MODIFIED STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

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

6. *Bidder*—the individual or entity who submits a Bid directly to Owner.

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

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

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

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

11. *Construction Field Representative (CFR)*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

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

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

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

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

16. *Contractor*—the individual or entity with whom Owner has entered into the Agreement.

17. *Cost of the Work*—See Paragraph 11.01 for definition.

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

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

20. *Engineer*—the individual or entity named as such in the Agreement.

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

22. *General Requirements*—Sections of Division 1 of the Specifications.

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

24. *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.

25. *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.

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26. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *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.

28. *Notice of Award*—the written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement. The Notice of Award shall not be construed as an agreement or contract. Contractor has no rights or remedies against Owner until the Notice to Proceed has been issued.

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

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

31. *PCBs*—Polychlorinated biphenyls.

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

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

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

35. *Project Manual*—the bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents. The Project Manual contains any and all addenda issued, documents executed by the Owner and Contractor or Engineer after bidding, and all attachments and exhibits thereto, up to and including the executed copy of the Notice to Proceed.

36. *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

37. *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.

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

39. *Schedule of Values*—a schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

40. *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.

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

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

43. *Subcontractor*—an individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be fully utilized for the purposes for which it is intended. As a precedent condition to Substantial Completion the Owner shall have received all certificates of occupancy and any other necessary permits for beneficial occupancy. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—the Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—that part of the Contract Documents which amends or supplements these Modified General Conditions.

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

48. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water

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levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

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

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

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

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

1.02 *Terminology*

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

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

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authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

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

a. does not conform to the Contract Documents or general standards of workmanlike construction or published authorities which govern the proper use and application of a particular material or component, including but not limited to literature published by manufacturers and trade organizations; or

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

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

E. *Furnish, Install, Perform, Provide:*

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

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

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

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

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

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ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish. The Owner shall have authority to review and reject any bonds as nonconforming.

B. Within fifteen (15) calendar days after the Effective Date of the Agreement, but before any Work at the Site is started, Contractor shall deliver to Owner, with a copy to Engineer, certificates and other evidence of insurance requested by Owner which Contractor is required to purchase and maintain in accordance with paragraphs Article 5 of these Modified General Conditions. The Owner shall have the authority to review and reject any insurance as nonconforming.

2.02 *Copies of Document*

A. Engineer shall furnish to the successful Contractor up to three (3) sets of the Project Manual. Additional sets will be made available by the Engineer to the Contractor at the cost set forth in the Advertisement for Bids for this project or the actual cost for reproduction whichever is greater.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contractor shall complete all of the work contracted herein, in an acceptable manner and within the established Contract Time. The Contract Time shall commence on the start date given in the Notice to Proceed, and shall run continuously each and every calendar day following, except as herein provided, and in accordance with paragraph 17.02. Times shall be of the essence of this Agreement.

2.04 *Starting the Work*

A. The Contractor shall commence work on or before the tenth (10th) calendar day after the date of the Notice to Proceed or as may be differently stated in the Notice to Proceed. Contractor shall not start work prior to the date set in the Notice to Proceed.

2.05 (Intentionally Deleted)

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a Preconstruction Conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the Contractor's schedule for completion of the work, policies and procedures for submittal of Shop Drawings and other submittals, presentation and processing of Applications for Payment, and maintaining records required by the Contract Documents. If agreed between Owner and Contractor, the Preconstruction Conference may be held prior to the commencement of the Contract Times.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the

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Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of, and legally bind each respective party.

2.07 *Submission and Acceptance of Schedules*

A. Prior to presentation of the first Application for Payment, the Contractor shall submit the following schedules. No progress payment shall be made to Contractor until acceptable Schedules are submitted to Engineer. All schedules shall be coordinated and shall be logically related in time and value for the various stages of work.

1. The Progress Schedule. The Progress Schedule shall be computer generated, utilizing the critical path method (CPM), indicating the dates and duration for completing the various stages of the Work, including any milestones. The level of detail a number of tasks shown in the Progress Schedule shall be commensurate with the complexity of the work. The Progress Schedule shall be acceptable to Engineer if at a minimum it clearly and accurately demonstrates an orderly progression and completion of the work within the contract times. Contractor shall be solely responsible for scheduling and completing the work within the contract time. Any approval or acceptance of the schedule shall not impose on Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility for completion within the contract time.

2. The Schedule of Submittals. The Schedule of Submittals shall provide a workable arrangement for the, engineer to timely review and process the required submittals. The Schedule of Submittals shall also include a list of manufacturers and suppliers. Approval of any schedule by Engineer shall not receive the Contractor from its obligations under the Contract.

3. The Schedule of Values. The Contractors Schedule of Values shall provide a reasonable allocation of the Contract Price to component parts of the Work. Contractor's Schedule of Values for all of the Work shall include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail, commensurate with the complexity of the Work, to serve as the basis for progress payments during performance of the Work. The Schedule of Values shall have line items for project closeout including, demobilization, record drawings, completion of the punch list and project restoration and final cleanup. Approval of any Schedule by Engineer shall not relieve the Contractor from its obligations under the Contract.

4. Cash Flow Schedule. Contractor's Cash Flow Schedule shall be a scheduled and forecasted value of the anticipated payment requests for the Work. The amounts shown shall be considered an estimate which may differ from the actual amounts requested.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

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

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

3.02 *Reference Standards*

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

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect as of the date Engineer sealed, signed, and dated the Contract Documents, except as may be otherwise specifically stated in the Contract Documents.

2. The Contract Documents shall be deemed to include applicable building codes, laws and regulations, relevant published industry and trade organization standards, as well is the published requirements of any product manufacturer. However, no such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents before Starting Work*: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby. Contractor's failure to notify Engineer of any such discrepancy prior to commencement of Work shall constitute a waiver of Contractor's right to seek additional compensation or damages for any alleged discrepancy later discovered by Contractor.

a. Contractor (and any Subcontractor responsible for the performance of all or any part of such Work) shall field verify the accuracy of all grades, elevations, dimensions, locations, orientation and measurements. This shall include locations of any underground utilities or other features which may be shown generally on the drawings for informational purposes only. The Engineer shall be promptly notified in writing of any discrepancies. Contractor's failure to notify Engineer of any such discrepancy prior to

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commencement of Work shall constitute a waiver of Contractor's right to seek additional compensation or damages for any alleged discrepancy later discovered by Contractor.

2. *Contractor's Review of Contract Documents During Performance of Work*: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04. Contractor's failure to notify Engineer of any such discrepancy prior to commencement of Work shall constitute a waiver of Contractor's right to seek additional compensation or damages for any alleged discrepancy later discovered by Contractor.

a. In the event Contractor determines that some aspect of the Contract Documents require clarification or interpretation by Engineer, Contractor shall submit a Request for Information (RFI) in writing to Engineer in a format provided by Engineer. RFIs may only be submitted by the Contractor and shall be in the form required by Engineer. Verbal RFI or a RFI presented on an unapproved form shall be rejected. Any delay caused by Engineer's refusal to accept a verbal RFI or a RFI presented on an unapproved form will be attributed solely to Contractor. Each RFI shall be limited to a single issue. Information that is discernible from the Contract Documents as well as issues concerning construction means, methods, techniques, sequences or safety will not be addressed by Engineer.

b. Contractor shall clearly and concisely state the issue for which clarification or interpretation is sought and why a clarification or interpretation is needed. The RFI process shall not be used by Contractor to seek approval for proposed "or-equal" or substitute materials or equipment.

c. Engineer's review of or responses to RFIs shall not constitute an approval, direction, or procedure related to the construction means, methods, techniques, sequences, or safety.

d. Responses to Contractor RFIs will not change any requirement of the Contract Documents. In the event Contractor believes that a response to an RFI will cause a change in the Contract Price or Contract Time, Contractor shall give written notice of the Claim to Engineer.

e. If Contractor wishes to make Claim for an adjustment of the Contract Price or an extension of the Contract Times, or both, written notice as provided in Paragraph 10.05 shall be given before proceeding to execute the Work. Failure to give such written notice shall waive Contractor's right to seek an adjustment of the Contract Price or an extension of the Contract Times.

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B. *Resolving Discrepancies:*

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

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

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

3.04 *Amending and Supplementing Contract Documents*

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

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

1. A Field Order;

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

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

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

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

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

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless Engineer, and the Owner and their employees, principals, agents, successors, insurers, sureties and assigns, from and against any and all liabilities, claims, causes of actions, suits of any nature, fines, penalties, expenses, costs, losses, and damages (including but not

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limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of, resulting from, or relating to the unauthorized use, reuse, or modification of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions, by Contractor, its employees, agents, or any other person or entity for whom Contractor is legally liable.

3.06 *Electronic Data*

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, surveys, graphics, or other types are furnished, if at all, only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. To the extent that any discrepancy exists between the electronic files and the hard copies, the hard copies shall govern.

1. The Engineer may, but shall not be obligated to, make copies of requested Drawings in electronic format for the Contractor's convenience and to facilitate the Contractor's administration of the Project. Because information presented on electronic files can be modified, unintentionally or otherwise, the Engineer reserves the right to remove all indications of ownership from each electronic display. Notwithstanding the removal of indicia of ownership, the Engineer's copyright interest in such files and the information contained therein shall not be abridged or abated by such action. The use of electronic files prepared by the Engineer shall not in any way relieve the contractor of its duty to fully comply with the Contract Documents nor negate the Contractor's responsibility for coordination of other trades, and taking field measurements.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. To the extent that any errors are detected, the receiving party shall provide written notice to the transferring party, which party shall correct such errors identified within the 60 day acceptance period.

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

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are

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unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

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

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

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Contract Documents identify:

1. If during the preparation of these Contract Documents, subsurface or geotechnical explorations were conducted which are relevant in the discretion of the Engineer to the scope of the work, the findings of such will be included in the Appendix of the Specifications. The Contractor shall be responsible for obtaining such reports and explorations it deems necessary and advisable for the performing of the Work in accordance with the Contract Documents.

2. Information and data reflected in the Contract Documents with respect to existing structures and facilities at or contiguous to the Site are based upon information obtained from varying sources which may include reports, drawings or other data of those facilities presently on file with the Owner. The Owner and Engineer do not guarantee the accuracy of any such information. The Contractor shall be responsible for field verifying all conditions and measurements and for determining the suitability of the site for the proposed Work.

B. *Limited Reliance by Contractor on Technical Data Authorized:* any reports and drawings which have been identified in Article 4.02 A 1 are not Contract Documents. However, in the event the Engineer specifically calls out and designates certain information in such reports and drawings as "Technical Data" than Contractor shall have a limited right to rely upon the accuracy of the designated Technical Data. Other than the designated Technical Data, any information provided and depicted on the Drawings is merely intended to be a general representation of the physical conditions likely be encountered during the Work and shall not constitute a guarantee or warranty by the Engineer or Owner that actual conditions will not vary from that which is depicted. Except for the Contractor's right to rely on the designated technical data, which is limited as more specifically shown below,_Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

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

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

4. The information provided herein and depicted on the project drawings are not guaranteed by the Owner or Engineer to be more than a general representation of the physical conditions likely to be encountered during the Work.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor discovers or should reasonably have discovered, or otherwise reasonably believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any "Technical Data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

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

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

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; and is not in the area of the project bid as Unclassified Excavation;

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

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

C. *Possible Price and Times Adjustments:*

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

a. such circumstance must meet the conditions of Paragraph 4.03. A; and

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

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

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

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

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

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any consequential damages, including but not limited to claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project, and Contractor expressly and specifically releases any and all damages related thereto. Any damages for suspension or idle time shall be limited to the Contractor's actual cost of labor or equipment costs, including a reasonable markup for overhead but shall not include a markup for profit.

4.04 *Underground Facilities*

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

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

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

a. reviewing and checking all such information and data;

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

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

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

B. *Not Shown or Indicated:*

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

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

3. Generally, service connections are not indicated on the project drawings. Contractor shall be responsible for locating all existing underground utility installations in advance of excavation.

C. *Underground Utility Damage Prevention Act:*

1. Contractor shall be required and agrees to comply with all the provisions of any applicable underground utility damage prevention act (however titled) and hereby agrees, to the fullest extent permitted by Laws and Regulations, to indemnify, defend, and hold harmless Owner, Engineer, and their employees, principals, agents, successors, sureties, insurers and assigns, including any of their Related Entities, if any, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to Contractor's failure, or the failure of anyone for whom Contractor is responsible, to so comply with the requirements of said act, except the Contractor shall not be required to indemnify any person or entity for acts attributable to the sole negligence of such person or entity.

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4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by Contractor on designated Technical Data Authorized:* Contractor may rely upon the accuracy of any designated "Technical Data" contained in such reports and drawings, but such reports and drawings are not Contract Documents, and Contractor's reliance on the designated Technical Data is limited to the extent specifically described in set forth in Article 4.02 B. Except for such reliance on such "Technical Data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

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

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

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

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

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Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

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

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

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

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

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

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ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

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

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Contract Documents, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain. The Owner shall be solely responsible for determining the adequacy and sufficiency of the insurance requested under the Contract Documents and any certificates of insurance which are furnished hereunder.

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

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Neither Owner nor Engineer represents that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the cap contract documents, including under the indemnities granted in the Contract Documents.

5.04 *Contractor's Insurance*

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

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

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

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

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

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

   b. by any other person for any other reason;

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

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

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7. claims for damages arising out of Contractor's performance or providing of professional architectural or engineering services in accordance with Paragraph 6.21.B.

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

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

2. include the specific coverages herein required or required by Laws or Regulations, whichever is greater;

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

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 60 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Contract Documents to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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

6. include completed operations coverage:

a. Such insurance shall remain in effect for two years after final payment.

b. Contractor shall furnish Owner and each other additional insured identified in the Contract Documents 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.

C. Satisfactory certificates of insurance shall be submitted and attached to the executed Agreement for Construction between the Owner and Contractor. In connection with the provisions set forth in the Modified General Conditions, the Notice to Proceed will not be issued until satisfactory certificates of insurance are filed.

D. <u>Specified Limits of Insurance Required to be Carried by Contractor</u>

1. Worker's Compensation and Employer's Liability

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This insurance shall protect the Contractor and Owner and the Engineer against all claims under applicable state workmen's compensation laws. The Contractor and Owner shall also be protected against claims for injury, disease, or death of employees that, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall include an "all states" endorsement.

The liability limits shall be not less than:
Worker's Compensation..... Statutory
Employer's Liability ..... $500,000 each occurrence

2. Comprehensive Automobile Liability

This insurance shall be written in comprehensive form and shall protect the Contractor and Owner and engineer against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.

The liability limits shall be not less than:

Bodily Injury	$1,000,000 each person
	$1,000,000 each occurrence
Property Damage	$1,000,000 each occurrence
	$1,000,000 aggregate

3. Comprehensive General Liability

This insurance shall be written in comprehensive form and shall protect the Contractor and Owner against all claims arising from injuries to persons other than his employees or damage to property of the Owner or others arising out of any act or omission of Contractor or his agents, employees, or Subcontractors. The policy shall also include protection against claims insured by usual personal injury liability coverage and shall include a "protective liability" endorsement to insure the contractual liability assumed by the Contractor under the indemnification provisions in the Modified General Conditions, and "Completed Operations and Products Liability" coverage (to remain in force during the correction or warranty period required under this Agreement.

To the extent that the Contractor's work, or work under his direction, may require blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property.

Bodily Injury	$1,000,000 each person
	$1,000,000 each occurrence
Property Damage	$1,000,000 each occurrence
	$2,000,000 aggregate

4. Umbrella Liability Policy

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This insurance shall protect the Contractor against all claims in excess of the limits provided under the workmen's compensation and employer's liability, comprehensive automobile liability, and general liability policies. The liability limits of the umbrella liability policy shall not be less than $5,000,000.

E. Contractor covenants and agrees that the insurance coverage and limits required by the Contract Documents shall in no way be considered or used in any manner as a limit or cap of any kind on any liability or obligation that Contractor may otherwise have, including, without limitation, liability under the indemnification provisions contained herein.

1. by requiring such insurance and insurance limits, neither Owner nor Engineer represents that such coverage and limits will necessarily be adequate to protect Contractor.

2. Contractor shall be responsible for any deductible or self-insured retention.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

A. Contractor shall purchase and maintain Builder's Risk insurance for 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 Contract Documents or required by law). Contractor shall be responsible for all associated costs for such insurance. This insurance shall:

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

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

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

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials

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and equipment have been included in an Application for Payment recommended by Engineer;

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

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued. The Owner shall be solely responsible for determining the adequacy and sufficiency of such Builders Risk insurance.

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

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 60 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

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

E. (Intentionally deleted)

5.07 *Waiver of Rights*

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees there under. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of

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or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued. This Waiver of Subrogation shall survive the completion or termination of this Agreement.

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

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

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

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party fails to purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

Contractor shall provide competent, qualified, on-site, supervision at all times during construction activities including supervision of the activities of the sub-contractor(s), vendors and suppliers through a Resident Superintendent. The Resident Superintendent shall be on-site at any time that work is ongoing at the project. Sub-contractors shall not work independently on the project without on-site supervision provided Resident Superintendent. A resume for the Resident Superintendent shall be submitted to the Engineer for approval prior to commencing work. Such resumes shall include projects that they were in responsible charge of, that are of similar work in scope and value with owner's references. Contractor shall not change the

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Resident Superintendent without written approval from the Engineer. However, the approval of any supervisor by the Engineer shall not relieve the Contractor of its obligation to properly supervise and perform the Work.

B. If at any point during the progress of the Work the Owner determines, in its sole discretion, that the Resident Superintendent is inadequately performing its services, the Owner may direct in writing the Contractor to replace the Resident Superintendent within thirty (30) days of such notification. The resumes of any proposed new Resident Superintendent shall be submitted to the Engineer for approval prior to their commencement of work on the project.

1. The Resident Superintendent shall provide Owner and Engineer with a written daily field report containing, as a minimum, the following information:

   a. the number of personnel on site, identified by craft or trade, employer and work activity, and the number of hours worked during the workday;

   b. the types and numbers of equipment on site and the time each piece of equipment was used or stood idle during the workday;

   c. any materials or equipment received on site during the workday; and

   d. the identification and quantity of any unit price work, if any, installed during the day.

   Said daily field reports shall be submitted to Owner and Engineer not less than weekly.

C. For purposes of giving or receiving notices, directives, Change Orders, or any other information from Owner or Engineer to Contractor, Contractor shall designate a specific individual as Project Manager to receive such notices, directives, Change Orders, or other information. If the person so designated by Contractor is not available, Contractor shall (in writing addressed to Owner and Engineer) identify the individual who is acting as his authorized representative.

D. Contractor acknowledges that its obligation to complete the Work in accordance with the Contract Documents shall not be affected or amended as a result of any act by Engineer or any other Owner's consultant, or as a consequence of any field inspections or observations or approval of any Application for Payment, or in regard to any other duty performed by Engineer or other Owner's consultant for the benefit of Owner, unless Owner and Engineer shall expressly approve Contractor's action in advance in writing specifically identifying the action approved. Furthermore, Contractor shall not be relieved of any responsibility to complete the Work in conformity with the contract Documents as a consequence of any knowledge of non-conformity obtained by an Owner's representative, including Engineer, whether or not such representative acts or fails to act on such knowledge. Contractor acknowledges and agrees that any representative retained by Owner to act for Owner's benefit, including Engineer, shall have no duty or responsibility to Contractor, except where specifically stated herein, and no act or failure to act by such Owner's representative shall relieve Contractor of its obligations to perform all requirements under this Contract, except as specifically approved in writing otherwise.

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6.02 *Labor; Working Hours*

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

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

C. No Work shall be done between 6 p.m. and 7 a.m. without permission of Owner. However, emergency work may be accomplished without prior permission. No Night Work may be undertaken without permission of Owner.

D. Each occasion Contractor works in excess of 45 hours per week, or outside of the hours of 7:00 am and 6:00 pm, or on weekends or holidays, the Contractor shall reimburse Owner for any and all costs and expenses (including, but not limited to, Engineer's fees and expenses associated with additional Observation and Contract Administration) incurred by Owner as a result of such schedule. Contractor covenants and agrees that Owner may retain, deduct, and/or offset monies due to Owner pursuant to this Paragraph from monies due to Contractor under the Agreement. Contractor further covenants and agrees that Owner retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such monies shall not be subject to any notice or claim provisions of the Contract Documents.

6.03 *Services, Materials, and Equipment*

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

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

1. To the extent possible, all warranties shall run to and be enforceable by Owner. Contractor agrees to assign to Owner at the time of final completion of the Work, or as otherwise required by the Contract Documents, any and all Subcontractor and Supplier warranties relating to materials and labor used in the Work and Contractor further agrees to perform the Work in such a manner to preserve any and all Subcontractors' and Suppliers' warranties. Contractor shall provide Owner assistance, throughout the duration of such warranties, in enforcing the obligations of Subcontractors and Suppliers. If necessary as a matter of law, Contractor may retain the right to enforce directly any such Subcontractors' and Suppliers'

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warranties during the one-year period following the date of Substantial Completion established by Paragraph 14.04. Contractor includes in this warranty materials and equipment specified by Engineer by brand name. The warranty provided in this Paragraph 6.03 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law and shall be in addition to all other rights and remedies available to Owner. All warranty obligations are cumulative to and in addition to all remedies available to Owner pursuant to the Contract Documents and applicable law.

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

D. Materials and equipment stored off site shall be stored in a bonded, secure warehouse. Any such materials and equipment stored off site shall be available for review by Engineer's representative. Material and equipment shall be stored and maintained while in storage in a manner consistent with the manufacturer's recommendations. Such maintenance during storage, or prior to startup shall be documented and presented to the Engineer. Risk of loss of stored materials and equipment shall be on Contractor, whether titled in the name of the Contractor or whether title previously passed to the Owner as a result of payment for the stored materials and equipment.

E. The Contractor shall have responsibility for the care of all equipment and materials, including those furnished by the Owner, if any, and shall bear the risk of injury, loss, or damage to any part thereof by action of the elements or from any other cause, until final completion. Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the equipment or materials occasioned by any cause before completion and acceptance of the Work and shall bear the expense therefore. Contractor shall, at no additional cost to Owner, provide temporary measures and suitable structures as they might be necessary to protect the Work or any portion thereof from damage.

F. Suspension of the Work or the granting of an extension of time for any cause whatever shall not relieve Contractor of his responsibilities for the Work as specified herein including the continuing care and maintenance of stored materials and equipment as well as work accomplished to date.

G. If the equipment furnished by the Contractor differs in dimension, orientation, horsepower requirements, pipe connection sizes, or is otherwise non-conforming to the Contract Documents, the Contractor shall be responsible for the furnishing of all properly-sized connecting piping, motor starters, motor controls, and electrical wiring and connections, and all other work required to properly install the equipment in complete operating condition. Further, such non—conforming equipment or materials shall be submitted as a "Substitute" in accordance with Section 6.05 of the Modified General Conditions, including and subject to Paragraph 6.05. E. *Engineer's Cost Reimbursement.* No additional compensation by the Owner to the Contractor will be made with respect to such "Substitutes".

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6.04 *Progress Schedule*

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

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

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

3. Contractor shall submit to the Engineer an adjusted Progress Schedule whenever the progress of the Work is behind the current, approved Progress Schedule as defined in paragraph 2.07 A.1 of the Modified General Conditions, or upon the Engineer's request and whenever the Engineer determines in its discretion that the Work cannot be substantially complete in the time remaining. The adjusted Progress Schedule must be submitted within ten (10) days of Engineer's written request and prior to the Contractor's next application for payment.

4. Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of Owner's premises or any tenants or invitees thereof. Contractor shall, upon Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Paragraph 6.04.A.3 may be grounds for an extension of the Contract Times, if permitted under Article 12, and an equitable adjustment in the Contract Price, if permitted under Article 12 and (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (ii) such rescheduling or postponement is required for the convenience of the Owner.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the Contract Documents contain a description followed by words reading "or an approved equivalent" or "or approved equal" item or "substitution is permitted," other items of material or equipment or material or equipment of other suppliers may not be submitted to Engineer for review. If the description contains or is followed by words reading "or an approved equivalent" or "or approved equal" item or "substitution is permitted," other items of material or equipment or material or equipment of other suppliers may be substituted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that

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no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

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

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

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

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

4) it is equal or better in form, features, operation and maintenance cost and general configuration; and

5) it conforms to the requirements of the Contract Documents in all respects, except for make and manufacturer or supplier and minor details of specified equipment; and

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

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

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

2. *Substitute Items:*

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

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

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances. Applications for approval of substitute items of material or equipment will not be accepted by the Engineer if made as part of a Shop drawing submittal. The application for use of substitute material or equipment must be made prior to the submission of a shop drawing by a written communication clearly labeled "Request for Substitution". Substitute items proposed by Shop Drawings for materials or

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equipment will be rejected by the Engineer unless previously approved in a separate application.

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

1) shall certify that the proposed substitute item will:

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

b) be similar in substance to that specified, and

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

d) Contractor accepts the installation instructions, warranty and correction obligations contained in the product manufacturer's literature in connection with the proposed substitution as if such, information pertaining to the new product was originally specified in the Contract Documents; and

2) will state:

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

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty; and

3) will identify:

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

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

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

e. If a proposed substitution affects a correlated function, adjacent construction, or the work of other contractors, then the necessary changes and modifications to the affected work are considered an essential part of the proposed substitution, to be accomplished by Contractor as a part of the Work, if and when approved.

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

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

1. Proposed substitutions may be rejected without explanation and will not be considered unless one or more of the following conditions exists:

   a. Required for compliance with interpretation of code requirements or insurance regulations then existing.

   b. Unavailability of specified products, through no fault of Contractor.

   c. Subsequent information discloses inability of specified products to perform properly or to fit in designated space.

   d. Manufacturer/fabricator refuses to certify or guarantee performance or specified product as required.

   e. When in the judgment of Owner or Engineer, that a substitution would be substantially to Owner's best interests, in terms of cost, time, or other considerations.

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

E. *Engineer's Cost Reimbursement*: Contractor shall be liable to Owner for any and all costs and expenses (including, but not limited to, Engineer's fees and expenses) incurred by Owner as a result of evaluating a substitute proposed or submitted by the Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B, and reflecting changes in the Contract Documents, whether or not Engineer approves a substitute so proposed or submitted by Contractor. Contractor covenants and agrees that Owner may retain, deduct, and/or offset monies due to Owner pursuant to this Paragraph 6.17.D.4 from monies due to Contractor under the Agreement. Contractor further covenants and agrees that Owner retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such monies shall not be subject to any notice or claim provisions of the Contract Documents. Such payment is an obligation separate and apart from the Contractor's obligation to pay liquidated damages for delay, if any.

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F. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

B. As part of the Bid or the Proposal, the Owner may require the identity of the Contractor's proposed Subcontractors and Suppliers of Equipment or Materials in order to better evaluate the Proposal or Bid. In the instance where identification of Suppliers is required, supply only one name per equipment or material item.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Owner or Engineer may furnish to any such Subcontractor, Supplier, or other individual, entity, or organization, to the extent practicable, information about amounts paid to Contractor for Work performed. Nothing in the Contract Documents:

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

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

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

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

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade. Owner and Engineer assume no responsibility for the overlapping or omission of parts of the Work by various Subcontractors or Suppliers in their subcontracts with the Contractor, as this is solely the Contractor's responsibility.

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

H. As soon as possible, but in no case more than 30 days after receipt of the Notice of Award, and prior to the first application for payment, the Contractor shall provide the Engineer with a list of sub-contractors along with the division of their work.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Contract Documents, 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

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necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

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

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

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

6.10 *Taxes*

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

B. A certified sales tax statement shall be provided with each and every pay application, even if there were no sales tax during that period.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

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

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

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

4. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. If Contractor uses any portion of the new Work prior to the date of Substantial Completion of the entire Work, such items shall be restored to their new condition.

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

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

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

6.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction including, but not necessarily limited to, (i) deviations from the Drawings and Specifications made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of all mechanical, electrical equipment, piping, ductwork, access panels, valves, drains, stub outs, etc.; and (v) such other information as Owner or Engineer may reasonably request. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to Engineer and Owner for reference. Contractor's Record Documents shall be available for review by Engineer as part of the pay application process. A pay application will not be considered until the Record Documents are shown complete through that application period. Upon completion of the Work, these Record Documents, Samples, and Shop Drawings will be delivered to Engineer for Owner. Final payment and any retainage shall not be due and owing to Contractor until the Record Documents, marked by Contractor, as required above are delivered as required above.

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6.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

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

C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any.

D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

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

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

G. Nothing contained in the Contract Documents shall be construed to require or authorize Engineer or Owner to supervise or be in any way responsible for Contractor's compliance with any applicable safety regulations, codes, or procedures. Engineer and Owner shall have no duty to

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inform the Contractor of any safety violations, and should Engineer or Owner voluntarily point out safety violations, such actions shall not be construed to mean that Engineer or Owner has assumed any responsibility for Contractor's compliance with any applicable safety regulations, codes, or procedures. Contractor is solely responsible for Project safety.

H. Contractor shall promptly report in writing to Owner and Engineer all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses.

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07) and the submittal procedures described elsewhere in these Contract Documents. In the event of any conflict between the submittal procedures noted above and this Paragraph 6.17, the more stringent requirements shall control. Each submittal will be identified as Engineer may require. Contractor represents and warrants that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Contract Documents or applicable Laws or Regulations, be a licensed architect or engineer, as appropriate.

1. *Shop Drawings:*

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

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to

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show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

a. Submit number of Samples specified in the Specifications.

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

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

C. *Submittal Procedures:*

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

a. 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;

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

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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

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

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples. Engineer's review and approval will be only to determine if the items covered by the submittals will, after

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installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. Engineer's review is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance responsibility of Contractor as required by the Contract Documents. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Except as otherwise expressly provided herein, Engineer's approval of any submittal shall not in any way be deemed to release Contractor from full responsibility for complete and accurate performance of the Work in accordance with the Contract Documents; neither shall such approval release Contractor from any liability imposed upon Contractor by any provision of the Contract Documents. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

4. Contractor acknowledges that the processing of Shop Drawings and other submittals often requires extensive and time-consuming reviews by many individuals and that the time required for such reviews are directly related to the clarity, completeness, and accuracy of such submittals. Contractor covenants and agrees that Contractor's responsibilities include, but are not limited to, reviewing and coordinating each submittal with all other related or affected work and approving each submittal before submitting same to Engineer for approval. As a part of its Basic services to Owner, Engineer will review up to two submissions of all Contractor submittals required by the Contract Documents. However, if Engineer is required to:

a. review a third or subsequent submission of any submittal, or

b. review more than the number of copies of each submittal specified in the Contract Documents, or

c. review submittals in addition to those required by the Contract Documents, or

d. review submittals for proposed substitutions for previously approved items, then

Contractor shall be liable to Owner for any and all costs and expenses (including, but not limited to, Engineer's fees and expenses) incurred by Owner as a result thereof. Contractor covenants and agrees that Owner may retain, deduct, and/or offset Monies due to Owner pursuant to this Paragraph 6.17.D.4 from monies due to Contractor under the Agreement.

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Contractor further covenants and agrees that Owner retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such monies shall not be subject to any notice or claim provisions of the Contract Documents. Contractor acknowledges that this obligation is separate and apart from the obligation to pay liquidated damages for delay, if any.

E. *Resubmittal Procedures:*

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

F. *Professional Certification:*

1. When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project site. Engineer shall be entitled to rely upon the accuracy and completeness of such certification.

6.18 *Continuing the Work*

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing. Contractor's refusal or failure to continue with the Work in a timely manner as a result of any dispute that arises will constitute a material breach of the Agreement. Owner shall be entitled to specific performance of provisions requiring delivery of warranties and other required documentation.

6.19 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee. Unless otherwise stipulated elsewhere within the Contract Documents, the Contractor's warranty period will begin at Owner's acceptance and remain in effect for a period of 12 months. If an equipment or material failure occurs during the Contractor's warranty period, the Contractor's warranty period shall be extended by a period of time, equal to the down time of the equipment, or time until the material failure was corrected to the Owner's satisfaction.

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

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

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

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

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

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

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

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

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, Contractor and Subcontractor(s) (the "Indemnitors") shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, insurers, agents, consultants and subcontractors of each and any of them (the "Indemnitees") from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of, resulting from, or relating to the Contractor's or its employees', agents' or Subcontractors' (or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable) actions, activities or omissions, negligent or otherwise, or breach or failure to perform this Agreement on or near Owner's property or easement, or arising in any way out of, resulting from, or relating to any of the Work to be performed under this Contract, including, without limitation, claim for bodily injuries, sickness, disease, or death, or to injury to or destruction of tangible property, or other economic damages such as fines, penalties, or other losses, including the loss of use resulting therefrom, except such obligation shall not require indemnity in favor of any party whose negligence solely call such loss. To the extent that any portion of this provision is deemed contrary to law or to otherwise be unenforceable, the parties agree that such offending portion or portions shall be severed from this provision and the remaining provisions shall be enforceable to the maximum extent permitted at law. In the event of any conflict in the construction of this provision, the parties agree that the interpretation requiring the fullest obligation and indemnity shall prevail.

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

C. Contractor's indemnity obligations under this Paragraph 6.20 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or mediation or other dispute resolution costs), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by Contractor, a Subcontractor, or any person or entity for whom either is responsible, specifically including, but not limited to, any violations of the federal Occupational Safety and Health Act (as applied in the state in which the Project is located or any of the Work is performed) or the safety requirements under Article 6 of these Modified General Conditions; (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work; and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Contractor, Subcontractor, or any person or entity for whom either is responsible.

D. Contractor shall indemnify and hold harmless all of the Indemnities from and against any and all costs and expenses (including, but not limited to, reasonable fees and charges of attorneys) incurred by any of the Indemnities in enforcing any of Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

E. No contention by Contractor that a certain claim is beyond its indemnity obligations herein required shall relieve Contractor of the obligation to provide indemnity until final judgment by a court of competent jurisdiction holding that there exists no duty on the part of Contractor to undertake any indemnity obligation under the circumstances of any particular claim.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures or safety precautions and programs in connection with the Work.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents,

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Owner and Engineer will specify all performance and design criteria of which the Owner and Engineer have knowledge that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional, whom shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

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

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

E. (Intentionally deleted)

6.22 *Owner-Purchased Material and Equipment*

A. Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of Owner-purchased materials and equipment that are identified as part of the Contract Documents, if any. Contractor shall be responsible for any such pre-purchased items as if Contractor were the original purchaser. The Contract Price shall include, without limitation, all costs and expenses in connection with delivery, handling, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the contract documents shall also apply to any pre-purchased items, unless the Contract Documents specifically provide otherwise.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefore, or have other work performed by utility owners that does not unreasonably interfere with Contractor's Work.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or

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otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

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

7.02 *Coordination*

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

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

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

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

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

7.03 *Legal Relationships*

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

B. (Intentionally deleted)

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

7.04 *Claims between Contractors*

A. Should Contractor cause damage to the Work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold harmless Owner and its officers, directors, partners, employees, agents, consultants, and subcontractors from and against all liabilities, claims, causes of action, suits of any nature, fines, penalties, expenses, costs, losses, and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, or, indirectly, out of any controversy arising between Contractor any other contractor

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oversight, including, without limitation, any action, legal or equitable, brought by any other contractor against Owner to the extent said claim is based on or arises out of Contractor's performance of the Work. Should the presence of another contractor at the Site give rise to any other Claim, Contractor agrees its sole remedy with respect to such claim shall be against the of the contractor and Contractor agrees it shall not institute any action, legal or equitable, against owner or its officers, directors, partners, employees, agents, consultants, and subcontracts, or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter, which seeks to impose liability on or to recover damages from Owner or its officers, directors, partners, employees, agents, consultants, and subcontractors on account of any such damage or Claim.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *(Intentionally deleted)*

8.07 *Change Orders*

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

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8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *(Intentionally deleted)*

8.12 *(Intentionally deleted)*

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer. Except for those responsibilities of the Engineer to decide matters in dispute between the Owner and contractor, the Engineer's services are being performed solely for Owner's benefit, and no other party or entity shall have any claim against Engineer because of the performance or non-performance of such services.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work. No act or omission of the Engineer and performing observation of the Work shall r relieve the Contractor of its primary obligation to perform Work in strict accordance with the Contract Documents. No deviation from the

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Contract Documents shall be deemed to be conforming Work and unless documented in a written Change Order signed by all Parties, except as provided for minor deviations which may be addressed by Field Orders as set forth below.

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

9.03 *Construction Field Representative (CFR)*

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

B. Limitations of Authority: Contractor shall have no right to rely on the CFR in performing any of the following unless Contractor first receives a written instructions of the Engineer and otherwise the CFR shall not:

1. shall not undertake any of the responsibilities of the Contractor, the Subcontractors, or the Contractor's superintendent;

2. shall not authorize any deviation from the Contract Documents;

3. shall not stop Work;

4. shall not expedite the work for the Contractor;

5. shall not advise on or issue directions relative to any aspect of the means, methods, techniques, safety, sequences, or procedures of construction;

6. shall not authorize the Owner to occupy the Project in whole or in part;

7. shall not participate in the performance of specialized field or laboratory tests.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If

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Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

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

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

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

9.07 *Determinations for Unit Price Work*

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

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

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 21 days of the event giving rise to the question in accordance with the provisions of Paragraph 10.5 with a request for formal decision.

1. In connection with Contractor's responsibilities with respect to requests for information (RFIs), see Paragraph 3.03.A.2.a and 3.03.A.2.b.

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

C. Engineer's written decision with respect to any such Claim will be a condition precedent to any exercise of rights or remedies a party may have under law.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision unless either party proves, by the preponderance of the evidence, that Engineer's decision was made arbitrarily and capriciously, with no evidence whatsoever to support Engineer's decision.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them. As a condition of the Contractor accepting the right to perform the Work required under this Agreement, the Contractor on behalf of itself, its subcontractors, employees, sureties, and assigns does prospectively release any such claim as to Engineer and Contractor agrees its sole remedy shall be under the Contract to request additional time and compensation from the Owner in strict accordance with the provisions of this Agreement.

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

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work. Neither the professional activities of Engineer, nor the presence of Engineer or its employees or consultants at the Project site, shall relieve Contractor of its obligations, duties, and responsibilities under the Contract Documents.

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

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

9.10 *(Intentionally deleted)*

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). A change in the Contract Price or the Contract Times shall be accomplished only by a written Amendment, a written Change Order, or a written Work Change Directive. Contractor waives the right to additional compensation or time unless it first obtains such documents, properly executed by the appropriate parties, prior to performing any additional Work. No course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any claim for an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents unless such written documentation is obtained, as such written documentation is a condition precedent to the Contractor's recovery of additional money or time.

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

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

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

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

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

B. Agreement on any Change Order shall constitute a full and final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect (including without limitation delay, disruption, impact, loss of efficiency, and extended overhead) costs associated with such change, or the cumulative effect of changes through the date of the subject Change Order, and any and all adjustments to the Contract Price and the Contract Times. Implied in every Change Order, unless expressly reserved by Owner or Contractor, is a waiver of all known and unknown claims arising out of or otherwise associated with the Change Order, including a waiver of an applicable federal or state anti-claim waiver statute or common law principal of similar effect. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such change Order in Applications for Payments as if such Work were originally part of the contract Documents.

10.04 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety 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), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change. Owner shall be charged with responsibility for enforcing this provision.

B. Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and/or (iv) any other item required by the surety. Owner shall be notified by Contractor and shall be carbon copied, in writing, with all communications between the Contractor and the surety. Owner may, in Owner's sole discretion, inform the surety of the quality and progress of the Work and obtain consents as necessary to protect Owner rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

10.05 *Claims*

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

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B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 21 days) after the start of the event giving rise thereto; provided, however, that the claimant shall use its best efforts to furnish Engineer and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with Engineer and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

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

1. Deny the Claim in whole or in part;

2. Approve the Claim; or

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

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

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

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

1. The notice required by Paragraph 10.05.B is a condition precedent to the assertion of any claim by Contractor. The right of Owner to receive written notice of claims under Paragraph 10.05.B may not be waived or modified by Owner or Engineer except in writing signed by Owner, and Contractor waives the right to rely on any purported waiver of this written notice by verbal instructions or other conduct of Owner or Engineer.

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2. Contractor's written notice of a Claim shall be made by written request seeking a Change Order and specifying the grounds therefore and the relief sought. Contractor shall attach to each Application for Payment a schedule of outstanding and unresolved Contractor Claims. By attaching and submitting such schedule with its Application for Payment, Contractor shall be deemed to have certified that the only outstanding and unresolved Claims of which it has notice at the time of the Application for Payment are those identified in the schedule attached to its Application for Payment. A schedule of outstanding and unresolved requests for change orders and claims shall be required of each Subcontractor submitting an application for payment to Contractor that is to be included in Contractor's Application for Payment to Owner. Owner and Engineer shall each rely upon Contractor's schedule of outstanding and unresolved Claims as inclusive of any and all Claims Contractor is then on notice of, and Contractor's acceptance of payment in response to an Application for Payment shall constitute a waiver and release of any and all Claims not identified in Contractor's schedule of outstanding and unresolved Claims not identified in Contractor's schedule accompanying such Application for Payment. Contractor shall require that each Subcontractor waive and release any and all requests for change orders and claims the Subcontractor is on notice of at the time it submits its application for payment to Contractor and which is not identified in its application for payment by acceptance of payment from Contractor.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

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

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 on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits

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funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

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

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work, but only to the extent authorized and approved by Owner in writing before such charges and expenses are incurred.

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for

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whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

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

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

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

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

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

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

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

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

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11.02 *Allowances*

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

B. *Cash Allowances:*

1. Contractor agrees that:

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

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

C. *Contingency Allowance:*

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

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

11.03 *Unit Price Work*

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

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

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

D. Unless otherwise stipulated in the Contract Documents, for Unit Price Work, Contractor shall be paid an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the actual quantity of each item as determined by the Engineer pursuant to paragraph 9.07. Variations between the actual quantity and the estimated quantity for items of Unit Price Work, including increases and decreases in quantities, as a result of any Change Orders, shall not serve as a basis for an adjustment in the unit price of the item.

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ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

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

1. If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand of Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if Contractor fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Price and may, in Owner's sole discretion, elect either to (1) deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, including payment of retainage, or (2) issue a written notice to Contractor reducing the Contract Price by an amount equal to that which Owner is entitled.

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

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

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

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

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

1. a mutually acceptable fixed fee; or

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

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

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

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

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

e. where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract cost attributable to the Work, plus a Contractor's markup of ten percent (10%) on the amount of deleted cost, shall be deducted from the Contract Price. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount equal to the greater of (i) one hundred percent (100%) of the Contract cost attributable to the deleted Work, minus reasonable order cancellation, material restocking, and similar fees, plus a Contractor's fee of five percent (5%) on the amount of deleted cost, or (ii) eighty percent (80%) of the Contract Price shall be deducted from the Contract Price. The credit to the Owner as a result of deletions in the work which results in a for reduced premiums on labor and material bonds, payment and performance bonds shall in all cases be one hundred percent (100%) of the reduction in premium. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

f. To the extent the Owner performs work as a result of any omission or breach of the Contractor, the Owner shall be entitled to an overhead mark-up consistent with the provisions set forth in this section.

12.02 *Change of Contract Times*

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

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

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times may be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph 12.02.A and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Times under the Contract Documents. Delays beyond the control of Contractor shall include, but not be

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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. Contractor acknowledges and agrees that adjustments in the Contract Times will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to Owner of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one day. In no event will claims for delay be allowed where alleged delays do not impact the critical path of the Contractor as demonstrated on the relevant schedule provided by the Contractor for the period of time in which the delay allegedly occurred.

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

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

1. If a claim is made as provided in Paragraph 12.03.A and this Paragraph 12.03.C for delay due to abnormal weather conditions, the time extension to be awarded to Contractor, if any, shall be calculated using the following standard baseline ("standard Baseline") of monthly anticipated adverse weather delay days for the project location, and extensions shall only be granted for days lost in any given month in excess of the number of days shown in the Standard Baseline for the same given month. The Standard baseline shall be regarded as the established normal and anticipatable number of calendar days for each month during which construction activity shall be expected to be prevented and suspended by cause of adverse weather. Suspension of construction activity for the number of days each month as listed in the Standard Baseline shall be included in the Contractor' scheduling of weather-dependent activities and shall not be eligible for extension of Contract Time.

Monthly Contract Allowance (MCA) in days												
Month	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Days	8	6	6	7	5	8	7	5	6	3	5	7

2. Adverse Weather is defined as the occurrence of one or more of the following conditions which prevents exterior construction activity or access to the site within twenty-four (24) hours:

   a. Precipitation (rain, snow, and/or ice) in excess of two-tenths inch (0.20") liquid measure.

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b. Standing Snow in excess of one inch (1.00")

3. Adverse Weather may include, as deemed by Engineer, "dry-out" or "mud" days:

   a. For rain days above the standard baseline,

   b. Only if there is a hindrance to site access or site work such as earthwork; and,

   c. At a rate no greater than one (1) make-up day for each day or consecutive days of rain beyond the standard baseline that total one inch (1.00") or more, liquid measure, unless specifically recommended otherwise by Engineer.

4. Actual adverse weather delay days must prevent work on critical exterior activities for fifty percent (50%) or more of Contractor's scheduled workday. The number of actual adverse weather delay days shall be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather days exceeds the number of days anticipated by the Standard Baseline in Paragraph 12.03.C.1, and providing that all other contractually-required conditions are met, qualifying delays will be converted to calendar days and additional calendar days will be added to the Contract times for each qualifying delay in excess of the Standard Baseline.

5. Upon commencement of on-site activities and continuing throughout construction, Contractor shall be responsible for accurately measuring and recording the daily the occurrence of adverse weather on-site.

6. Within 30 days of the last day of any month (hereinafter referred to as the "Reporting Month"), Contractor shall submit a written Adverse Weather Report, including copies of Contractor's daily weather reports and applicable climatological data from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location, unless Engineer allows an additional period of time for submission of said report. Notwithstanding any other provisions, failure to submit the required written report within the time specified above shall be deemed to be and shall constitute a waiver by Contractor of any and all claims for delay due to adverse weather conditions occurring during said Reporting Month.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. Time extensions due to weather delay shall not entitle Contractor to any claim, compensation, or recovery for extended overhead.

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

F. Contractor shall be liable to Owner and shall pay Owner for a percentage of all costs incurred by Owner and Engineer in investigating, analyzing, negotiating, arbitrating, and litigating any claim

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against Owner or Engineer for costs or damages due to any alleged delaying or Contractor in the performance of the Work, which percentage shall be equal to the percentage of Contractor's total delay claim which is determined to be false or to have no basis in law or in fact.

G. To the fullest extent permitted by law, and notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under Paragraph 12.02, shall be the sole remedy of Contractor for any (1) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this Paragraph 12.03.G as "Delays" whether or not such Delays are foreseeable, unless a Delay is caused by acts of Owner constituting active interference with Contractor's performance of the Work, and only to the extent such acts continue after Contractor furnishes Owner with notice of such interference. In no event shall Contractor be entitled to any compensation with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration. Owner's exercise of any of its rights under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling, or correction of the Work), regardless of the extent or frequency of Owner's exercise of such rights or remedies, shall not be construed as active interference with Contractor's performance of the Work.

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

G. Contractor shall be responsible for inspection of portions of the work already performed to determine that such portions are in proper condition to receive subsequent Work. Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms strictly to the Contract requirements. Contractor shall keep full and detailed inspection records and Owner and Owner's authorized representatives shall be afforded access to, and shall be permitted to audit and copy, Contractor's inspection records relating to the Project., and Contractor shall preserve these records for a period of five years after final payment or for such longer period of time as may be required by law.

13.04 *Uncovering Work*

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

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

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory

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replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05.

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

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

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

C. At any time during the progress of the Work and up to the date of final acceptance, the Engineer shall have the right to reject any Work that does not conform to the requirements of the Contract Documents, even though such Work has been previously inspected and paid for. Any omissions or failure on the part of the Engineer to disapprove or reject any Work or materials at the time of inspection shall not be construed as an acceptance of any defective Work or materials.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use

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by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

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

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

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

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

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

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

13.08 *Acceptance of Defective Work*

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

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If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

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

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

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefore as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work and the Owner's expenses and compensation for the Engineer's additional services made necessary by Contractor's default, neglect, or failure. Contractor covenants and agrees that Owner may retain, deduct, or offset Monies due to Owner pursuant to this Paragraph 13.09.C from Monies due to Contractor under the Contract Documents. Contractor further covenants and agrees that Owner retains the right to make such reduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such Monies shall not be subject to any notice or Claim provisions of the Contract Documents.

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

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ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

B. Detail Breakdown of Contract Amount: except in cases where unit prices form the basis for payment under the Contract, the Contractor shall, in accordance with Paragraph 2.07.3, submit a complete itemization of the Contract Amount showing the value assigned to each part of the work, including an allowance for profit and overhead. Upon approval of the itemization of the Contract Amount by the Engineer, it shall be used as the basis for all Applications for Payment.

14.02 *Progress Payments*

A. *Applications for Payments:*

1. At the date established for each progress payment (but not more often than once a month), Contractor shall submit to the Engineer an Application for Payment for Work done and materials delivered and stored on the Site. Each Application for Payment shall be computed on the basis of Work completed on all items listed in the Detail Breakdown of Contract Amount (or on unit prices), less retainage. The Contractor shall furnish the Engineer and Owner all reasonable information required for obtaining the necessary data relative to the progress and execution of the Work. 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 another location agreed to in writing, the Application for Payment shall be accompanied by evidence that the materials and equipment are covered by appropriate property insurance, all of which must be satisfactory to the Owner.

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

3. The amount of retainage with respect to progress payments shall be governed by N.C. General Statute Section 143-134.1.

4. Payment for Stored Materials and Equipment: The following conditions apply to payment for stored materials and equipment allowed by Article 14.02.A.1.:

   a. Except in the instance of a material or equipment item that involves little or no installation cost, payment for stored materials or equipment shall not exceed fifty percent (50%) of the value of the item on the Schedule of Values (for lump sum contracts) or fifty percent (50%) of the value the pay item (for unit price contracts) that covers the materials or equipment being claimed. For material or equipment items that involve little or no installation cost, the percentage of the value of the item that will be paid for stored materials will be as agreed upon by the Engineer, Owner, and Contractor.

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b. Contractor shall submit paid invoices or releases of Lien from the e materials and equipment suppliers with each Application for Payment containing a request for payment for that particular item of stored materials or equipment.

c. Payment for stored materials and equipment is generally intended to apply only to major materials and equipment items, as determined by the Engineer.

5. Each Application for Payment shall be accompanied by the following, all in form and substance in accordance with the Contract Documents and satisfactory to Owner:

   a. In accordance with Paragraph 10.05.F.2, a current schedule of outstanding and unresolved Contractor Claims;

   b. A current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and Suppliers with whom contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for an Subcontractor and Supplier in the requested progress payment, and the amount to be paid to Contractor from such progress payment, together with similar sworn statements from all Subcontractors and Suppliers;

   c. Duly executed waivers of mechanic's and material man's liens from all Subcontractors and, when appropriate, from Suppliers and lower tier subcontractors establishing payment or satisfaction of payment of all amounts requested by Contractor on behalf of such entities or persons in any previous Application for Payment; and

   d. All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by Owner or Engineer.

   e. Contractor's social security number (if an independent contractor) or federal employer identification number (if a corporation, partnership, or proprietorship), as appropriate.

   f. Contractor shall annotate the record copy of the Drawings to show all changes made each period as a condition for Engineer's recommendation of payment.

   g. Contractor shall provide a certified sales tax statement with its pay application.

6. Contractor shall also comply with the following specific requirements:

   a. Title to all materials and equipment purchased by the Contractor for the Work shall pass to the Owner at the time Owner makes payment for such materials and equipment. The Contractor shall comply with any procedures established by the Owner to secure, evidence, or establish the Owner's title to such materials and equipment.

   b. With each application for payment, Contractor shall submit to Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. Contractor shall procure insurance satisfactory to Owner for materials stored off the Project site in an amount not less than the total value thereof.

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c. The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

d. Representatives of Owner and Owner's lender, if any, shall have the right to make inspections of the storage areas at any time.

e. Such materials shall be: (1) protected from diversion, destruction, theft, and damage to the satisfaction of Owner and Owner's lender, if any; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

B. *Review of Applications:*

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

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

a. the Work has progressed to the point indicated;

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

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

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

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

b. That Engineer is legally liable or responsible for any defects in the Work performed by the Contractor; or

c. 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.

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

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

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

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

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

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

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

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

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

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

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

e. there are other items warranting a set-off against the amount requested by Contractor, including, but not by way of limitation, errors or overpayments on prior payments to Contractor.

C. *Payment Becomes Due:*

1. Within thirty (30) days after receipt of a Contractor's Request for Payment with Engineer's recommendation, the Owner shall:

a. Pay the Application for Payment as recommended by the Engineer.

b. Pay such other amount as Owner decides is due the Contractor, informing the Contractor and Engineer in writing stating the reasons for paying the amended amount.

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c. Withhold payment informing the Contractor and the Engineer of his reasons for withholding payment.

D. *Reduction in Payment:*

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

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

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

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

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

e. Failure of the Contractor to make payments due to Subcontractors, material suppliers, or employees.

f. Damage to another Contractor or any allegations of damage caused to another Contractor

g. The Owner reasonably believes that the Contractor cannot complete the Work within the Contract Price.

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

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

E. Other Payment to Contractor Provisions

1. Credit for Uncorrected Work: Should the Owner direct the Contractor to leave uncorrected Work that has been damaged or that was not performed in accordance with the Contract Documents, an equitable deduction from the Contract Amount shall be made to compensate the Owner for the Uncorrected Work.

2. Payment for Removal of Rejected Work and Materials: The removal of Work and materials rejected in accordance with paragraph 13.06.A of the Modified General Conditions and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and he shall pay the cost of replacing the Work of other contractors destroyed or damaged by

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the removal of the rejected Work or materials and the subsequent replacement of acceptable Work.

a. Removal by Owner: Removal of rejected Work or materials and storage of materials by the Owner, in accordance with paragraph 13.09.A of the Modified General Conditions, shall be paid by the Contractor within thirty (30) days after written notice to pay is given by the Owner. If the Contractor does not pay the expenses of such removal and after ten (10) days written notice being given by the Owner of his intent to sell the materials, the Owner may sell the materials at auction or at private sale and will pay the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the Contractor.

14.03 *Contractor's Warranty of Title*

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

14.04 *Substantial Completion*

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

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall review 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 therefore.

1. If after the performance of such Substantial Completion Review, Engineer determines that the Work is not substantially complete, Contractor shall be liable to Owner for any and all costs and expenses (including, but not limited to, Engineers fees and expenses) incurred by the Owner as a result of each such failed review thereafter.. Contractor covenants and agrees that Owner may retain, deduct, and/or offset monies due to the Owner pursuant to this Paragraph 14.04.B.1 from monies due to Contractor under the Agreement. Contractor further covenants and agrees that Owner retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such monies shall not be subject to any notice or claim provisions of the Contract Documents.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a proposed certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a proposed list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the proposed certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the proposed certificate to Owner, notify Contractor in writing, stating the reasons therefore. If, after consideration of Owner's objections, Engineer considers the Work substantially complete,

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Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised list of items to be completed or corrected) reflecting such changes from the proposed certificate as Engineer believes justified after consideration of any objections from Owner.

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

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

14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

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

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

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

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14.06 *Final Inspection*

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

1. If after the performance of such final completion inspection, Engineer determines that punch list items, site or project cleanup activities remain or the Work is otherwise not fully complete in accordance with all of the requirements of the Contract Documents, Contractor shall be liable to Owner for any and all costs and expenses (including, but not limited to, Engineer's fees and expenses) incurred by the Owner as a result thereof. Contractor covenants and agrees that Owner may retain, deduct, and/or offset Monies due to the Owner pursuant to this Paragraph 14.06.A.1 from Monies due to Contractor under the Agreement. Contractor further covenants and agrees that Owner retains the right to make such deduction or offset at any time prior to and including final payment and that the imposition and the deduction and/or offset of such Monies shall not be subject to any notice or claim provisions of the Contract Documents.

14.07 *Final Payment*

A. *Application for Payment:*

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

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

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;

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

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

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

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment

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bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, 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.

4. Contractor must submit to the Engineer within thirty (30) days of the Final Completion date, all Maintenance and Operating Manuals, schedules, guarantees, equipment test reports, and record drawings noting all changes during construction. Failure to submit all items listed will give cause to the Engineer to deny final payment recommendation to the Owner.

B. *Engineer's Review of Application and Acceptance:*

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

C. *Payment Becomes Due:*

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

14.08 *Final Completion Delayed*

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

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14.09 *Waiver of Claims*

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

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

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

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

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

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

3. Contractor's repeated disregard of the authority of Engineer; or

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

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

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

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

3. complete the Work as Owner may deem expedient, including hiring contractors on any contractual basis including payment under a cost plus contract

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

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 10 days of receipt of said notice.

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

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

15.03 *Owner May Terminate For Convenience*

A. Owner may, at any time, terminate the contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this Paragraph 15.03 shall be by a notice of termination prepared by the Owner and delivered to Contractor indicating intent to terminate for convenience and the effective date thereof.

1. (Intentionally deleted)

2. (Intentionally deleted)

3. (Intentionally deleted)

4. (Intentionally deleted)

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

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C. Upon receipt of a notice of termination for convenience, Contractor shall immediately, in accordance with instruction from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph 15.03.B:

1. Cease operations as specified in the notice;

2. Place no further order and enter into no further subcontracts for materials, labor, services, or facilities except as necessary to complete continued portions of the Contract;

3. Terminate all subcontracts and orders to the extent they relate to the Work terminated;

4. Proceed to complete the performance of Work not terminated; and

5. Take actions that may be necessary, or that Owner may direct, for the protection and preservation of the Work.

D. Upon such termination, Contractor shall recover as its sole remedy payment of the percentage of the Contract Price equal to the percentage of the Work performed satisfactorily and not previously paid for as determined by the Engineer. Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

E. Owner shall be credited for:

1. Payments previously made to Contractor for the terminated portion of the Work;

2. Claims which Owner has against Contractor under the contract; and

3. The value of the materials, supplies, equipment, or other items that are to be disposed of by contractor that are part of the Contract Price.

15.04 *Contractor May Stop Work or Terminate*

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

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

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ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

If this project is a State Construction Project and/or for a public Owner, Dispute Resolution shall be governed by RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN NORTH CAROLINA PUBLIC CONSTRUCTION PROJECTS adopted February 26, 2002.

If the project is a private project, Dispute Resolution shall be as follows:

A. Either Owner or Contractor, when mutually agreed to by both parties, may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the North Carolina Rules of Mediated Settlement Conferences then in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the Engineer and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

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

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

1. Files for Arbitration in accordance with the N.C. Arbitration Act, which arbitration shall be governed by the current Construction Arbitration rules of the American Arbitration Association; or

2. Agrees with the other party to submit the Claim to another dispute resolution process;

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

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

17.02 *Computation of Times*

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

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17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

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