspension of Work-in general	15
Terms and Adjectives	3.4
Tests and Inspections-	
Access to the Work, by others	13.2
CONTRACTOR's responsibilities	13.5
cost of	13.4
covering Work prior to	13.6-13.7
Laws and Regulations (or)	13.5
Notice of Defects	13.1
OWNER May Stop Work	13.10
OWNER's independent testing	13.4
special, required by ENGINEER	9.6
timely notice required	13.4
Uncovering the Work, at ENGINEER's request	13.8-13.9
Times-	
Adjusting	6.6
Change of Contract	12
Adjusting	6.6
Computation of	17.2
Contract Times-definition of	1.12
day	17.72
Milestones	12
Requirements-	
appeals	16
clarifications, claims and disputes	9.11, 11.2, 12
commencement of contract times	2.3
preconstruction conference	2.8
schedules	2.6, 2.9, 6.6
starting the Work	2.4
Title, Warranty of	14.3
Uncovering Work	13.8-13.9
Underground Facilities, Physical Conditions-	
definition of	1.41
Not Shown or Indicated	4.3.2
protection of	4.3, 6.20
Shown or Indicated	4.3.1
Unit Price Work-	
claims	11.9.3
definition of	1.42
general	11.9, 14.1, 14.5
Unit Prices-	
general	11.3.1
Determination for	9.10
Use of Premises	6.16, 6.18, 6.30.2.4
Utility owners	6.13, 6.20, 7.1-7.3, 13.2
Utilization, Partial	1.28, 5.15, 6.30, 2.4, 14.10
Value of the Work	11.3
Values, Schedule of	2.6, 2.8-2.9, 14.1
Variations in Work-Minor Authorized	6.25, 6.27, 9.5
Visits of Site-by ENGINEER	9.2
Waiver of Claims-on Final Payment	14.15
Waiver of Rights by insured parties	5.11, 6.11
Warranty and Guarantee, General-by CONTRACTOR	6.30
Warranty of Title, CONTRACTOR's	14.3
Work-	
Access to	13.2
by others,	7
Changes in the	10
Continuing the,	6.29
CONTRACTOR May Stop Work or Terminate	15.5
Coordination of	7.4
Cost of the	11.4-11.5
definition of	1.43
neglected by CONTRACTOR	13.14
other Work	7
OWNER May Stop Work	13.10
OWNER May Suspend Work	13.10, 15.1
Related, Work at Site	7.1-7.3
Starting the	2.4
Stopping by CONTRACTOR	15.5
Stopping by OWNER	15.1-15.4
Variation and deviation authorized, minor	3.6
Work Change Directive-	
claims pursuant to	10.2
definition of	1.44
principal references to	3.5.3, 10.1-10.2
Written Amendment-	
definition of	1.45

*Article or Paragraph
Number*

*Article or Paragraph
Number*

principal references to 1.10, 3.5, 5.10, 5.12, 6.6.2,
6.8.2, 6.19, 10.1, 10.4, 11.2, 12.1, 13.12.2, 14.7.2
Written Clarifications and
Interpretations..... 3.6.3, 9.4, 9.11

Written Notice Required-
by CONTRACTOR..... 7.1, 9.10-9.11, 10.4, 11.2, 12.1
by OWNER 9.10-9.11, 10.4, 11.2, 13.14

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

Wherever used in these General Conditions or in the other Contract documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

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

1.2. *Agreement* - The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3. *Application for Payment* - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

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

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

1.6. *Bidding Documents* - The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

1.7. *Bidding Requirements* - The advertisement or invitation to Bid, instructions to bidders, and the Bid form.

1.8. *Bonds* - Performance and Payment bonds and other instruments of security.

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

1.10. *Contract Documents* - 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 pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

1.11. *Contract Price* - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price work).

1.12. *Contract Times* - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by

ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.

1.13. *CONTRACTOR* - The person, firm or corporation with whom OWNER has entered into the Agreement.

1.14. *Defective* - An adjective which 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 14.8 or 14.10).

1.15. *Drawings* - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.

1.16. *Effective Date of the Agreement* - The date indicated in the Agreement on which 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.

1.17. *ENGINEER* - The person, firm or corporation named as such in the Agreement.

1.18. *ENGINEER's Consultant* - A person, firm or corporation 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.

1.19. *Field Order* - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

1.20. *General Requirements* - Sections of Division 1 of the Specifications.

1.21. *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.

1.22. *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.

1.23. *Liens* - Liens, charges, security interests or encumbrances upon real property or personal property.

1.24. *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.

1.25. *Notice of Award* - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.26. *Notice to Proceed* - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. *OWNER* - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. *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.

1.29. *PCBs* - Polychlorinated biphenyl's.

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

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

1.32. *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.

1.33. *Resident Project Representative* - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34. *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.

1.35. *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.

1.36. *Specifications* - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.37. *Subcontractor* - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.38. *Substantial Completion* - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

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

1.40. *Supplier* - A manufacturer, fabricator, supplier, distributor, materialmen 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.

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

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

1.43. *Work* - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. *Work Change Directive* - A written directive 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 physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed 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 as provided in paragraph 10.2.

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

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Document:

2.2. OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonable necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

2.3. 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 thirty days after the Effective Date of the Agreement. ~~In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~

SEE SUPPLEMENTARY CONDITIONS

Starting the Work:

2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon 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.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. a preliminary progress schedule indicating the time (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2 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;

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. 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 paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8. Within twenty days 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 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

2.9. 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 2.6. 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 the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

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

3.2. 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 Work, 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 furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

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

3.3.2. 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 such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; 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.

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, 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:

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

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

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and 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 it be effective to assign to OWNER, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the

provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment 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 furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5. 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:

- 3.5.1. a formal Written Amendment,
- 3.5.2. a Change Order (pursuant to paragraph 10.4), or
- 3.5.3. a Work Change Directive (pursuant to paragraph 10.1).

3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- 3.6.1. a Field Order (pursuant to paragraph 9.5),
- 3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
- 3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4)

Reuse of Documents:

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with 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 ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

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

Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct 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 lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which

CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Subsurface and Physical Conditions:

4.2.1. *Reports and Drawings:* Reference is made to the Supplementary Conditions for identification of:

4.2.1.1. *Subsurface Conditions:* Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and

4.2.1.2 *Physical Conditions:* Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Document.

4.2.2. *Limited Reliance by CONTRACTOR Authorized: Technical Data:* 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:

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

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

4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. *Notice of Differing Subsurface or Physical Conditions:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or

4.2.3.4. 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 conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such

condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, 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.

4.2.5. *Possible Contract Documents Change:* If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. *Possible Price and Times Adjustments:* An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3.1. through 4.2.3.4, inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. 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 9.10 and 11.9; and

4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;

4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or

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

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3. *Physical Conditions - Underground Facilities:*

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

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

4.4. 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 shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point 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 by professionally qualified personnel.

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material 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 and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23),

and (ii) notify OWNER and ENGINEER (and 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 hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special 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 the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special 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 such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4. 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, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment and other Bonds:

5.1. 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 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. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. ~~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 Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.~~

SEE SUPPLEMENTARY CONDITIONS

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a 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 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

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

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

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

5.4.1. claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

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

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

5.4.6. 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.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other

persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;

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

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

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

OWNER's Liability Insurance:

5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

~~5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

~~5.6.1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;~~

~~5.6.2. 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, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;~~

~~5.6.3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);~~

~~5.6.4. Cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and~~

~~5.6.5. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.~~

SEE SUPPLEMENTARY CONDITIONS

5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractor or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.11. Waiver of Rights:

5.11.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have not rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to

the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them, for:

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

5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 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 any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. 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 fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace:

5.14. If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to

provide such coverage, and a Change order shall be issued to adjust the Contract Price accordingly.

Partial utilization - Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others 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. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. 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 indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all 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 furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment 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 OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

6.6 CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1 CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change 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.

6.6.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function 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 accepted by ENGINEER under the following circumstances:

6.7.1.1. *"Or-Equal"*: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2. *Substitute Items*: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute 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 evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result

directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. *CONTRACTOR's Expense*: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.7.2. *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, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3. *Engineer's Evaluation*: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2. and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or 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 person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR 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 person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier, or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

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

6.11. All Work performed by 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 5.6 or 5.7, 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 additional insureds for all losses and damages cause by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from 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.

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if

there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

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

6.14.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

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

SEE SUPPLEMENTARY CONDITIONS

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

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

6.20.1 all persons on the Work site or who may be affected by the Work;

6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. 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.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, and Subcontractor, Supplier or any other person or organization 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, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or 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 CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

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

Emergencies:

6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as 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 ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2 CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted 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 ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

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

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

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

6.25.1.3. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

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.

6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

6.25.3. At that time of each submission, CONTRACTOR shall give 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 ENGINEER for review and approval of each such variation.

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

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

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2. normal wear and tear under normal usage.

6.30.2. 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:

6.30.2.1. observations by ENGINEER;

6.30.2.2. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

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

6.30.2.8. any correction of *defective* Work by OWNER.

Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, 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 engineers, architects, attorneys and other professionals and all court of arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, and subcontractor, any Supplier, any person or organization 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 a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization 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, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

6.34. All representations, indemnification's, 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 and termination or completion of the Agreement.

ARTICLE 7 - OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with 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 connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

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

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

Unless otherwise provided in Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

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

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR

makes not reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's rights to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

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

8.10. OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in

accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against *defective* Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous 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 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonable inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be *defective*, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require

special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, See Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, See Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise

such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 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 14.15) will be a condition precedent to any exercise by 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 pursuant to Article 16.

9.13. *Limitations on ENGINEER's Authority and Responsibilities:*

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

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

9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.12 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.

9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

ARTICLE 10 - CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions

or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. 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 and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

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

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. 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 delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said

occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3. 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:

11.3.1. 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 paragraphs 11.9.1 through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. 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 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

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

11.4.2. 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.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the

Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6, and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

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

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof -- all in accordance with the terms of said rental agreements. The rental of such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

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

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. 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.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5. The term Cost of Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4. — all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

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

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

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

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or

11.6.2. 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:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3. where one or more tiers of subcontractors are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

11.6.2.4. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5, and 11.5;

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

11.6.2.6. when both additions and credits are involved in any on change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

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

11.8.2. CONTRACTOR's 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.

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

11.9. Unit Price Work:

11.9.1. 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 established 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. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

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

~~11.9.3. Owner or Contractor may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:~~

~~11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and~~

significantly from the estimated quantity of such item indicated in the Agreement; and

~~11.9.3.2 there is no corresponding adjustment with respect to any other item of Work; and~~

~~11.9.3.3 if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.~~

SEE SUPPLEMENTARY CONDITIONS

ARTICLE 12 -- CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of 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 therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, and Supplier, 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 (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

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

13.1. *Notice of Defects:* Prompt notice of all *defective* Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2. OWNER, ENGINEER, ENGINEER's Consultant's, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

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

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

13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. 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, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

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

13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

OWNER May Stop the Work:

13.10. If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

13.12.1. 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*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If 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, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2. 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.

13.12.3. Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this paragraph 13.12, 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.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. 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 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. 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. 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 OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 -- PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

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

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

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

14.5.1. the Work has progressed to the point indicated,

14.5.2. 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 9.10, and to any other qualifications stated in the recommendation), and

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

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle

CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

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

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3. OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

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

14.7.5. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work,

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

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially

complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be complete or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

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

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER does not consider that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 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.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. 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 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

14.13. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of 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 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 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

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

14.15.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

14.15.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 -- SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR persistently fails 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 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body have jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case 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 sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

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

15.4.1. 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 on such Work;

15.4.2. 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;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and

15.4.4. for reasonable expenses directly attributable to termination.

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.

CONTRACTOR May Stop Work or Terminate:

15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 -- DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11, and 9.12. OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise under the Contract Documents or by Laws or Regulations in respect any dispute.

ARTICLE 17 -- MISCELLANEOUS

Giving Notice:

17.1. 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.

Computation of Times:

17.2.1. 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.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim: 17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claims will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, 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.

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

SEE SUPPLEMENTARY COSTS

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