

**SECTION 00700
GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT
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GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1 DEFINITIONS

Whenever used in these GENERAL CONDITIONS or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.01. *Addenda*-Written or graphic instruments issued by ENGINEER prior to the receipt of bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

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

1.03. *Application for Payment*-A request from CONTRACTOR for a progress or final payment on the form accepted by ENGINEER and which is accompanied by such supporting documentation as is required by the Contract Documents.

1.04. *Asbestos*-Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.05. *BID*-The offer or proposal of the BIDDER submitted through CivcastUSA.com electronic BID form on the prescribed form setting forth the required information, including prices for the Work to be performed.

1.06. *Bidder* - one who submits a bid directly to OWNER as distinct from a sub-bidder, who submits a bid to a BIDDER.

1.07. *Bidding Documents*-The advertisement or Invitation to Bid, Instructions to Bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids) through CivcastUSA.com.

1.08. *Bidding Requirements*-The information requested by and conditions for bidding set forth in the advertisement or Invitation to Bid, Instructions to Bidders, and the electronic Bid form.

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

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

1.11. *Contract Documents*-Contract Documents are those documents listed at Article 8 of the Agreement. Shop Drawing submittals approved pursuant to Paragraphs 6.17.4 and 6.17.5 and the reports referred to in Paragraphs 4.2.1 and 4.2.2 are not Contract Documents.

1.12. *Contract Price*-The amount agreed to by OWNER and CONTRACTOR for completion of the Work, in accordance with the Contract Documents, as stated in Article 4 of the Agreement (subject to the provisions of Paragraph 11.3.1 in the case of Unit Price Work), and as adjusted by any Change Orders.

1.13. *Contract Times*-The numbers of days following the date for starting performance set out in a Notice to Proceed, if any, or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with Paragraph 15.9.1.

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

1.15. *Days*-When days are used in the documents, it is implied to be calendar days, unless otherwise noted.

1.16. *Defective*-An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to, or has not been performed in accordance with, the Contract Documents to the extent that such Work is not capable of performing its intended function in an efficient manner, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to the making of final payment.

1.17. *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.

1.18. *ENGINEER*-The person, firm, or corporation named as such in the Agreement who has performed the designed work for the Project.

1.19. *ENGINEER's Subconsultant*-A person, firm, or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.20. *Field Order*-A written order issued by PROJECT MANAGER which orders minor changes in the Work in accordance with Paragraph 9.4 but which does not involve a change in the Contract Price or the Contract Times.

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

1.22. *Hazardous Waste*-The term Hazardous Waste shall mean (i) any hazardous materials, hazardous wastes, hazardous substances, and toxic substances as those or similar terms are defined under any Environmental Laws; (ii) any Asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable;(iii) any PCBs or PCB-containing materials, or fluids; (iv) radon; (v)

any other hazardous, radioactive, toxic, or noxious substance, material, pollutant, or solid, liquid, or gaseous waste; (vi) any pollutant or contaminant (including petroleum, petroleum hydrocarbon, petroleum products, crude oil, and any fractions thereof; any oil or gas exploration or production waste, and natural gas, synthetic gas, and any mixtures thereof) that in its condition, concentration, or area of release could have a significant effect on human health, the environment, or natural resources; (vii) any substance that, whether by its nature or its use, is subject to regulation under any Environmental Law or, with respect to which any Environmental Law or Governmental Authority, requires environmental investigation, monitoring, or remediation; (viii) any Radioactive Material; and (ix) any underground storage tanks, as defined in 42 U.S.C. Section 699(1)(A)(I) (including those defined by Section 9001[1] of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled, or partially filled with any substance.

1.23. *Issuing Office* – the OWNER’s office and where the bidding procedures are to be administered.

1.24. *Laws and Regulations; Laws or Regulations*-Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Work, the Project, and/or the CONTRACTOR’s performance of the Work.

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

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

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

1.28. *Notice to Proceed*-A written notice given by OWNER to CONTRACTOR (with a copy to PROJECT MANAGER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR’s obligation under the Contract Documents.

1.29. *OWNER*-The North Harris County Regional Water Authority (Authority) which is a party to the Agreement and for whom the Work is to be provided.

1.30. *Partial Utilization*-Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work in accordance with Paragraph 15.6.

1.31. *PCBs*-Polychlorinated biphenyls.

1.32. *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 Wastes and crude oils.

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

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

1.35. *PROJECT MANAGER*-The person, firm, or corporation named as such in the Agreement.

1.36. *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.

1.37. *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.

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

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

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

1.41. *Substantial Completion*-The Work (or a specified part thereof) has progressed to the point where, in the opinion of PROJECT MANAGER and OWNER as evidenced by PROJECT MANAGER's and OWNER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.42. *Successful Bidder*-the BIDDER submitting the lowest responsive, responsible and best BID to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

1.43. *Supplementary Conditions*-The part of the Contract Documents which amends or supplements these GENERAL CONDITIONS.

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

1.45. *Underground Facilities*-All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities which have been installed underground.

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

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

1.48. *Work Change Directive*-A written directive to CONTRACTOR, issued on or after the Effective date of the Agreement and signed by OWNER and prepared by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed, as provided in Paragraph 4.2 or 4.3, or to emergencies under Paragraph 6.15. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in Paragraph 10.1.2.

ARTICLE 2 PRELIMINARY MATTERS

2.1. Delivery of Bonds

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

2.2. Copies of Documents

OWNER shall furnish to CONTRACTOR, with the Notice to Proceed, up to five (5) copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3. Commencement of Contract Times, Notice to Proceed

If the Contract specifies calendar dates for Substantial Completion and/or Final Completion, the Contract Times shall expire on those dates. If the Contract specifies a number of days following a

date for starting performance set out in a Notice to Proceed, the Contract Times shall expire accordingly. CONTRACTOR shall not begin performance of Work on the Site without receiving permission to do so from the OWNER. However, if OWNER has not given permission to begin Work on the site by 30 days after the Effective Date of the Agreement, CONTRACTOR may begin Work at the Site on that date.

2.4. Before Starting Construction

2.4.1. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and check and verify all applicable field measurements. CONTRACTOR shall promptly report in writing to PROJECT MANAGER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from PROJECT MANAGER before proceeding with any Work affected thereby; **NEITHER OWNER, PROJECT MANAGER, NOR ENGINEER SHALL BE LIABLE TO CONTRACTOR, AND CONTRACTOR SHALL NOT BE ENTITLED TO AN INCREASE IN THE CONTRACT PRICE OR THE CONTRACT TIMES, FOR ANY COSTS, EXPENSES, DAMAGES, OR DELAYS ASSOCIATED WITH ANY CONFLICT, ERROR, AMBIGUITY, OR DISCREPANCY IN THE CONTRACT DOCUMENTS WHICH CONTRACTOR KNEW OR SHOULD HAVE KNOWN THEREOF BUT FAILED TO REPORT PURSUANT TO THIS PARAGRAPH 2.4.1, EVEN IF SUCH COSTS, EXPENSES, DAMAGES, OR DELAYS ARE DUE TO THE NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, OR ENGINEER.**

2.4.2. Within ten (10) days after the Effective Date of the Agreement and before any work at the site is started (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to PROJECT MANAGER for review:

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

2.4.2.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittals.

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

2.4.3. Before any Work at the site is started, CONTRACTOR shall deliver to the OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance

(and other evidence of insurance which OWNER or any additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with this Contract.

2.5. Pre-construction Conference

At the sole option of OWNER before any Work at the site is started, a conference attended by CONTRACTOR, PROJECT MANAGER, ENGINEER, and others, as appropriate, may be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.4.2.2, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining records and other items that are required by OWNER, PROJECT MANAGER, or CONTRACTOR.

2.6. Initially Acceptable Schedules

At the sole option of OWNER ten (10) days before submission of the first Application for Payment, a conference attended by CONTRACTOR, PROJECT MANAGER, and others as appropriate may be held to review for acceptability to OWNER as provided below the schedules submitted in accordance with Paragraph 2.4.2. CONTRACTOR shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to OWNER as provided below. The progress schedule shall provide for an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Any acceptance of the progress schedule by OWNER will neither impose on OWNER responsibility for the sequencing, scheduling, or progress of the Work, nor interfere with, nor relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions shall provide for a workable arrangement for reviewing and processing the required submittals, but in no event shall OWNER, ENGINEER and PROJECT MANAGER have less than 3 weeks for review of such submittals. CONTRACTOR's schedule of values shall be acceptable to OWNER as to form and substance.

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1. Intent

3.1.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. In the event of any discrepancies between the parties of the Contract Documents, or likewise, in the event of any doubt as to the meaning and intent of any portion of the Contract Documents, ENGINEER shall define that which is intended to apply to the Work, if instructed to do so by the OWNER.

3.1.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials, or equipment that may reasonably be inferred from the Contract Documents, or from prevailing custom or trade usage as being required to produce the intended result, will be furnished and performed by

the CONTRACTOR whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by PROJECT MANAGER as provided in Paragraph 9.3.

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

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

3.2.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in Paragraph 6.2.3, CONTRACTOR shall report it to PROJECT MANAGER in writing at once, and, CONTRACTOR shall not proceed with the work affected thereby (except in an emergency as authorized by Paragraph 6.15) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.3.1 or 3.3.2; **NEITHER OWNER, PROJECT MANAGER, NOR ENGINEER SHALL BE LIABLE TO CONTRACTOR, AND CONTRACTOR SHALL NOT BE ENTITLED TO AN INCREASE IN THE CONTRACT PRICE OR THE CONTRACT TIME, FOR ANY COSTS, EXPENSES, DAMAGES, OR DELAYS ASSOCIATED WITH ANY SUCH CONFLICT, ERROR, AMBIGUITY, OR DISCREPANCY WHICH CONTRACTOR KNEW OR SHOULD HAVE KNOWN THEREOF BUT FAILED TO REPORT PURSUANT TO THIS PARAGRAPH 3.2.2, EVEN IF SUCH COSTS, EXPENSES, DAMAGES, OR DELAYS ARE DUE TO THE NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, OR ENGINEER.**

3.2.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in Paragraph 3.3, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

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

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

No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR, PROJECT MANAGER or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER, or any of PROJECT MANAGER's or ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of Paragraph 9.8 or any other provision of the Contract Documents.

3.2.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to OWNER, PROJECT MANAGER or ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.8 or any other provision of the Contract Documents.

3.3. Amending and Supplementing Contract Documents

3.3.1. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.3.1.1. a written amendment to the Contract,
- 3.3.1.2. a Change Order (pursuant to Paragraph 10.1.4), or
- 3.3.1.3. a Work Change Directive (pursuant to Paragraph 10.1.1).

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

- 3.3.2.1. a Field Order (pursuant to Paragraph 9.4),
- 3.3.2.2. PROJECT MANAGER's written interpretation or clarification (pursuant to Paragraph 9.3).

3.4. Reuse of Documents

CONTRACTOR and any Subcontractor, or Supplier, or other person, or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall

not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's subconsultant and, (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. CONTRACTOR and any Subcontractor, or Supplier, or other person, or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall use the PLANS, Specifications, or other documents only in connection with performance of the Work; shall not provide the Drawings, Specifications, or other documents (or any copies thereof) to any third party except as required for performance of the Work; and shall return all copies of the Drawings, Specifications, or other documents to OWNER upon completion of the Work or termination of the Agreement, whichever is earlier.

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

4.1. Availability of Lands

OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

CONTRACTOR shall thoroughly review any easement document, deed or any side agreement with the grantor of the easement if furnished by OWNER to ascertain any special terms or conditions to be followed in connection with any part of the Work.

4.2. Subsurface and Physical Conditions

4.2.1. *Reports:* Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2. *Limited Reliance by CONTRACTOR Authorized; Technical Data:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports, but such reports are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. CONTRACTOR may not rely upon or make any claim against OWNER, PROJECT MANAGER, ENGINEER, or any of PROJECT MANAGER's or ENGINEER's Subconsultants with respect to:

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

- 4.2.2.2. other data, interpretations, opinions, and information contained in such reports, or
 - 4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any “technical data” or any such data, interpretations, opinions, or information.
- 4.2.3. *Notice of Differing Subsurface or Physical Conditions:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
- 4.2.3.1. is of such a nature as to establish that any “technical data” on which CONTRACTOR is entitled to rely as provided in Paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or
 - 4.2.3.2. is of such a nature as to require a change in the Contract Documents, or
 - 4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or
 - 4.2.3.4. is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware (within twenty-four [24] hours) thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by Paragraph 6.15), notify OWNER and PROJECT MANAGER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. *PROJECT MANAGER’s Review:* If instructed to do so by OWNER, PROJECT MANAGER and/or ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER’s obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of PROJECT MANAGER’s finding and conclusions.

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

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

- 4.2.6.1 any adjustment is subject to all of the requirements of Articles 11 and 12.
- 4.2.6.2. such condition must meet any one or more of the categories described in Paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

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

4.2.6.4. 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 9.7; and

4.2.6.5. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times, and neither OWNER, PROJECT MANAGER, PROJECT MANAGER'S Subconsultants, ENGINEER, nor ENGINEER'S Subconsultants shall be liable to CONTRACTOR for any costs, losses, expenses, or damages if:

4.2.6.5.1. CONTRACTOR knew or should have known of the existence of such conditions at the time CONTRACTOR submitted a bid or became bound under a contract to OWNER; or

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

4.2.6.5.3. CONTRACTOR failed to give the written notice within the time and as required by Paragraph 4.2.3.

EVEN IF SUCH COSTS, EXPENSES, OR DAMAGES ARE DUE TO THE NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, OR ENGINEER'S SUBCONSULTANTS.

If OWNER and CONTRACTOR are unable to agree on entitlement to, or as to the amount or length of, any such adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12.

4.3. Physical Conditions—Underground Facilities

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

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

4.3.1.2. The cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in Paragraph 6.12 and repairing any damage thereto resulting from the Work.

OWNER, PROJECT MANAGER, and ENGINEER expressly disclaim any and all warranties that the information, data, interpretations, and opinions shown, indicated, or contained in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is accurate, correct, complete, or fit for its intended purpose.

4.3.2. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents or is in a location materially different from that shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.15), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and PROJECT MANAGER. If instructed to do so by the OWNER, PROJECT MANAGER and/or 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 different location of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in Paragraph 6.12. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that the Contract Price or Contract Times are directly and materially affected by the existence or different location of any Underground Facility that was not shown or indicated, or was inaccurately shown or indicated in the Contract Documents, and that CONTRACTOR did not know of, and could not reasonably have been expected to be aware of, or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. **HOWEVER, OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, AND ENGINEER'S CONSULTANTS SHALL NOT BE LIABLE TO CONTRACTOR, OR CONTRACTOR SHALL NOT BE ENTITLED TO AN INCREASE IN THE CONTRACT PRICE OF THE CONTRACT TIMES FOR ANY COSTS, EXPENSES, DAMAGES, OR DELAYS ASSOCIATED WITH ANY SUCH UNDERGROUND FACILITY WHICH CONTRACTOR KNEW OR SHOULD HAVE KNOWN THEREOF, NOR SHALL OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, OR ENGINEER'S CONSULTANTS BE LIABLE TO CONTRACTOR FOR ANY CLAIMS, COSTS, LOSSES, OR DAMAGES SUSTAINED BY CONTRACTOR ON OR IN CONNECTION WITH ANY OTHER PROJECT OR ANTICIPATED PROJECT, IF**

CONTRACTOR KNEW OR SHOULD HAVE KNOWN THEREOF, EVEN IF SUCH EXPENSES, COSTS, CLAIMS, LOSSES, DAMAGES, OR DELAYS ARE DUE TO THE NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, OR ENGINEER'S SUBCONSULTANTS.

4.4. Reference Points

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

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

4.5.1. OWNER shall be responsible for any Hazardous Waste uncovered or revealed at the site which was not shown or indicated within the PLANS or Specifications, identified in the Contract Documents to be within the scope of the Work or which CONTRACTOR could not have discovered in CONTRACTOR'S inspection of the property in preparing any Bid, and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such Hazardous Waste and in any area affected thereby (except in an emergency as required by Paragraph 6.15), and (ii) notify OWNER (and thereafter confirm such notice in writing). CONTRACTOR shall not be required to resume Work in connection with such Hazardous Waste or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work because to do so would be unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such Hazardous Waste or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in

Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4 In the event that the Hazardous Waste uncovered or revealed at the site is such that CONTRACTOR discovered or should have discovered it in CONTRACTOR's inspection of the property in preparing any Bid, the provisions of Sections 4.5.2 and 4.5.3 shall apply, but the OWNER's cost of removal of such Hazardous Waste shall be deducted from the contract.

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

ARTICLE 5 BOND AND INSURANCE

5.1. Construction Performance Bond, Payment Bond, and One-Year Maintenance Bond

5.1.1. CONTRACTOR shall furnish Construction Performance Bond, Payment Bond and an One-Year Maintenance Bond, 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 at least until one year after the date when final payment becomes due, or as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by the Contract Documents and be provided by sureties that are qualified to do business in the State of Texas and have an excellent rating of A+ A, or A- according to the A.M. Best Key Rating Guide. If the surety company does not have such a rating due to the length of time it has existed, the surety company must be eligible to participate and must participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current U.S. Dept. of Treasury Circular 570 and must meet all related rules and regulations of the U.S. Treasury Dept. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.1.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.1.1, CONTRACTOR shall within ten (10) days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.2. Licensed Sureties and Insurers; Certificates of Insurance

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

5.2.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with Paragraph 5.3. Each certificate issued will contain waiver provisions in accordance with paragraph 5.5.

5.3. CONTRACTOR's Liability Insurance

CONTRACTOR shall, at its sole expense, maintain in effect at all times during the full term of the Work under the Agreement and as otherwise required under the Contract Documents, insurance coverages with limits not less than those set forth below in the Supplemental Conditions and in Paragraph 5.3.14 hereof with insurers licensed to do business in the state in which the Project is located and acceptable to OWNER and under forms of policies satisfactory to OWNER. None of the requirements contained herein as to types, limits or OWNER'S approval of insurance coverage to be maintained by CONTRACTOR is intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by CONTRACTOR under the Agreement or otherwise provided by law. In the event of any failure by CONTRACTOR to comply with the provisions of this Paragraph, OWNER may, without in any way comprising or waiving any right or remedy at law or in equity, on notice to CONTRACTOR, purchase such insurance, at CONTRACTOR'S expense, provided that OWNER shall have no obligation to do so and if OWNER shall do so, CONTRACTOR shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages. Such insurance shall protect against:

- 5.3.1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
- 5.3.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
- 5.3.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
- 5.3.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
- 5.3.5. claims for damages, other than to the Work itself, because of injury to, or destruction of, tangible property wherever located, including loss of use resulting therefrom; and
- 5.3.6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

The policies of insurance so required by this Paragraph 5.3 to be purchased and maintained shall:

- 5.3.7. with respect to insurance required by Paragraphs 5.3.3 through 5.3.6 inclusive, include as additional insured (subject to any customary exclusion in respect of professional liability) OWNER,

PROJECT MANAGER, PROJECT MANAGER's Subconsultants, ENGINEER, ENGINEER's Subconsultants, and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, include coverage for the respective officers and employees of all such additional insureds, and state that this insurance is primary insurance as regards any other insurance carried by any indemnitee under this Agreement;

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

5.3.9. include completed operations insurance for a period of two (2) years after completion of the project;

5.3.10. include broad form contractual liability insurance covering CONTRACTOR's indemnity obligations under Paragraphs 6.6, 6.8.2, 6.10.1, 6.12.2, and 6.20.1;

5.3.11. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days, prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to Paragraph 5.2.2 will so provide);

5.3.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing Defective Work and

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

5.3.14 CONTRACTOR shall maintain, at its sole expense, all-risk builder's risk insurance as follows:

Completed value form builder's risk property insurance (subject to a deductible per loss not to exceed \$50,000.00) upon the entire Work for 100% of the full replacement cost value thereof (100% includes additional costs of architectural and engineering services in the event of a loss). This policy shall include the interests of the OWNER and the other indemnitees, CONTRACTOR, and Subcontractors in the Work as named insureds, as their interests may appear, and shall be on an "All Risk" basis for physical loss or damage including without limitation, fire, flood, earthquake, subsidence, hail, theft, vandalism and malicious mischief and shall include, without limitation, coverage for portions of the Work while it is stored off the site or is in transit. This policy shall provide, by endorsement or otherwise, that CONTRACTOR shall be solely responsible for the payment of all premiums under the policy, and that the OWNER and the other indemnitees shall have no obligation for the payment thereof, notwithstanding that OWNER and the other indemnitees are

named insureds under the policy. Any insured loss or claim of loss shall be adjusted by the OWNER, and any settlement payments shall be made payable to the OWNER, as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by OWNER who shall make distribution in accordance with an agreement to be reached in such event between OWNER and CONTRACTOR. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute. The CONTRACTOR shall be responsible for any loss within the deductible. The builder's risk policy described herein shall include a Waiver of Subrogation in favor of the indemnitees.

5.3.15 **CONTRACTOR'S Equipment Policy.** Any insurance policy covering CONTRACTOR'S or Subcontractor's equipment against loss by physical damage shall include an endorsement waiving the insurer's right of subrogation against the indemnitees. Such insurance shall be CONTRACTOR'S and Subcontractor's sole and complete means of recovery for any such loss, **SHOULD CONTRACTOR OR SUBCONTRACTORS CHOOSE TO SELF INSURE THE RISK, IT IS EXPRESSLY AGREED THAT THE CONTRACTOR AND SUBCONTRACTORS HEREBY WAIVE ANY CLAIM FOR DAMAGE OR LOSS TO SAID EQUIPMENT IN FAVOR OF THE INDEMNITEES, EVEN IF SUCH DAMAGE OR LOSS TO SAID EQUIPMENT IN FAVOR OF THE INDEMNITEES, EVEN IF SUCH DAMAGE OR LOSS ARISES FROM OR IS ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE.**

5.3.16 **Evidence of Insurance.** Evidence of the insurance coverage required to be maintained by CONTRACTOR under this Article 5, must be represented by Certificates of Insurance issued by the insurance carrier and must be furnished to the OWNER prior to CONTRACTOR starting Work. Certificates of insurance shall specify the insured status mentioned above in this Paragraph, as well as the waivers of subrogation. Such certificates of insurance shall state that OWNER will be notified in writing sixty (60) days prior to cancellation, material change, or non-renewal of insurance. CONTRACTOR shall provide to OWNER a certified copy of any and all applicable insurance policies upon request of OWNER. Timely renewal certificates will be provided to OWNER as the coverage renews.

5.3.17 **Subcontractors' Insurance.** Insurance similar to that required of CONTRACTOR shall be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract; provided, however, that the limits of such insurance may be adjusted in accordance with the nature of each Subcontractor's operations. CONTRACTOR shall in any event be held responsible for any modifications in these insurance requirements as they apply to Subcontractors. CONTRACTOR shall maintain certificates of insurance from all Subcontractors, enumerating, among other things, the waivers in favor of, and insured status of, the indemnitees, as required herein, and shall provide to OWNER a copy of each certificate of insurance from each Subcontractor before that Subcontractor is permitted to begin Work on the Project.

5.4. OWNER's Liability Insurance

In addition to the insurance required to be provided by CONTRACTOR under Paragraph 5.3, 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.

5.5. Waiver of Rights

5.5.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with Paragraphs 5.2.1 and 5.2.2 will protect OWNER, CONTRACTOR, Subcontractors, PROJECT MANAGER, PROJECT MANAGER's Subconsultants, ENGINEER, ENGINEER's Subconsultants, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of, or resulting from, any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, PROJECT MANAGER, PROJECT MANAGER's Subconsultants, ENGINEER, ENGINEER's Consultants, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.5.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, PROJECT MANAGER, PROJECT MANAGER's Subconsultants, ENGINEER, ENGINEER's Subconsultants, and the officers, directors, employees, and agents of any of them, for loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from, fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to Paragraph 15.6, after substantial completion pursuant to Paragraph 15.5, or after final payment pursuant to Paragraph 15.9.

Any insurance policy maintained by OWNER covering any loss or damage, referred to in this Paragraph 5.5.2 shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, PROJECT MANAGER, PROJECT MANAGER's Subconsultants, ENGINEER, ENGINEER's Consultants, and the officers, directors, employees, and agents of any of them.

5.6. Receipt and Application of Insurance Proceeds

5.6.1. Any insured loss under the policies of insurance required by Paragraph 5.3.14 will be adjusted with OWNER and made payable to OWNER subject to the requirements of any applicable mortgage clause and of Paragraph 5.6.2. OWNER shall distribute any money so received in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.6.2. OWNER shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER 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 shall adjust and settle the loss with the insurers and retain all monies received until agreement is reached for the cost of reconstruction.

5.7. Option to Replace

If CONTRACTOR does not acquire and maintain insurance or Bonds meeting the requirements of the Contract Documents, without prejudice to any other right or remedy, the OWNER may elect to obtain equivalent Bonds or insurance to protect OWNER's interests at the expense of CONTRACTOR who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.8. Partial Utilization—Property Insurance

If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Paragraph 15.6 provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice hereof 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.

5.9 Risk of Loss

Until there has been Final Acceptance of the Work, CONTRACTOR shall have the risk of loss to all of the Work material and equipment for the Project.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITY

6.1. Supervision and Superintendence

6.1.1. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. CONTRACTOR shall be responsible for seeing that the complete Work complies accurately with the Contract Documents.

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

6.2. Labor, Materials, and Equipment

6.2.1. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of the persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday (holidays as recognized by the OWNER) without OWNER's written consent. CONTRACTOR must make such written request forty-eight (48) hours prior to start of such work.

6.2.2. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work.

6.2.3. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by OWNER and/or PROJECT MANAGER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.3. Progress Schedule

6.3.1. CONTRACTOR shall adhere to the progress schedule established in accordance with Paragraph 2.6 as it may be adjusted from time to time as provided below:

6.3.1.1. CONTRACTOR shall submit to PROJECT MANAGER for acceptance (to the extent indicated in Paragraph 2.6) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and, additionally, will comply with any provisions of the General Requirements applicable thereto.

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

6.4. “Or-Equal” Items

6.4.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or “or-equal” item, or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:

6.4.1.1. *“Or-Equal”*: If CONTRACTOR is able to demonstrate conclusively to the OWNER, PROJECT MANAGER and ENGINEER that equipment proposed is equal in function and quality to that named and sufficiently similar so that no substantial change in related Work will be required, it may be considered as an “or-equal” item, in which case review and approval of the proposed item may be accomplished as provided herein.

6.4.1.2. *Procedure for Consideration of “Or-Equal” Items*: If CONTRACTOR wishes to have an item considered as an “or-equal” item, CONTRACTOR shall submit within 15 days after award of contract sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is qualified as an “or-equal” item. The procedure for review will include at least the following requests, with such additional requests as are appropriate to the circumstances may decide. Requests for review of proposed substitute items of material or equipment will not be accepted by PROJECT MANAGER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to PROJECT MANAGER for acceptance thereof, certifying that the proposed substitute will be equal in function and quality to the specified product. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR’s achievement of Substantial Completion on time, whether or not

acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute, and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance and repair and replacement service will be indicated.

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

6.4.2. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in, and expressly required by, the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, methods, technique, sequence, or procedure or construction acceptable to OWNER, ENGINEER and PROJECT MANAGER. CONTRACTOR shall submit sufficient information to allow OWNER, ENGINEER and/or PROJECT MANAGER, to reasonably determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review will be similar to that provided in subparagraph 6.4.1.2.

6.4.3. *Evaluation:* A reasonable time will be allowed within which to evaluate each proposal or submittal to be pursuant to Paragraphs 6.4.1.2 and 6.4.2. No "or-equal" will be ordered, installed, or utilized without OWNER, ENGINEER or PROJECT MANAGER's prior written acceptance, which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal". PROJECT MANAGER will record time required by PROJECT MANAGER, ENGINEER, and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to Paragraphs 6.4.1.2. and 6.4.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of PROJECT MANAGER, ENGINEER, and ENGINEER's Consultants for evaluating each such proposed substitute item.

6.5. Concerning Subcontractors, Suppliers, and Others

6.5.1. CONTRACTOR shall not employ any Subcontractor, Supplier, or other person or organization (including those acceptable to OWNER as indicated in Paragraph 6.5.2), whether initially, or as a substitute, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.5.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of a specified date prior to the Effective Date of the

Agreement for acceptance by OWNER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier, or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other person or organization shall constitute a waiver of any right of OWNER to reject Defective Work.

6.5.3. CONTRACTOR shall be fully responsible to OWNER and PROJECT MANAGER for all acts and omissions of the Subcontractors, Suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other person or organization any contractual relationship between OWNER, ENGINEER or PROJECT MANAGER and any such Subcontractor, Supplier, or other person or organization, nor shall it create any obligation on the part of the OWNER, ENGINEER or PROJECT MANAGER to pay, or to see to, the payment of any moneys due any such Subcontractor, Supplier, or other person or organization except as may otherwise be required by Laws and Regulations. There are no third party beneficiaries to the Agreement or Contract Documents.

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

6.5.5. 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 in delineating the Work to be performed by any specific trade.

6.5.6. 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.

6.6. Patent Fees and Royalties

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, copyrights, trade secret, trademark, or other

intellectual property rights of any third party. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER, PROJECT MANAGER, or ENGINEER its use is subject to patent rights, copyrights, trade secret, trademark, or other intellectual property rights of any third party calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. **TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, ENGINEER'S SUBCONSULTANTS, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND OTHER CONSULTANTS OF EACH AND ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF, OR RESULTING FROM, ANY INFRINGEMENT OF PATENT RIGHTS, COPYRIGHTS, TRADE SECRET, TRADE MARK, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY 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.**

6.7. Permits

Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist

CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of BIDs, or, if there are no BIDs, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work.

6.8. Laws and Regulations

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

CONTRACTOR shall advise OWNER of changes or pending changes to any Laws or Regulations of which CONTRACTOR is aware so that OWNER may make any changes to the Contract Documents or the Project required to comply with such Laws or Regulations.

6.8.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws and Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages caused by, arising out of, or resulting therefrom, **AND, TO THE FULLEST EXTENT ALLOWED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, PROJECT MANAGER, AND ENGINEER FROM AND AGAINST ANY**

GOVERNMENT ASSESSED PENALTIES, FINES AND CHARGES, AND ASSOCIATED DAMAGES, COSTS, LOSSES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF WHATEVER KIND WHICH OWNER, PROJECT MANAGER, OR ENGINEER MAY INCUR, BE REQUIRED TO PAY, OR BE LIABLE FOR, AS A RESULT OF, IN CONNECTION WITH, ARISING OUT OF, OR RELATED TO, ANY SUCH PERFORMANCE OF THE WORK BY CONTRACTOR CONTRARY TO LAWS AND REGULATIONS. However, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and PLANS are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under Paragraph 3.2.2.

6.9. Taxes

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

6.10. Use of Premises

6.10.1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the site and land and areas identified in, and permitted by, the Contract Documents and other land areas permitted by Laws and Regulations, rights-of-way, and permits, easements, side agreements with the grantor of any easement, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. CONTRACTOR shall comply with all such special terms and conditions contained in any easement document, deed or side agreement in connection with the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim. **CONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, INDEMNIFY AND HOLD HARMLESS OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, ENGINEER'S CONSULTANT, AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF, OR RESULTING FROM, ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST OWNER, ENGINEER, OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED BY OR BASED UPON CONTRACTOR'S PERFORMANCE OF THE WORK EVEN IF DUE IN PART TO THE NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, ENGINEER'S CONSULTANTS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM.**

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

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

6.11. Record Documents

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

6.12. Safety and Protection

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

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

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

6.12.1.3. 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.

6.12.2. CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury or loss to any

property referred to in Paragraph 6.12.1.2. or 6.12.1.3. caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR, **EVEN IF DUE IN PART TO THE CONCURRENT NEGLIGENCE, OTHER FAULT, STRICT LIABILITY WITHOUT REGARD TO FAULT, OR BREACH OF CONTRACT OF OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, ENGINEER, ENGINEER'S SUBCONSULTANTS OR ANYONE EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, EXCEPT DAMAGE OR LOSS SOLELY ATTRIBUTABLE TO THE FAULT OF DRAWINGS OR SPECIFICATIONS OR TO THE ACTS OR OMISSIONS OF OWNER, PROJECT MANAGER, PROJECT MANAGER'S SUBCONSULTANTS, OR ENGINEER OR ENGINEER'S SUBCONSULTANT OR ANYONE EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, AND NOT ATTRIBUTABLE, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, TO THE FAULT OR NEGLIGENCE OF CONTRACTOR OR ANY SUBCONTRACTOR, SUPPLIER OR OTHER PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM.** CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and PROJECT MANAGER has issued a notice to OWNER and CONTRACTOR in accordance with Paragraph 15.9.1. that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.13. Safety Representative

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.

6.14. Hazard Communication Programs

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 all applicable Laws or Regulations.

6.15. Emergencies

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER, ENGINEER or PROJECT MANAGER, is obligated to act promptly, efficiently and reasonably to prevent threatened damage, injury or loss. CONTRACTOR shall give PROJECT MANAGER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If PROJECT MANAGER determines that a change in the Contract Documents is required because of the action taken by

CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.16. Shop Drawings and Samples

6.16.1. CONTRACTOR shall submit Shop Drawings to PROJECT MANAGER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see Paragraph 2.6). All submittals must be in accordance with Specification Section 01330 Submittals of the Contract Specifications. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data necessary to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by Paragraph 6.17.4.

6.16.2. CONTRACTOR shall also submit Samples to PROJECT MANAGER for review and approval in accordance with Specification Section 01330 Submittals of the Contract Specifications. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog number and the use for which it is intended, and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by Paragraph 6.17.4. The Contractor shall submit the number of each Sample specified in the Specifications.

6.17. Shop Drawings and Sample Submittal Procedures

6.17.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall determine and verify:

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

6.17.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and all information relating to CONTRACTOR's sole responsibilities for or in connection with means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also review, coordinate, and ensure the compatibility of each Shop Drawing or Sample with other Shop Drawings and Samples and compliance with the requirements of the Work and the Contract Documents.

6.17.2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations as required by Specification Section 01330 of the Contract Documents.

6.17.3. At the time of each submission, CONTRACTOR shall give PROJECT MANAGER specific written notice of any and all variations that the Shop Drawing or Sample submitted has from the requirements of the Contract Documents, such notice to be in a written communication separate from

the submittal; and, in addition, shall cause a specific notation of any and all such variations to be made on each Shop Drawing and Sample submitted to PROJECT MANAGER for review and approval of each such variation.

6.17.4. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by Paragraph 2.6. ENGINEER's review and approval will be limited to determination of whether the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item, as such, will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct ENGINEER's specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.17.5. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from (i) responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR in writing has called ENGINEER's attention to each such variation at the time of submission as required by Paragraph 6.17.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval or (ii) responsibility for complying with the requirements of Paragraph 6.17.1.

6.17.6. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop drawings and Sample submissions accepted by PROJECT MANAGER as required by Paragraph 2.6, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense, risk, and responsibility of CONTRACTOR. CONTRACTOR shall pay any and all costs and expenses associated with any rework, changes, or results of CONTRACTOR performing work related to a submittal prior to ENGINEER's review and approval of the pertinent submittals.

6.18. Continuing the Work

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 16.3 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19. CONTRACTOR's General Warranty and Guarantee

6.19.1. CONTRACTOR warrants and guarantees the Work including equipment installed to be performed in accordance with the standard of care set forth in Article 1 of the Agreement. CONTRACTOR further warrants and guarantees the Work including equipment installed to be free from Defects due to faulty workmanship or faulty materials for a period of 12 months from the date as noted in writing from PROJECT MANAGER or OWNER, of Beneficial Use, Substantial Completion, or Final Acceptance which ever occurs first. Upon notice from OWNER, CONTRACTOR shall promptly repair any and all Defects in all work which develop during such 12-month period at no cost to OWNER. Neither final acceptance nor final payment nor any provision in the CONTRACT DOCUMENTS relieves CONTRACTOR of the above warranty and guarantee. Notice of observed Defects will be given with reasonable promptness. Failure of CONTRACTOR to repair or replace a Defect upon notice entitles OWNER to repair or replace the same and to recover reasonable costs and expenses associated with such repair or replacement from CONTRACTOR and/or surety.

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

- 6.19.2.1. observations by OWNER, PROJECT MANAGER or ENGINEER;
- 6.19.2.2. payment of any progress or final payment;
- 6.19.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- 6.19.2.4. use or occupancy of the Work or any part thereof by OWNER;
- 6.19.2.5. any acceptance by OWNER or any failure to do so;
- 6.19.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to Paragraph 15.9.1;
- 6.19.2.7. any inspection, test, or approval by others; or
- 6.19.2.8 any correction of Defective Work by OWNER.

6.20. Indemnification

6.20.1. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE OWNER, PROJECT MANAGER, ENGINEER, AND EACH OF THE AFOREMENTIONED PARTIES' RESPECTIVE AFFILIATED COMPANIES, PARTNERS,

SUCCESSORS, ASSIGNS, HEIRS, LEGAL REPRESENTATIVES, DEVISEES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ALL LIABILITIES, CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS AND EXPENSES (INCLUDING COURT COSTS, ATTORNEY FEES AND COSTS OF INVESTIGATION), OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, CAUSED BY, OR RESULTING FROM (IN WHOLE OR IN PART), (1) THE WORK PERFORMED HEREUNDER, OR ANY PART THEREOF, (2) THE AGREEMENT, OR (3) ANY ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE THAT THEY CONTROL, OR EXERCISE CONTROL OVER (COLLECTIVELY, "LIABILITIES"), INCLUDING ALL CLAIMS, COSTS, LOSSES, DAMAGES, SUITS AND CAUSES OF ACTION, AND ANY AND ALL LIABILITY, COSTS, EXPENSES, SETTLEMENTS, DAMAGES, AND JUDGMENTS INCURRED IN CONNECTION THEREWITH (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF PROJECT MANAGER, ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS, AND ALL COURT OR ARBITRATION OR OTHER DISPUTES RESOLUTION COSTS) WHETHER ARISING IN EQUITY, AT COMMON LAW, OR BY STATUTE, INCLUDING THE TEXAS DECEPTIVE TRADE PRACTICES ACT OR SIMILAR STATUTE OF OTHER JURISDICTIONS, OR UNDER THE LAW OF CONTRACTS, TORTS (INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY WITHOUT REGARD TO FAULT) OR PROPERTY, OF EVERY KIND OR CHARACTER. UNLESS OTHERWISE SET FORTH IN THIS PARAGRAPH 6.20, THE OBLIGATIONS OF CONTRACTOR UNDER THIS INDEMNIFICATION SHALL APPLY TO LIABILITIES EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO THE CONCURRENT NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH CONTRACTOR'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY IS WITH RESPECT TO LIABILITIES RESULTING FROM THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE. CONTRACTOR SHALL PROMPTLY ADVISE OWNER IN WRITING OF ANY ACTION, ADMINISTRATIVE OR LEGAL PROCEEDING OR INVESTIGATION AS TO WHICH THIS INDEMNIFICATION MAY APPLY, AND CONTRACTOR, AT CONTRACTOR'S EXPENSE, SHALL ASSUME ON BEHALF OF OWNER (AND THE OTHER INDEMNITEES) AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE THEREOF WITH COUNSEL SATISFACTORY TO OWNER; PROVIDED, HOWEVER, THAT OWNER SHALL HAVE THE RIGHT, AT ITS OPTION, TO BE REPRESENTED THEREIN BY ADVISORY COUNSEL OF ITS OWN SELECTION AND AT ITS OWN EXPENSE. IN THE EVENT OF FAILURE BY CONTRACTOR TO FULLY PERFORM IN ACCORDANCE WITH THIS INDEMNIFICATION PARAGRAPH, OWNER, AT ITS OPTION, AND WITHOUT RELIEVING CONTRACTOR OF ITS OBLIGATIONS HEREUNDER, MAY SO PERFORM, BUT ALL COSTS AND EXPENSES SO INCURRED BY OWNER IN THAT EVENT SHALL BE REIMBURSED BY CONTRACTOR TO OWNER, TOGETHER WITH INTEREST ON THE SAME FROM THE DATE ANY SUCH EXPENSE

WAS PAID BY OWNER UNTIL REIMBURSED BY CONTRACTOR, AT THE RATE OF INTEREST PROVIDED TO BE PAID ON JUDGMENTS, BY THE LAW OF THE JURISDICTION TO WHICH THE INTERPRETATION OF THE CONTRACT IS SUBJECT. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEES' BENEFIT ACTS. IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATION UNDER THIS SECTION, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION AND SHALL OPERATE TO AMEND THE INDEMNIFICATION OBLIGATION TO THE MINIMUM EXTENT NECESSARY TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE INDEMNIFICATION OBLIGATION SHALL CONTINUE IN FULL FORCE AND EFFECT. NOTHING IN THIS CLAUSE IS INTENDED TO INDEMNIFY THE ENGINEER OR PROJECT MANAGER FROM RESPONSIBILITY FOR EITHER OF THEIR ACTS OF PROFESSIONAL NEGLIGENCE EXCEPT AS EXPRESSLY PROVIDED OTHERWISE. IT IS THE SPECIFIC INTENT OF THIS INDEMNITY THAT THE INDEMNITOR IS INDEMNIFYING THE INDEMNITEES FROM ACTS OF NEGLIGENCE OF INDEMNITEES.

6.20.2. In any and all claims against OWNER, PROJECT MANAGER, or ENGINEER or any of their respective consultants, agents, officers, directors, or employees by any employee (or the survivor or personal representative of such employee of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other person or organization under workers' compensation acts, disability benefit acts or other employees benefit acts.

6.21. Survival of Obligations

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, shall survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7 OTHER WORK

7.1. Related Work at Site

7.1.1. OWNER may perform other work related to the Project at the site by OWNER's own forces or let other direct contracts therefor which shall contain GENERAL CONDITIONS similar to these or have other work performed by utility owners.

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

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

ARTICLE 8 OWNER'S RESPONSIBILITIES

8.1. Replacement of PROJECT MANAGER or ENGINEER

In case of termination of the employment of PROJECT MANAGER or ENGINEER, OWNER shall appoint a replacement PROJECT MANAGER or ENGINEER or perform the remaining Work to be done by the terminated professional with the staff of OWNER.

8.2. Furnish Data

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

8.3. Lands and Easements; Reports and Tests

OWNER shall provide lands and easements and engineering surveys to establish reference points and special terms and conditions of the Work or any portion thereof in accordance with and for the purpose set forth in Paragraphs 4.1 and 4.4. OWNER shall identify and make available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparing the Contract Documents in accordance with Paragraph 4.2.

8.4. Limitations on OWNER's Responsibilities

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

ARTICLE 9 PROJECT MANAGER'S AND ENGINEER'S STATUS DURING CONSTRUCTION

9.1. OWNER's Representative

PROJECT MANAGER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of PROJECT MANAGER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and PROJECT MANAGER. OWNER may also provide for some of the duties prescribed herein for performance by the PROJECT MANAGER to be performed by project representatives employed directly by the OWNER. OWNER may also employ testing firms directly.

9.2. Visits to Site

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor, for the benefit of OWNER, to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep PROJECT MANAGER informed of the progress of the Work and will endeavor to guard OWNER against Defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in Paragraph 9.8, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR'S Work, ENGINEER will not supervise, direct, control, or have authority over, or be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work, for any failure of CONTRACTOR to comply with the Contract Documents.

9.3. Clarifications and Interpretations

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

9.4. Authorized Variations in Work

Minor variations in the Work from the requirements of the Contract Documents may be authorized 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 CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

9.5. Rejecting Defective Work

PROJECT MANAGER or ENGINEER will have authority, but not the obligation, to disapprove or reject Work which PROJECT MANAGER or ENGINEER believes (i) to be Defective, or (ii) will not produce a completed Project that conforms to the Contract Documents, or (iii) will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. PROJECT MANAGER or ENGINEER will also have authority to require special inspection or testing of the Work as provided in Paragraph 14.4.2, whether or not the Work is fabricated, installed or completed.

9.6. Shop Drawings, Change Orders, and Payments

9.6.1. PROJECT MANAGER's and ENGINEER's authority and responsibility with respect to Shop Drawings and Samples is set forth in Paragraphs 6.16 through 6.17.6 inclusive.

9.6.2. PROJECT MANAGER's and ENGINEER's authority and responsibility with respect to Change Orders is set forth in Articles 10, 11, and 12.

9.6.3. PROJECT MANAGER's and ENGINEER's authority and responsibility with respect to Applications for Payment, is set forth in Article 15.

9.7. Determinations for Unit Prices

OWNER or PROJECT MANAGER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR and review with CONTRACTOR the determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The written decision thereon will be final and binding upon CONTRACTOR, unless, within ten (10) days after the date of any such decision, CONTRACTOR delivers to the owner and to PROJECT MANAGER written notice of intention that it disagrees with the decision. Any disagreement will be resolved according the Requests of Articles 11 and 12.

9.8. Limitations on PROJECT MANAGER's and ENGINEER's Authority and Responsibilities

9.8.1. Neither PROJECT MANAGER's nor ENGINEER's authority, nor responsibility under this Article 9, nor under any other provision of the Contract Documents, nor any decision made by PROJECT MANAGER nor 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 PROJECT MANAGER or ENGINEER shall create, impose, or give rise to any duty owed by PROJECT MANAGER or ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them. **PROJECT MANAGER AND ENGINEER EXPRESSLY DISCLAIM ANY DUTY TO CONTRACTOR ARISING OUT OF PROJECT MANAGER'S OR ENGINEER'S PERFORMANCE OF ITS CONTRACT WITH OWNER. CONTRACTOR AGREES AND ACKNOWLEDGES THAT CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY TO THE CONTRACT BETWEEN ENGINEER AND OWNER OR BETWEEN PROJECT MANAGER AND OWNER.**

9.8.2. Neither PROJECT MANAGER nor ENGINEER will supervise, direct, control, or have authority over, or be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. Neither PROJECT MANAGER nor ENGINEER will be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.8.3. Neither PROJECT MANAGER nor ENGINEER will be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.8.4. PROJECT MANAGER's review of Applications for Payment, including the final application for payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals, and other documentation required to be delivered by the Contract Documents will only be to determine generally that their content complies with the requirements of, and, in the case of certificates of

inspections, tests, and approvals, that the results certified indicate compliance with, the Contract Documents.

9.8.5. The limitations upon authority and responsibility set forth in this Paragraph 9.8 also apply to PROJECT MANAGER's and ENGINEER's Subconsultants, Resident Project Representative and assistants.

ARTICLE 10 CHANGES IN THE WORK

10.1. Changes in the Work

10.1.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time, or from time to time, order additions, deletions, or revisions in the Work. Such additions, deletions, or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided), even if CONTRACTOR and OWNER have been unable to agree upon the extent, if any, of adjustments to the contract price or contract times resulting from such addition, revision, or deletion.

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

10.1.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any change to the Work performed that is not the subject of an amendment, modification or supplement to the Contract by one of the methods provided in Paragraph 3.3.1. and 3.3.2., issued in advance of the performance of the change Work except in the case of an emergency as provided in Paragraph 6.15 or in the case of uncovering Work as provided in Paragraph 14.4.2.

10.1.4. OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

10.1.4.1. changes in the Work which are (i) ordered by OWNER pursuant to Paragraph 10.1.1, (ii) required because of acceptance of Defective Work under Paragraph 14.8 or correcting Defective Work under Paragraph 14.9, or (iii) agreed to by the parties;

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

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

ARTICLE 11 CHANGE OF CONTRACT PRICE

11.1. Change of Contract Price

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

11.1.2. It is intended that the provisions of Article 11 govern any claim or demand by the CONTRACTOR for a change in the Contract Price, or for recovery from the OWNER outside the Contract related to the Project, including recovery by Change Order, recovery for Work Change Directives, claims, disputes of all kinds, including quantum meruit, which arise from the Project claims to which Article 11 applies include any demand or assertion that CONTRACTOR'S performance has been delayed, interrupted or interfered with, that CONTRACTOR'S performance has been accelerated, constructively accelerated, or suspended, that CONTRACTOR'S performance has been wrongfully terminated, that the Contract Documents have been misinterpreted, that there has been a failure of payment, that CONTRACTOR has encountered concealed or unknown conditions, that CONTRACTOR has encountered hazardous materials, that there are problems with the Contract Documents, or the time of approvals or decisions, that actions of the OWNER have been intentionally wrongful or deceptive, that OWNER is directly or indirectly guilty of negligence or an intentional tort related in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Work and the Contract. Nothing contained in this subparagraph shall be construed as creating any CONTRACTOR right to make a claim, where no such right otherwise exists. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the OWNER and to PROJECT MANAGER promptly (but in no event later than thirty [30] days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after the start of such occurrence or event and shall be accompanied by claimant's written representation that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. In addition to the 30 day and 60 day requirements set out herein, it is also agreed that any claim for a change in the Contract price is void and waived unless the CONTRACTOR give OWNER a specific written statement of the basis of the claim of the amount of change sought within 91 days of the date of the event giving rise to the claim. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with Article 11.

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

11.1.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.4, inclusive);

11.1.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.2.3.2.);

11.1.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 11.1.3.2., on the basis of the Cost of the Work (determined as provided in Paragraphs 11.2.1. and 11.2.2.) plus a CONTRACTOR's fee for overhead and profit (determined as provided in Paragraph 11.2.3.).

11.2. Cost of the Work

11.2.1. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in an amount no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.2.2.:

11.2.1.1. 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 site. The 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, worker's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be recoverable costs under this Paragraph 11.2.1.1. to the extent authorized by OWNER.

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

11.2.1.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain

competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of PROJECT MANAGER and/or ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractors cost of the work and fee shall be determined in the same manner as CONTRACTOR'S Cost of the Work and fee as provided in Paragraphs 11.2.1., 11.2.2., 11.2.3., and 11.2.4.

All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.2.1.4. Supplemental costs including the following:

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

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

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

11.2.1.4.4. Sales Tax. Costs of any applicable sales tax.

11.2.1.4.5. Deposits lost for causes other than negligence, other fault, or breach of contract 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.

11.2.1.4.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work, provided they have resulted from causes other than the negligence, other fault, strict liability without regard to fault, breach of contract, or breach of warranty of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the

written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in Paragraph 11.2.3.

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

11.2.1.4.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the Work.

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

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

11.2.2.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.2.1.1. or are to be considered administrative costs covered by the CONTRACTOR's fee.

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

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

11.2.2.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same except for the cost of premiums covered by subparagraph 11.2.1.4.9. above).

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

11.2.2.6. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 11.2.1.

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

11.2.3.1 A mutually acceptable fixed fee; or

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

11.2.3.2.1. For costs incurred under Paragraphs 11.2.1.1. and 11.2.1.2., the CONTRACTOR's fee shall be ten (10) percent;

11.2.3.2.2. For costs incurred under Paragraph 11.2.1.3., the CONTRACTOR's fee shall be five (5) percent:

11.2.3.2.3. 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 11.2.1.1., 11.2.1.2., 11.2.1.3. and 11.2.3.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of ten (10) percent of the costs incurred by such Subcontractor under Paragraphs 11.2.1.2. and 11.2.3 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five (5) percent of the amount paid to the next lower tier Subcontractor.

11.2.3.2.4. No fee shall be payable on the basis of costs itemized under Paragraphs 11.2.1.4. and 11.2.2.;

11.2.3.2.5. The amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five (5) percent of such net decrease; and

11.2.3.2.6. 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 11.2.3.2.1. through 11.2.3.2.5., inclusive.

11.2.4. Whenever the cost of any Work is to be determined pursuant to Paragraphs 11.2.1. and 11.2.2., CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to PROJECT MANAGER an itemized cost breakdown together with supporting data.

11.2.5. In calculating the amount of any Change of Contract Price, the following standards shall apply:

11.2.5.1 No indirect or consequential damages will be allowed.

11.2.5.2. All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

11.2.5.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

11.2.5.4 The maximum delay limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Contract Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by CONTRACTOR for job overhead cost shall be used.

11.3. Allowances

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

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

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

11.3.2 Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted, provided that CONTRACTOR shall not be entitled to a change order in an amount greater than the allowances.

11.4. Unit Price Work

11.4.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include, for all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for 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 OWNER or PROJECT MANAGER in accordance with Paragraph 9.7. CONTRACTOR represents that its profits are not based upon the estimated

quantities of Unit Price Work and agrees that neither PROJECT MANAGER, ENGINEER nor OWNER shall be liable to CONTRACTOR if the actual amount of Unit Price Work differs from the estimated quantities of Unit Price Work, even if OWNER or CONTRACTOR was negligent in making such estimates.

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

11.4.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.4.3.1. The quantity of any item of Unit Price Work performed by CONTRACTOR differs by more than twenty-five (25) percent (over or under) from the estimated quantity of such item indicated in the Agreement; and

11.4.3.2. There is no corresponding adjustment with respect to any other item of Work; and

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

ARTICLE 12 CHANGE OF CONTRACT TIMES

12.1 Claim for Adjustment

The Contract Times (or Milestones) may only be changed by a Change Order. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by CONTRACTOR to PROJECT MANAGER promptly (but in no event later than thirty [30] days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim, with supporting data, shall be delivered within sixty (60) days after such occurrence and shall be accompanied by the claimant's written representation that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this Paragraph 12.1. CONTRACTOR must submit, as a minimum, the following supporting data:

12.1.1. Information showing that time requested is not included in the existing Contract and is an addition to the Contract.

12.1.2. Information documenting that the number of days requested is accurate for the event.

12.1.3. Revised, current construction schedule showing that the time requested affects the project's critical path.

12.2. Time of the Essence

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

12.3. Compensatory Delays

When the Critical Path of the Project is delayed by a compensatory delay event, and there is no concurrent delay that is not a compensatory delay event, Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in Paragraph 12.1. Compensatory delay events are (1) delays caused by acts or neglect of OWNER, and (2) acts of neglect other contractors performing other work for OWNER. No adjustment to the Contract time will be allowed unless the matter on which the claim for an adjustment is based had an impact on the Critical Path of the Project equal to the adjustment sought.

12.4. Excusable Delays

When the Critical Path of the Project is delayed by an excusable delay event, and there is no concurrent reason for the delay that is the fault of CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. CONTRACTOR shall not be entitled to any increase in Contract Price as a result of such delay. Excusable delay events include delays for fire, flood, acts of God, unusually severe adverse weather when the weather over the entire Contract Time is considered and any other causes beyond the reasonable control of the CONTRACTOR when acting as a reasonably prudent CONTRACTOR.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Claims

In the event the parties are not able to resolve claims for changes in Contract Price under Article 11 or claims for changes of Contract Time under Article 12, the matter is subject to the provisions of Article 13.

13.2 Claims Handling During Construction.

After receipt of a Notice of Claim, the Owner may elect to refer the matter to the PROJECT MANAGER or ENGINEER or another party for review. CONTRACTOR will attend meeting called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The OWNER may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the OWNER at the completion of the Work. At any stage, the OWNER is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and if this reference is made, CONTRACTOR will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle CONTRACTOR to stop performance of the Work. The CONTRACTOR shall proceed diligently with performance of the Contract during the pendency

of any claim, excepting termination or under OWNER's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally, and the Mediation shall be held in Houston, Texas.

13.3 Claims Handling Following Construction

The acceptance of final payment shall constitute a waiver of Claims by the CONTRACTOR which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment. If a Claim has not been resolved within six (6) months of the date of the final Application for Payment through Claim review procedures, mediation, or other Claim settlement negotiations, then CONTRACTOR at that time, but not before, shall be entitled to institute litigation on the Claim in a State Court of competent jurisdiction in Harris County, Texas and in no other forum.

ARTICLE 14 TESTS AND INSPECTIONS, CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.1. Notice of Defects

Notice of all Defective Work of which OWNER, PROJECT MANAGER, or ENGINEER have actual knowledge will be given to CONTRACTOR. All Defective Work may be rejected, corrected or accepted as provided in this Article 14.

14.2. Access to Work

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

14.3. Tests and Inspections

14.3.1. CONTRACTOR shall give PROJECT MANAGER 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.

14.3.2. 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:

14.3.2.1. For inspections, test or approvals covered by Paragraph 14.3.3 below;

14.3.2.2. That costs incurred in connection with tests or inspections conducted pursuant to Paragraph 14.4.2 below shall be paid as provided in said Paragraph 14.4.2; and

14.3.2.3. as otherwise specifically provided in the Contract Documents.

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

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

14.3.5. Uncovering Work as provided in Paragraph 14.3.4. shall be at CONTRACTOR's expense unless CONTRACTOR has given PROJECT MANAGER timely notice of CONTRACTOR's intention to cover the same and PROJECT MANAGER has not acted with reasonable promptness in response to such notice.

14.4. Uncovering Work

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

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

14.5. OWNER May Stop the Work

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

14.6. Correction or Removal of Defective Work

If required by OWNER or PROJECT MANAGER, CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by OWNER or PROJECT MANAGER, remove it from the site and replace it with Work that is not Defective.

14.7. Correction Period

14.7.1. If, within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such Defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not Defective, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the Defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by, or resulting from, such removal and replacement (including but not limited to, all costs of repair or replacement of Work of others) will be paid by CONTRACTOR.

14.7.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period set forth in Paragraph 14.7.1 for the item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

14.7.3. Where Defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this Paragraph 14.7.1, 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.

14.8 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of Defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, cost, losses, and damages

attributable to OWNER's evaluation of, and determination to, accept such Defective Work. If any such acceptance occurs prior to PROJECT MANAGER'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.

14.9. OWNER May Correct Defective Work

Prior to final acceptance, if CONTRACTOR fails, within a reasonable time after written notice from OWNER or PROJECT MANAGER to correct Defective Work or to remove and replace rejected Work as required by OWNER or PROJECT MANAGER in accordance with Paragraph 14.6 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 (7) days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this Paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment, and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, PROJECT MANAGER, PROJECT MANAGER's Subconsultants, and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this Paragraph. All claims, costs, losses, and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. OWNER shall be entitled to an appropriate decrease in the Contract Price. Such claims, cost, losses, and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's Defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 15 PAYMENTS TO CONTRACTOR AND COMPLETION

15.1 Schedule of Values

The schedule of values established as provided in Paragraph 2.4.2.3 will serve as the basis of progress payments and will be incorporated into a form of application for payment acceptable to OWNER or PROJECT MANAGER. Progress payments on account of Unit Price Work will be based on the number of units completed.

15.2 Application for Progress Payment

At least twenty (20) days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to PROJECT MANAGER for review an Application for Payment completed and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. CONTRACTOR'S application for payment shall include a sworn representation and warranty by CONTRACTOR that it has paid all of its subcontractors and suppliers for all work performed and materials and equipment supplied to the extent covered by prior applications for payment. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. Payment for such materials shall be a OWNER's sole discretion. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

15.3. CONTRACTOR's Warranty of Title

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 and free and clear of all liens.

15.4. Review of Applications for Progress Payment

15.4.1. PROJECT MANAGER will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing PROJECT MANAGER's reasons for refusing payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten (10) days after presentation of the Application for Payment to OWNER with PROJECT MANAGER's recommendation, the amount recommended by PROJECT MANAGER, less amounts withheld by OWNER pursuant to Paragraph 15.4.4, will become due and when due will be paid by OWNER to CONTRACTOR.

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

15.4.2.1. the Work has progressed to the point indicated,

15.4.2.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.7, and to any other qualifications stated in the recommendation),

15.4.2.3. in the case of Unit Price Work that there are not unbalanced Unit Prices that would, as a result of the payment to be made, result in a situation where the amount due CONTRACTOR to date would be a percentage of the total Contract Price substantially exceeding CONTRACTOR's percentage of overall completion on the Project.

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

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

15.4.3. PROJECT MANAGER's recommendations of any payment, including final payment, shall not mean that PROJECT MANAGER is responsible for, and shall not relieve CONTRACTOR from, its responsibility for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents or that PROJECT MANAGER is representing that CONTRACTOR has complied with Laws and Regulations or performed or furnished the work in accordance with the Contract Documents.

15.4.4. PROJECT MANAGER may refuse to recommend the whole or any part of payment if, in PROJECT MANAGER's opinion, it would be incorrect to make the representations to OWNER referred to in Paragraph 15.4.2. PROJECT MANAGER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in PROJECT MANAGER's opinion to protect OWNER from loss because:

15.4.4.1. the Work is Defective, or completed Work has been damaged requiring correction or replacement,

15.4.4.2. the Contract price has been reduced by Written Amendment or Change Order,

15.4.4.3. OWNER has been required to correct Defective Work or complete Work in accordance with Paragraph 14.9, or

15.4.4.4. PROJECT MANAGER has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 16.2.1 through 16.2.1.4 inclusive.

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

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

15.4.4.6. Notices have been received from Subcontractor, Suppliers or Workman indicating that CONTRACTOR is not current in its obligations,

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

15.4.4.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 15.4.4.1 through 15.4.4.3 or Paragraphs 16.2.1.1. through 16.2.1.4 inclusive;

The amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, shall be paid when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action. Any amount not recommended for payment or approved for payment by OWNER pursuant to this Paragraph 15.4 shall not be due to CONTRACTOR and shall not be subject to interest under the Contract Document.

15.5. Substantial Completion

15.5.1. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER and PROJECT MANAGER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and shall request that PROJECT MANAGER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR, PROJECT MANAGER, and ENGINEER shall make an inspection of the Work to determine the status of completion. If PROJECT MANAGER, ENGINEER and/or OWNER do not consider the Work substantially complete, PROJECT MANAGER will notify CONTRACTOR in writing giving the reasons therefor. If PROJECT MANAGER, ENGINEER and OWNER considers the Work substantially complete, PROJECT MANAGER will prepare and deliver to CONTRACTOR a certificate of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The Certificate of Substantial Completion shall set out a division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance, and warranties and guarantees.

15.5.2. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list used until final acceptance. CONTRACTOR shall complete or correct such items in a diligent and expeditious manner.

15.5.3 If it is necessary for the OWNER, ENGINEER and PROJECT MANAGER are required to respond to more than two Notices from CONTRACTOR that the Work is Substantially Completed before the Work is reasonably found to be Substantially Complete, the cost of all evaluations of the state of completion beyond the second evaluation shall be charged to CONTRACTOR.

15.6. Partial Utilization

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

15.6.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete.

15.6.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of Paragraph 5.8 in respect of property insurance.

15.7. Final Inspection

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, OWNER, PROJECT MANAGER and/or ENGINEER will make a final inspection with OWNER and OWNER, PROJECT MANAGER and/or ENGINEER will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete in that the Work is not capable of performing its intended function in an efficient matter or is Defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.8. Final Application for Payment

After CONTRACTOR has completed all such corrections described in Paragraph 15.7 to the satisfaction of PROJECT MANAGER, ENGINEER and OWNER and has delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates, or other evidence of insurance required by Paragraph 5.3, certificates of inspection, marked-up record documents (as provided in Paragraph 6.11), and other documents reasonably required by OWNER, CONTRACTOR may make application for final payment following the procedure for progress payments. The Final Application for Payment shall be

accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including, but not limited to, the evidence of insurance required by subparagraph 5.3.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of, or filed in connection with, the Work. In lieu of such releases or waivers of liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien. **CONTRACTOR AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS OWNER, ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL DEMANDS, OR OTHER ENCUMBRANCES ON OWNER OR ITS PROPERTY FILED IN CONNECTION WITH THE WORK, AND ANY AND ALL CLAIMS, SUITS AND CAUSES OF ACTION, LIABILITY, COSTS, EXPENSES, SETTLEMENTS, AND JUDGMENTS INCURRED IN CONNECTION THEREWITH (INCLUDING, BUT NOT LIMITED TO, ALL FEES AND CHARGES OF PROJECT MANAGER, ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS).**

15.9. Final Payment and Acceptance

15.9.1. If, on the basis of PROJECT MANAGER's and/or ENGINEER's observation of the Work during construction and final inspection and OWNER or PROJECT MANAGER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, OWNER and/or PROJECT MANAGER are satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, OWNER or PROJECT MANAGER will, within ten (10) days after receipt of the final Application for Payment, indicate in writing if it is timely for Final Payment. At the same time, OWNER or PROJECT MANAGER also will give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 15.10. Otherwise, OWNER or PROJECT MANAGER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application and accompanying documentation in appropriate form and substance, and the final payment will be come due and will be paid by OWNER to CONTRACTOR.

15.9.2. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of PROJECT MANAGER and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully complete or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in Paragraph 5.1.1, the

written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to PROJECT MANAGER 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.

15.10. Waiver of Claims

The acceptance of final payment will constitute a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and complying with all requirements of Article 11 and still unsettled.

ARTICLE 16 SUSPENSION OF WORK AND TERMINATION

16.1. OWNER May Suspend Work

At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

16.2. OWNER May Terminate

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

16.2.1.1. if, in the opinion of the OWNER, CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply a sufficient number of or sufficiently skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.6 as adjusted from time to time pursuant to Paragraph 6.3);

16.2.1.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction over the project, the work of CONTRACTOR'S performance of the work;

16.2.1.3. if CONTRACTOR disregards the authority of PROJECT MANAGER or ENGINEER; or

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

16.2.1.5. if Hazardous Waste is uncovered or revealed at the site which was not shown or indicated within the plans or specifications identified in the Contract Documents to be within the scope of the Work or which CONTRACTOR discovered or should have discovered in CONTRACTOR'S inspection of the property in preparing any Bid and which may present a

substantial danger to persons or property exposed thereto in connection with the Work at the site.

OWNER may, after giving CONTRACTOR seven (7) days' written notice, and, to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages sustained by OWNER arising out of, or resulting from, completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. When exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price for the Work performed.

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

16.2.3. Upon seven (7) days' written notice to CONTRACTOR, PROJECT MANAGER, and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement in whole or in part. In such case, CONTRACTOR shall be paid (without duplication of any items):

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

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

16.2.3.3. For all claims, costs, losses, and damages incurred in reasonable settlements of terminated contracts with Subcontractors, Suppliers, and others; and

16.2.3.4. For reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, or resulting from, such termination. **OWNER SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY LOSS OF ANTICIPATED PROFITS OR REVENUE OR OTHER ECONOMIC LOSS ARISING OUT OF, OR RESULTING FROM, SUCH TERMINATION, EVEN IF SUCH LOSS IS DUE TO THE NEGLIGENCE, OTHER FAULT, BREACH OF CONTRACT OR WARRANTY, VIOLATION OF THE TEXAS**

DECEPTIVE TRADE PRACTICES ACT, OR STRICT LIABILITY WITHOUT REGARD TO FAULT OF OWNER.

16.3. CONTRACTOR May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty (30) calendar days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days' written notice to OWNER and PROJECT MANAGER, and provided OWNER or PROJECT MANGER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER, payment on the same terms as provided in Paragraph 16.2.3. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if PROJECT MANAGER has failed to act on an Application for Payment within thirty (30) days after it is submitted, or OWNER has failed for thirty (30) days to pay CONTRACTOR any sums finally determined to be due, CONTRACTOR may upon seven (7) day's written notice to OWNER and PROJECT MANAGER stop the Work until payment of all such amount due CONTRACTOR, including interest thereon. The provisions of this Paragraph 15.3 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this Paragraph.

16.4. Termination Conversion

If OWNER Terminates the Agreement pursuant to Paragraph 16.2 and such termination is subsequently determined to be wrongful or otherwise improper by a court of competent jurisdiction, such termination shall thereby be deemed as a termination under Paragraph 16.2.3. CONTRACTOR'S rights of recovery against OWNER shall be limited to the amounts set forth at Paragraphs 16.2.3.1, 16.2.3.2, 16.2.3.3, and 16.2.3.4 and as otherwise limited in Article 11.

ARTICLE 17 MISCELLANEOUS

17.1. Giving Notice

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

17.2. Computation of Times

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such

period falls on a Saturday or Sunday or on a day made a legal holiday (holiday recognized by OWNER) such day will be omitted from the computation.

17.2.2. A day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

17.2.3. Unless specifically provided otherwise in Supplemental Conditions or the Contract, all count of days under the provisions of this Contract shall be calendar days.

17.3. Notice of Claim

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

17.4. Cumulative Remedies

The duties and obligations imposed by these GENERAL CONDITIONS and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon CONTRACTOR by Paragraphs 6.6, 6.8.2, 6.10.1, 6.12.2, 6.19, 6.20.1, 6.20.2, 12.4, 14.6, 14.7, 14.9, 15.8, and 16.2.3, and all of the rights and remedies available to OWNER, PROJECT MANAGER, and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

17.5. Setoff

OWNER may, at its option, setoff any amounts otherwise due from OWNER to CONTRACTOR under this Agreement against any delinquent amounts or liabilities which are due to OWNER or its commonly controlled affiliates from CONTRACTOR. All of CONTRACTOR's claims for money due or to become due from OWNER under this Agreement shall be subject to deduction or set off by OWNER by reason of any counterclaim arising out of this or any other transaction with CONTRACTOR.

17.6. Voluntary Agreement

The parties hereto enter into this Agreement as their free and voluntary act, with adequate opportunity to consult with counsel of their choice, without coercion or duress of any kind.

17.7. Invalidities

The invalidity of any part or provision of this Agreement shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of this Agreement.

17.8. Multiple Counterparts

This Agreement shall be executed in multiple counterparts, each of which counterpart shall be considered an original counterpart of equal dignity with all other original counterparts.

17.9. No Third Party Beneficiaries

This Agreement shall be executed in multiple counterparts, each of which counterpart shall be considered an original counterpart of equal dignity with all other original counterparts.

17.10. Governing Law

This Agreement shall be governed by the laws of the state of Texas.

END OF SECTION