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**STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT**

Prepared by
Engineers Joint Contract Documents Committee
and

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These General Conditions have been prepared for use with the Owner-Contractor Agreement (No. 1910-A-1 or 1910-8-A-2) (1990 Editions). Their provisions are interrelated and a change in one may necessitate a change in the others. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Contract Documents (No. 1910-9) (1990 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1990 Edition). When bidding is involved, the Standard Form of Instructions to Bidders (No. 1910-12) (1990 Edition) may be used.

TABLE OF CONTENTS OF GENERAL CONDITIONS

Article or Paragraph Number & Title	Page Number	Article or Paragraph Number & Title	Page Number
1. DEFINITIONS	13	Before Starting Construction:	
1.1 Addenda	13	CONTRACTOR's Responsibility to	
1.2 Agreement	13	Report: Preliminary Schedules:	
1.3 Application for Payment	13	Delivery of Certificates of	
1.4 Asbestos	13	Insurance.....	15
1.5 Bid	13	2.8 Preconstruction Conference.....	15
1.6 Bidding Documents.....	13	2.9 Initially Acceptable Schedules	16
1.7 Bidding Requirements.....	13		
1.8 Bonds.....	13	3. CONTRACT DOCUMENTS: INTENT,	
1.9 Change Order	13	AMENDING, REUSE.....	16
1.10 Contract Documents	13	3.1-3.2 Intent	16
1.11 Contract Price.....	13	3.3 Reference to Standards and	
1.12 Contract Times	13	Specifications of Technical Societies:	
1.13 CONTRACTOR.....	13	Reporting and Resolving	
1.14 <i>defective</i>	13	Discrepancies	16
1.15 Drawings	13	3.4 Intent of Certain Terms or Adjectives	17
1.16 Effective Date of the Agreement.....	13	3.5 Amending Contract Documents	17
1.17 ENGINEER.....	13	3.6 Supplementing Contract Documents	17
1.18 ENGINEER's Consultant.....	13	3.7 Reuse of Documents.....	17
1.19 Field Order	13		
1.20 General Requirements	14	4. AVAILABILITY OF LANDS; SUBSURFACE AND	
1.21 Hazardous Waste.....	14	PHYSICAL CONDITIONS; REFERENCE POINTS.	17
1.22 Laws and Regulations: Laws or		4.1 Availability of Lands.....	17
Regulations.....	14	4.2 Subsurface and Physical Conditions.....	17
1.23 Liens	14	4.2.1 Reports and Drawings	17
1.24 Milestone	14	4.2.2 Limited Reliance by CONTRACTOR	
1.25 Notice of Award	14	Authorized; Technical Data	18
1.26 Notice to Proceed	14	4.2.3 Notice of Differing Subsurface or	
1.27 OWNER	14	Physical Conditions	18
1.28 Partial Utilization	14	4.2.4 ENGINEER's Review	18
1.29 PCBs	14	4.2.5 Possible Contract Documents Change.....	18
1.30 Petroleum	14	4.2.6 Possible Price and Time Adjustments	18
1.31 Project	14	4.3 Physical Conditions – Underground	
1.32 Radioactive Material	14	Facilities	18
1.33 Resident Project Representative	14	4.3.1 Shown or Indicated.....	18
1.34 Samples	14	4.3.2 Not Shown or Indicated.....	19
1.35 Shop Drawings	14	4.4 Reference Points.....	19
1.36 Specifications	14	4.5 Asbestos, PCBs, Petroleum, Hazardous	
1.37 Subcontractor	14	Waste or Radioactive Material	19
1.38 Substantial Completion	14		
1.39 Supplementary Conditions	14	5. BONDS AND INSURANCE	20
1.40 Supplier	14	5.4-5.2 Performance, Payment and other Bonds.....	20
1.41 Underground Facilities	14	5.3 Licensed Sureties and Insurers;	
1.42 Unit Price Work	14	Certificates of Insurance	20
1.43 Work	15	5.4 CONTRACTOR's Liability Insurance.....	20
1.44 Work Change Directive.....	15	5.5 OWNER's Liability Insurance	21
1.45 Written Amendment.....	15	5.6 Property Insurance.....	21
		5.7 Boiler and Machinery or Additional	
2. PRELIMINARY MATTERS	15	Property Insurance	21
2.1 Delivery of Bonds	15	5.8 Notice of Cancellation Provisions	21
2.2 Copies of Documents	15	5.9 CONTRACTOR's Responsibility for	
2.3 Commencement of Contract Times;		Deductible Amounts	22
Notice to Proceed.....	15	5.10 Other Special Insurance.....	22
2.4 Starting the Work	15	5.11 Waiver of Rights	22

Article or Paragraph Number & Title	Page Number	Article or Paragraph Number & Title	Page Number
5.12-5.13	Receipt and Application of Insurance Proceeds..... 22	8.6	Change Orders..... 29
5.14	Acceptance of Bonds and Insurance; Option to Replace 22	8.7	Inspections, Tests and Approvals 29
5.15	Partial Utilization - Property Insurance..... 23	8.8	Stop or Suspend Work; Terminate CONTRACTOR's Services..... 29
6.	CONTRACTOR'S RESPONSIBILITIES..... 23	8.9	Limitations on OWNER's Responsibilities..... 30
6.1-6.2	Supervision and Superintendence 23	8.10	Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material 30
6.3-6.5	Labor, Materials, and Equipment 23	8.11	Evidence of Financial Arrangements 30
6.6	Progress Schedule 23	9.	ENGINEER'S STATUS DURING CONSTRUCTION 30
6.7	Substitutes and "Or-Equal" Items; CONTRACTOR's Expense; Substitute Construction Methods or Procedures; ENGINEER's Evaluation 23	9.1	OWNER's Representative 30
6.8-6.11	Concerning Subcontractors, Suppliers and Others; Waiver of Rights 24	9.2	Visits to Site 30
6.12	Patent Fees and Royalties..... 25	9.3	Project Representative..... 30
6.13	Permits 25	9.4	Clarifications and Interpretations 30
6.14	Laws and Regulations 25	9.5	Authorized Variations in Work..... 30
6.15	Taxes 25	9.6	Rejecting Defective Work..... 30
6.16	Use of Premises..... 26	9.7-9.9	Shop Drawings, Change Orders, and Payments..... 31
6.17	Site Cleanliness..... 26	9.10	Determinations for Unit Prices..... 31
6.18	Safe Structural Loading..... 26	9.11-9.12	Decisions on Disputes; ENGINEER as Initial Interpreter..... 31
6.19	Record Documents..... 26	9.13	Limitations on ENGINEER's Authority and Responsibilities..... 31
6.20	Safety and Protection 26	10.	CHANGES IN THE WORK 32
6.21	Safety Representative..... 26	10.1	OWNER Ordered Change..... 32
6.22	Hazard Communication Program..... 27	10.2	Claim for Adjustment..... 32
6.23	Emergencies 27	10.3	Work Not Required by Contract Documents 32
6.24	Shop Drawings and Samples..... 27	10.4	Change Orders
6.25	Submittal Procedures; CONTRACTOR's Review Prior to Shop Drawings or Sample Submittal.. 27	10.5	Notification of Surety..... 32
6.26	Shop Drawing & Sample Submittals Review by ENGINEER 27	11.	CHANGE OF CONTRACT PRICE..... 32
6.27	Responsibility for Variation From Contract Documents 27	11.1-11.3	Contract Price; Claim for Adjustment; Value of the Work 32
6.28	Related Work Performed Prior to ENGINEER's Review and Approval of Required Submittals 27	11.4	Cost of the Work 33
6.29	Continuing the Work..... 28	11.5	Exclusions to Cost of the Work 34
6.30	CONTRACTOR's General Warranty and Guarantee 28	11.6	CONTRACTOR's Fee 34
6.31-6.33	Indemnification 28	11.7	Cost Records 34
6.34	Survival of Obligations 28	11.8	Cash Allowances 35
7.	OTHER WORK..... 29	11.9	Unit Price Work 35
7.1-7.3	Related Work at Site 29	12.	CHANGE OF CONTRACT TIMES 35
7.4	Coordination	12.1	Claim for Adjustment..... 35
8.	OWNER'S RESPONSIBILITIES 29	12.2	Time of the Essence 35
8.1	Communications to Contractor 29	12.3	Delays Beyond CONTRACTOR's Control 35
8.2	Replacement of ENGINEER..... 29	12.4	Delays Beyond OWNER's and CONTRACTOR's Control 35
8.3	Furnish Data and Pay Promptly When Due 29	13.	TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK..... 36
8.4	Lands and Easements; Reports and Tests..... 29	13.1	Notice of Defects 36
8.5	Insurance..... 29	13.2	Access to the Work 36
		13.3	Tests and Inspections; Contractor's Cooperation..... 36

Article or Paragraph Number & Title	Page Number	Article or Paragraph Number & Title	Page Number
13.4	OWNER's Responsibilities: Independent Testing Laboratory.....	14.12	Final Application for Payment.....
	36	14.13-14.14	Final Payment and Acceptance.....
13.5	CONTRACTOR's Responsibilities.....	14.15	Waiver of Claims.....
	36		40
13.6-13.7	Covering Work Prior to Inspection. Testing or Approval.....	15.	SUSPENSION OF WORK AND TERMINATION.....
	36		40
13.8-13.9	Uncovering Work at ENGINEER's Request.....	15.1	OWNER May Suspend Work.....
	36	15.2-15.4	OWNER May Terminate.....
13.10	OWNER May Stop the Work.....	15.5	CONTRACTOR May Stop Work or Terminate.....
	36		41
13.11	Correction or Removal of Defective Work.....	16.	DISPUTE RESOLUTION.....
	37		41
13.12	Correction Period.....	17.	MISCELLANEOUS.....
	37		42
13.13	Acceptance of Defective Work.....	17.1	Giving Notice.....
	37	17.2	Computation of Times.....
13.14	OWNER May Correct Defective Work.....	17.3	Notice of Claim.....
	37	17.4	Cumulative Remedies.....
		17.5	Professional Fees and Court Costs Included.....
			42
14.	PAYMENTS TO CONTRACTOR AND COMPLETION.....	EXHIBIT GC-A (Optional):	
	37	Dispute Resolution Agreement (Optional).....	GC-A1
14.1	Schedule of Valves.....	16.1-16.6	Arbitration.....
	37		GC-A1
14.2	Application for Progress Payments.....	16.7	Mediation.....
	38		GC-A2
14.3	CONTRACTOR's Warranty of Title.....		
	38		
14.4-14.7	Review of Applications for Progress Payments.....		
	38		
14.8-14.9	Substantial Completion.....		
	39		
14.10	Partial Utilization.....		
	39		
14.11	Final Inspection.....		
	39		

INDEX TO GENERAL CONDITIONS

Article or Paragraph Number	Article or Paragraph Number
Acceptance of—	
Bonds and Insurance.....	5.14
<i>defective</i> Work	10.4.1,13.13,1.15
final payment	9.12,14.15
insurance.....	5.14
other Work by CONTRACTOR.....	7.3
Substitutes and “Or-Equal” Items.....	6.7.1
Work by OWNER	2.5,6.30,6.34
Access to the—	
Lands OWNER and CONTRACTOR	
responsibilities	4.1
site, related work	7.2
Work.....	13.2,13.14,14.9
Acts or Omissions – Acts and Omissions—	
CONTRACTOR.....	6.9.1,9.13.3
ENGINEER.....	6.20,9.13.3
OWNER	6.20,8.9
Addenda—definition of (also see	
definition of Specifications)	(1.6,1.10,6.19)1.1
Additional Property Insurances	5.7
Adjustments	
Contract Price or Contract	
Times	1.5,3.5,4.1,4.3,2.4,5.3,4.5.3,9.4,9.5, 10.2-10.4,11,12.14.8,15.1
progress schedule	6.6
Agreement—	
definition of	1.2
All risk Insurance policy form	5.6.2
Allowances, Cash.....	11.8
Amending Contract Documents.....	3.5
Amendment, Written—	
In general.....	1.10,1.45,3.5,5.10,5.12,6.6.2,6.8.2,6.19, 10.1,10.4,11.2,12.1,13.12.2,14.7.2
Appeal, OWNER or CONTRACTOR	
intent to.....	9.10,9.11,10.4,16.2,16.5
Application for Payment—	
definition of.....	1.3
ENGINEER’s Responsibility.....	9.9
final payment.....	9.13.4,9.13.5,14.12-14.15
in general	2.8,2.9,5.6.4,9.10,15.5
progress payment.....	14.1,14.7
review of.....	14.4-14.7
Arbitration (Optional)	16.1-16.6
Asbestos—	
claims pursuant thereto.....	4.5.2,4.5.3
CONTRACTOR authorized to stop Work	4.5.2
definition of.....	1.4
OWNER responsibility for.....	4.5.1,8.10
possible price and times changes.....	4.5.2
Authorized Variations in Work.....	3.6,6.25,6.27,9.5
Availability of Lands	4.1,8.4
Award, Notice of—defined.....	1.25
Before Starting Construction	2.5-2.8
Bid—definition of	1.5
(1.1,1.10,2.3,3.3,4.2.6.4,6.13,11.4.3,11.9.1)	
Bidding Document—definition of	1.6,(6.8.2)
Biding Requirements—definitions of	1.7(1.1,4.2.6.2)
Bonds—acceptance of	5.14
additional bonds	10.5,11.4,5.9
Cost of the Work	11.5.4
definition of.....	1.8
delivery of.....	2.1,5.1
final application for payment.....	14,12-14.14
general	1.10,5.1-5.3,5.13,9.13,10.5,14.7.6
performance, Payment and Other	5.1-5.5
Bonds and Insurance—in general	5
Builder’s risk “all risk” policy form.....	5.6.2
Cancellation Provisions, Insurance	5.4.11,5.8,5.15
Cash Allowances.....	11.8
Certificate of Substantial Completion.....	1.38,6.30.2.3, 14.8,14.10
Certificates of Inspection	9.13,13.5,14.12
Certificates of Insurance	2.7,5.3,5.4.11,5.4.13,5.6.5,5.8, 5.14,9.13,4,14.12
Change in Contract Price—	
Cash Allowances	11.8
claim for price adjustment.....	4.1,4.2.6.4,5.5,15.6.8.2, 9.4,9.5,9.11,10.2,10.5,11.2,13.9, 13.13,13.14,15.1, 15.5
CONTRACTOR’s fee	11.6
Cost of the Work	
general.....	11.4-11.7
Exclusions to	11.5
Cost Records.....	11.7
in general.....	1.19,1.44,9.11,10.4.2,10.4.3,11
Lump Sum Pricing.....	11.3.2
Notification of Surety	10.5
Scope of.....	10.3-10.4
Testing and Inspection, Uncovering the Work	13.9
Unit Price Work.....	11.9
Value of Work	11.3
Change in Contract Times—	
Claim for times adjustment	4.1,4.2.6.4,5.5,15.6.8.2, 9.4,9.5,9.11,10.2,10.5,12.1,13.9,13.13, 13.14,14.7,15.1,15.5
Contractual time limits	12.2
Delays beyond CONTRACTOR’s control	12.3
Delays beyond OWNER’s and CONTRACTOR’S	
control	12.4
Notification of surety.....	10.5
Scope of change.....	10.3-10.4
Change Orders-	
Acceptance of Defective Work.....	13.13
Amending Contract Documents	3.5
Cash Allowances	11.8
Change of Contract Price.....	11
Change of Contract Times.....	12
Changes in the Work	10
CONTRACTOR’s fee	11.6
Cost of the Work	11.4-11.7

Article or Paragraph Number	Article or Paragraph Number
Cost Records	General.....
definition of.....	Hazard Communication Programs
emergencies.....	Completion—
ENGINEER's responsibility	Final Application for Payment.....
execution of.....	Final inspection.....
Indemnification	Final Payment and Acceptance.....
Insurance, Bonds and	Partial Utilization.....
OWNER may terminate.....	Substantial Completion.....
OWNER's Responsibility	Waiver of Claims
Physical Conditions—	Computation of Times.....
Subsurface and,	Concerning Subcontractors,
Underground Facilities	Suppliers and Others
Record Documents.....	Conferences—
Scope of Change	initially acceptable schedules.....
Substitutes.....	preconstruction.....
Unit Price Work.....	Conflict, Error, Ambiguity, Discrepancy—
value of Work, covered by.....	CONTRACTOR to Report.....
Changes in the Work	Construction, before starting by CONTRACTOR
Notification of surety	Construction Machinery, Equipment, etc.
OWNER's and CONTRACTORs responsibilities.....	Continuing the Work.....
Right to an adjustment	Contract Documents—Amending
Scope of change	Bonds
Claims—against CONTRACTOR.....	Cash Allowances.....
against ENGINEER	Change of Contract Price
against OWNER.....	Change of Contract Times
Change of Contract Price.....	Change in the Work
Change of Contract Times	check and verify.....
CONTRACTOR's 4,7,1,9,4,9,5,9,11,10,2,11,2,11,9,	Clarifications and Interpretations.....
12,1,14,8,15,1,15,5,17,3	definition of.....
CONTRACTOR's Fee.....	ENGINEER as initial interpreter of.....
CONTRACTOR's liability	ENGINEER as OWNER's representative.....
Cost of the Work.....	general
Decisions on Disputes.....	Insurance
Dispute Resolution.....	Intent
Dispute Resolution Agreement	minor variations in the Work.....
ENGINEER as initial interpreter	OWNER's responsibility to furnish data
Lump Sum Pricing.....	OWNER's responsibility to make
Notice of	prompt payment.....
OWNER's.....	precedence
9,4,9,5,9,11,10,2,11,2,11,9,12,1,	Record Documents.....
13,9,13,13,13,14,17,3	Reference to Standards and Specifications
OWNER's liability.....	of Technical Societies.....
OWNER may refuse to make payment	Related Work
Professional Fees and Court Costs Included	Reporting and Resolving Discrepancies
request for formal decision on.....	Reuse of
Substitute items.....	Supplementing
Time Extension	Termination of ENGINEER's Employment
Time requirements	Unit Price Work
Unit Price Work	variations.....
Value of.....	3,6,6,23,6,27
Waiver of—on Final Payment	Visits to Site, ENGINEER's
Work change Directive	Contract Price—
written notice required	adjustment of.....
Clarifications and Interpretations	Change of.....
Clean Site	Decision on Disputes
Codes of Technical Society, Organization or	definition of.....
Association.....	Contract Times—
Commencement of Contract Times.....	adjustment of.....
Communications—	Change of

Article or Paragraph Number	Article or Paragraph Number
Commencement of.....	2.3
definition of.....	1.12
CONTRACTOR—	
Acceptance of Insurance	5.14
Limited reliance on Technical Data Authorized	4.2.2
Communications	6.2,6.9.2
Continue Work.....	6.29,10.4
coordination and scheduling	6.9.2
definition of.....	1.13
May Stop Work or Terminate	15.5
provide site access to others.....	7.2,13.2
Safety and Protection	4.3.1.2,6.16,6.18,6.21-6.23 7.2,13.2
Shop Drawing & Sample Review Prior to Submittal... 6.25	
Stop Work requirements	4.5.2
CONTRACTOR's—	
Compensation	11.1-11.2
Continuing Obligation.....	14.15
Defective Work.....	9.6,13.10-13.14
Duty to correct defective Work.....	13.11
Duty to Report—Changes in the Work caused by	
Emergency.....	6.23
Defects in Work of Others.....	7.3
Differing conditions.....	4.2.3
Discrepancy in Documents.....	2.5,3.3.2,6.14.2
Underground Facilities not indicated	4.3.2
Emergencies.....	6.23
Equipment and Machinery Rental, Cost	
of the Work.....	11.4.5.3
Fee—Cost—Plus.....	11.4.5.6,11.5.1,11.6
General Warranty and Guarantee.....	6.30
Hazard Communication Programs	6.22
Indemnification	6.12.6.16,6.31-6.33
Inspection of the Work.....	7.3,13.4
Labor, Materials and Equipment.....	6.3-6.5
Laws and Regulations, Compliance by	6.14.1
Liability Insurance	5.4
Notice of Intent to Appeal.....	9.10,1.4
Obligation to perform and complete the work	6.30
Patent Fees and Royalties, paid for by	6.13
Performance and other Bonds	5.1
Permits, obtained and paid for by	6.13
Progress Schedule	2.6,2.8,2.9,6.6,6.29,10.4,15.2.1
Request for formal decision on disputes	9.11
Responsibilities—	
Changes in the Work	10.1
Concerning Subcontractors, Suppliers & others.....	6.8-6.1
Continuing the Work	6.29,10.4
CONTRACTOR's expense	6.7.1
CONTRACTOR's General Warranty and	
Guarantee	6.30
CONTRACTOR's review prior to Shop Drawing or Sample submittal	6.25
Coordination of Work	6.9.2
Emergencies	6.23
ENGINEER's evaluation, Substitutes	
Or "Or-Equal" Items.....	6.7.3
For Acts and Omissions of Others	6.9.1-2.9.13
For deductible amounts, insurance.....	5.9
general.....	6.7.2,7.3,8.9
Hazardous Communication Programs.....	6.22
Indemnification	6.31-6.33
Labor, Materials, and Equipment.....	6.3-6.5
Laws and Regulations	6.14
Liability Insurance	5.4
Notice of variation from Contract Documents.....	6.27
Patent Fees and Royalties	6.12
Permits	6.13
Progress Schedule	6.6
Record Documents.....	6.19
related Work performed prior to ENGINEER's	
approval of required submittals	6.28
safe structural loading	6.18
Safety and Protection	6.20,7.2,13.2
Safety Representative.....	6.21
Scheduling the Work.....	6.9.2
Shop Drawings and Samples.....	6.24
Shop Drawings and Samples Review	
by ENGINEER	6.26
Site cleanliness.....	6.17
Submittal Procedures	6.25
Substitute Construction Methods and	
Procedures	6.7.2
Substitutes and "Or-Equal" Items	6.7.1
Superintendence	6.2
Supervision	6.1
Survival of Obligations	6.34
Taxes.....	6.15
Tests and Inspections	13.5
To Report.....	2.5
Use of Premises.....	6.16-6.18,6.30.2.4
Review Prior to Shop Drawing or Sample Submittal.....	6.25
Right to adjustment for changes in the Work.....	10.2
right to claim	4.7.1,9.4,9.5,9.11,10.2,11.2,11.9,12.1, 13.9,14.8,15.1,15.5,17.3
Safety and Protection.....	6.20-6.22,7.2,13.2
Safety Representative	6.21
Shop Drawings and Samples Submittals	6.24-6.28
Special Consultants	11.4.4
Substitute Construction Methods and Procedures	6.7
Substitute and "Or-Equal" Items, Expense.....	6.7.1,6.7.2
Subcontractors, Suppliers and Others.....	6.8-6.11
Supervision and superintendence	6.1,6.2,6.21
Taxes, Payment by	6.15
Use of Premises	6.16-6.18
Warranties and guarantees.....	6.30.6.5
Warranty of Title.....	14.3
Written Notice Required—	
CONTRACTOR stop Work or terminate.....	15.5
Reports of Differing Subsurface and Physical Conditions	
.....	4.2.3
Substantial Completion	14.8
CONTRACTORS—other	
Contractual Liability Insurance	5.4,10
Contractual Time Limits	12.2
Coordination	

Article or Paragraph Number	Article or Paragraph Number
CONTRACTOR's responsibility.....	6.9.2
Copies of Documents	2.2
Correction Period	13.12
Correction, Removal or Acceptance of Defective Work in general.....	10.4.1, 13, 10-13.14
Acceptance of Defective Work	13.13
Correction or Removal of Defective Work	6.30, 13.11
Corrective Period	13.12
OWNER May Correct Defective Work	13.14
OWNER May Stop Work	13.10
Cost—	
of Tests and Inspections	13.4
Records	11.7
Cost of the Work—	
Bonds and insurance, additional	11.4.5.9
Cash Discounts.....	11.4.2
CONTRACTOR's Fee.....	11.6
Employee Expenses	11.4.5.6
Exclusion to	11.5
General.....	11.4-11.5
Home office and overhead expenses.....	11.5
Losses and damages	11.4.5.6
Materials and equipment.....	11.4.2
Minor expenses	11.4.5.8
Payroll costs on changes	11.4.1
Performed by Subcontractors.....	11.4.3
Records	11.7
Rentals of construction equipment and machinery... ..	11.4.5.3
Royalty payments, permits and license fees.....	11.4.5.5
Site office and temporary facilities	11.4.5.2
Special consultants. CONTRACTOR's	11.4.4
Supplemental.....	11.4.5
Taxes related to the Work	11.4.5.4
Tests and Inspection.....	13.4
Trade Discounts	11.4.2
Utilities, fuel and sanitary facilities	11.4.5.7
Work after regular hours	11.4.1
Covering Work	13.6-13.7
Cumulative Remedies.....	17.4-17.5
Cutting, fitting and patching.....	7.2
Data, to be furnished by OWNER.....	8.3
Day—definition of	1.14
Decisions on Disputes	9.11, 9.12
defective—definition of	1.14
defective Work—	
Acceptance of.....	10.4.1, 13.13
Correction or Removal of	10.4.1, 13.11
Correction Period	13.12
in general.....	13, 14.7, 14.11
Observation by ENGINEER	9.2
OWNER May Stop Work	13.10
Prompt Notice of Defects.....	13.1
Rejecting	9.6
Uncovering the Work.....	13.8
Definitions	1
Delays.....	4.1, 6.29, 12.3-12.4
Delivery of Bonds	2.1
Delivery of Certificates of insurance.....	2.7
Determinations of Unit Prices	9.10
Differing Subsurface or Physical Conditions	
Notice of	4.2.3
ENGINEER's Review.....	4.5.4
Possible Contract Documents Change	4.5.5
Possible Price and Times Adjustments	4.2.6
Discrepancies—Reporting and Resolving	2.5, 3.3.2, 6.14.2
Dispute Resolution—	
Agreement.....	16.1-16.6
Arbitration.....	16.1-16.5
general.....	16
Mediation	16.6
Dispute Resolution Agreement.....	16.1-16.6
Disputes, Decisions by ENGINEER	9.11-9.12
Documents—	
Copies of	2.2
Record.....	6.19
Reuse of	3.7
Drawings – definition of.....	1.15
Easements.....	4.1
Effective date of Agreement—definition of.....	1.16
Emergencies	6.23
ENGINEER—	
as initial interpreter on disputes	9.11-9.12
definition of.....	1.17
Limitations on authority and responsibilities.....	9.13
Replacement of	8.2
Resident Project Representative.....	9.3
ENGINEER's Consultant—definition of.....	1.18
ENGINEER's—	
authority and responsibility, limitations on.....	9.13
Authorized Variations in the Work.....	9.5
Change Orders, responsibility for	9.7, 10, 11, 12
Clarifications and interpretations	3.6.3, 9.4
Decisions on Disputes	9.11-9.12
defective Work, notice of.....	13.1
Evaluation of Substitute Items	6.7.3
Liability.....	6.32, 9.12
Notice Work is Acceptable	14.13
Observations	6.30.2, 9.2
OWNER's Representative	9.1
Payments to the CONTRACTOR, Responsibility For	9.9, 14
Recommendation of Payment	14.4, 14.13
Responsibilities—	
Limitations on.....	9.11-9.13
Review of Reports on Differing Subsurface and Physical Conditions	4.2.4
Shop Drawings and Samples, review responsibility	6.26
Status During Construction—	
authorized variations in the Work	9.5
Clarifications and Interpretations	9.4
Decisions on Disputes	9.11-9.12
Determinations on Unit Price	9.10
ENGINEER as Initial Interpreter	9.11-9.12
ENGINEER's Responsibilities.....	9.1-9.12

Article or Paragraph Number	Article or Paragraph Number
Limitations on Engineer's Authority and Responsibilities	deductible amounts, CONTRACTOR's responsibility
OWNER's Representative	responsibility
Project Representative	Final Application of Payment
Rejecting Defective Work	Licensed Insurers
Shop Drawings, Change Orders and Payments	Notice requirements, material changes
Visits to Site	Option to Replace
Unit Price Determinations	other special insurances
Visits to Site	OWNER as fiduciary for Insureds
Written consent required	OWNER's Liability
Equipment, Labor, Materials and	OWNER's Responsibility
Equipment rental, Cost of the Work	Partial Utilization, Property Insurance
Equivalent Materials and Equipment	Property
Errors or omissions	Receipt and Application of insurance Proceeds
Evidence of Financial Arrangements	Special Insurance
Explorations of physical conditions	Waiver of rights
Fee, CONTRACTOR's—Costs —Plus	Intent of Contract Documents
Field Order—	Interpretations and Clarifications
definition of	Investigations of physical conditions
issued by ENGINEER	Labor, Materials and Equipment
Final Application for Payment	Lands—
Final Inspection	and Easements
Final Payment—	Availability of
and Acceptance	Reports & Tests
Prior to, for cash allowances	Laws and Regulations—Laws or Regulations—
General Provisions	Bonds
General Requirements—	Changes in the Work
definition of	Contract Documents
principal references to	CONTRACTOR's Responsibilities
Giving Notice	Correction Period, defective Work
Guarantee of Work—by	Cost of the Work, taxes
CONTRACTOR	definition of
Hazard Communication Programs	general
Hazardous Waste—	Indemnification
definition of	Insurance
general	Precedence
OWNER's responsibility for	Reference to
Indemnification	Safety and Protection
Initially Acceptable Schedules	Subcontractors, Suppliers and Others
Inspection—	Tests and Inspections
Certificates of	Use of Premises
Final	Visits to Site
Special, required by ENGINEER	Liability Insurance—CONTRACTOR's
Tests and Approval	OWNER's
Insurance—	Licensed Sureties and Insurers
Acceptance of, by OWNER	Liens—
Additional, required by changes	Application for Progress Payment
In the Work	Contractor's Warranty of Title
Before starting the Work	Final Application for Payment
Bonds and—in general	definition of
Cancellation Provisions	Waiver of Claims
Certificates of	Limitations on ENGINEER's authority and responsibilities
completed operations	responsibilities
CONTRACTOR's Liability	Limited Reliance by CONTRACTOR Authorized
CONTRACTOR's objection to coverage	Maintenance and Operating Manuals—
Contractual Liability	Final Application for Payment
	Manuals (of others)—
	Precedence

Article or Paragraph Number	Article or Paragraph Number
Reference to the Contract Documents.....	3.3.1
Materials and equipment—	
furnished by CONTRACTOR	6.3
not incorporated in Work	14.2
Materials or equipment—equivalent	6.7
Mediation (Optional).....	16.7
Milestones—definition of.....	1.24
Miscellaneous—	
Computation of Times	17.2
Cumulative Remedies	17.4
Giving Notice.....	17.1
Notice of Claim.....	17.3
Professional Fees and Court Costs Included.....	17.5
Multi-prime contracts	7
Not Shown or Indicated.....	4.3.2
Notice of—	
Acceptability of Project	14.13
Award, definition of.....	1.25
Claim.....	17.3
Defects	13.1
Differing Subsurface or Physical Conditions.....	4.2.3
Giving	17.1
Tests and Inspections	13.3
Variation, Shop Drawing and Sample.....	6.27
Notice to Proceed—definition of.....	1.26
giving of.....	2.3
Notification to Surety	10.5
Observations by ENGINEER	6.30,9.2
Occupancy of the Work.....	5.15,6.30,2.4,14.10
Omissions or acts by CONTRACTOR.....	6.9,9.13
“Open peril” policy form, Insurance	5.6.2
Option to Replace.....	5.14
“Or Equal” Items	6.7
Other work.....	7
Overtime Work—prohibition of.....	6.3
OWNER—	
Acceptance of defective Work	13.13
appoint and ENGINEER.....	8.2
as fiduciary.....	5.12-5.13
Availability of Lands, responsibility.....	4.1
definition of.....	1.27
data, furnish	8.3
May Correct Defective Work.....	13.14
May refuse to make payment.....	14.7
May stop the Work.....	13.10
May suspend work,	
terminate.....	8.8,13.10,15.1-15.4
Payment, make prompt	8.3,14.4,14.13
performance of other Work.....	7.1
permits and licenses, requirements	6.13
purchased insurance requirements	5.6-5.10
OWNER’s—	
Acceptance of the Work.....	6.30.2.5
Change Orders, obligation to	
execute.....	8.6,10.4
Communications	8.1
Coordination of the Work	7.4
Disputes, request for decision	9.11
Inspections, tests and approvals	8.7,13.4
Liability Insurance	5.5
Notice of Defects	13.1
Representative—During Construction.	
ENGINEER’s Status	9.1
Responsibilities—	
Asbestos, PCB’s, Petroleum, Hazardous	
Waste on Radioactive Material.....	8.10
Change Orders.....	8.6
Changes in the Work	10.1
Communications.....	8.1
CONTRACTOR’s responsibilities	8.9
evidence of financial arrangements	8.11
inspections, tests and approvals	8.7
Insurance	8.5
lands and easements	8.4
prompt payment by.....	8.3
replacement of ENGINEER	8.2
reports and tests	8.4
stop or suspend Work	8.8,13.10,15.1
terminate CONTRACTOR’s services.....	8.8,15.2
separate representative at site.....	9.3
independent testing	13.4
use of occupancy of the Work.....	5.15,14.10
written consent of approval	
required.....	9.1.6.3.11.4
written notice	
required.....	7.1,9.4,9.11,11.2,11.9,14.7,15.4
PCBs—	
definition of.....	1.29
general.....	4.5
OWNER’s responsibility for	8.10
Partial Utilization—	
definition of.....	1.28
general.....	6.30.2.4,14.10
Property Insurance.....	5.15
Patent Fees and Royalties	6.12
Payment Bonds	5.1-5.2
Payments, Recommendation of.....	14.4-14.7,14.13
Payments to CONTRACTOR and Completion—	
Application for Progress Payments	14.2
CONTRACTOR’s Warranty of Title	14.3
Final Application for Payment	14.12
Final Inspection	14.11
Final Payment and Acceptance.....	14.13-14.14
general.....	8.3,14
Partial Utilization	14.10
Retainage.....	14.2
Review of Applications for Progress	
Payments.....	14.4-14.7
prompt payment.....	8.3
Schedule of Values.....	14.1
Substantial Completion	14.8-14.9
Waiver of Claims.....	14.15
when payments due	14.4,14.13
withholding payment	14.7
Performance Bonds.....	5.1-5.2
Permits	6.13

Article or Paragraph Number	Article or Paragraph Number
Petroleum—	
definition of.....	1.30
general.....	4.5
OWNER's responsibility for.....	8.10
Physical Conditions—	
Drawings of, in or relating to.....	4.2.1.2
ENGINEER's review.....	4.2.4
existing structures.....	4.2.2
general.....	4.2.1.2
Subsurface and.....	4.2
Underground Facilities.....	4.3
Possible Contract Documents Change.....	4.2.5
Possible Price and Times Adjustments.....	4.2.6
Reports and Drawings.....	4.2.1
Notice of Differing Subsurface or.....	4.2.3
Subsurface and.....	4.2
Subsurface Conditions.....	4.2.1.1
Technical Data, Limited Reliance by	
CONTRACTOR Authorized.....	4.2.2
Underground Facilities—general.....	4.3
Not Shown or Indicated.....	4.3.2
Protection of.....	4.3,6.20
Shown or Indicated.....	4.3.1
Technical Data.....	4.2.2
Preconstruction Conference.....	2.8
Preliminary Matters.....	2
Preliminary Schedules.....	2.6
Premises, Use of.....	6.16-6.18
Price, Change of Contract.....	11
Price, Contract—definition of.....	1.11
Progress Payment, Applications for.....	14.2
Progress Payment—retainage.....	14.2
Progress schedule, CONTRACTOR's.....	2.6,2.8,2.9,6.6, 6.29,10.4,15.2.1
Project—definition of.....	1.31
Project Representative—	
ENGINEER's Status During Construction.....	9.3
Project Representative, Resident	
--definition of.....	1.33
prompt payment by OWNER.....	8.3
Property Insurance	
Additional.....	5.7
general.....	5.6-5.10
Partial Utilization.....	5.15,14.10.2
receipt and application of	
proceeds.....	5.12-5.13
Protection, safety and.....	6.20-6.21,13.2
Punch list.....	14.11
Radioactive Material—	
definition.....	1.32
general.....	4.5
OWNER's responsibility for.....	8.10
Recommendation of Payment.....	14.4,14.5,14.13
Record Documents.....	6.19,14.12
Records, procedures for maintaining.....	2.8
Reference Points.....	4.4
Reference to Standards and Specifications	
of Technical Societies.....	3.3
Regulations, Laws and (or).....	6.14
Rejecting Defective Work.....	9.6
Related Work—	
at Site.....	7.1-7.3
Performed prior to Shop Drawings	
and samples Submittals review.....	6.28
Remedies, cumulative.....	17.4,17.5
Removal of Correction of	
Defective Work.....	13.11
rental agreements, OWNER approval	
required.....	11.4.5.3
replacement of ENGINEER, by OWNER.....	8.2
Reporting and Resolving Discrepancies.....	2.5,3.3.2,6.12.2
Reports—	
and Drawings.....	4.2.1
and Tests, OWNER's responsibility.....	8.1
Resident Project Representative—	
definition of.....	1.33
provision for.....	9.3
Resident Superintendent, CONTRACTOR's.....	6.2
Responsibilities—	
CONTRACTOR's in general.....	6
ENGINEER's in general.....	9
Limitations on.....	9.13
OWNER's in general.....	8
Retainage.....	14.2
Reuse of Documents.....	3.7
Review by CONTRACTOR: Shop Drawings	
and Samples Prior to Submittal.....	6.25
Review of Applications for Progress	
Payments.....	14.4-14.7
Right to an adjustment.....	10.2
Rights of Way.....	4.1
Royalties, Patent Fees and.....	6.12
Safe Structural Loading.....	6.18
Safety—	
and Protection.....	4.3.2,6.16,6.18,6.20-6.21,7.2,13.2
general.....	6.20-6.23
Representative, CONTRACTOR's.....	6.21
Samples—definition of.....	1.34
general.....	6.24-6.28
Review by CONTRACTOR.....	6.25
Review by ENGINEER.....	6.26-6.27
related Work.....	6.28
submittal of.....	6.24.2
Submittal procedures.....	6.25
Schedule of progress.....	2.6.2.8-2.9.6.6.6.29.10.4.15.2.1
Schedule of Shop Drawings and Sample	
Submittals.....	2.6,2.8-2.9,6.24-6.28
Schedule of Values.....	2.6,2.8-2.9,14.1
Schedules—	
Adherence to.....	15.2.1
Adjusting.....	6.6
Change of Contract Times.....	10.4
Initially Acceptable.....	2.8-2.9
Preliminary.....	2.6
Scope of Changes.....	10.3-10.4
Subsurface Conditions.....	4.2.1.1

	Article or Paragraph Number
Shop Drawings—	
and Samples, general.....	6.24-6.28
Change Orders & Applications for	
Payments, and.....	9.7-9.9
definition of.....	1.35
ENGINEER's approval of	3.6.2
ENGINEER's responsibility	
for review	9.7,6.24-6.28
related Work.....	6.28
review procedures	2.8,6.24-6.28
submittal required	6.24.1
submittal Procedures	6.25
use to approve substitutions	6.7.3
Shown or indicated.....	4.3.1
Site Access	7.2,13.2
Site Cleanliness	6.17
Site, Visits to—by ENGINEER	9.2,13.2
by others.....	13.2
“Special causes of loss” policy form, insurance	5.6.2
Specifications—	
definition of.....	1.36
of Technical Societies, reference to	3.3.1
precedence	3.3.3
Standards and Specifications of Technical	
Societies	3.3
Starting Construction, Before.....	2.5-2.8
Starting the Work.....	2.4
Stop or Suspend Work—	
by CONTRACTOR	15.5
by OWNER.....	8.8,13.10,15.1
Storage of materials and equipment	4.1,7.2
Structural Loading, Safety.....	6.18
Subcontractor—	
Concerning.....	6.8-6.11
definition of.....	1.37
delays	12.3
waiver of rights	6.11
Subcontractors—in general	6.8-6.11
Subcontracts—required provisions	5.11,6.11,11.4.3
Submittals—	
Applications for Payment.....	14.2
Maintenance and Operation Manuals.....	14.12
Procedures.....	6.25
Progress Schedules.....	2.6,2.9
Samples.....	6.24-6.28
Schedule of Values	2.6,14.1
Schedule of Shop Drawings and	
Samples Submissions	2.6,2.8-2.9
Shop Drawings.....	6.24-6.28
Substantial Completion—	
certification of	6.30.2.3,14.8-14.9
definition of.....	1.38
Substitute Construction Methods or Procedures.....	6.7.2
Substitutes and “Or Equal” Items.....	6.7
CONTRACTOR's Expense	6.7.1.3
ENGINEER's Evaluation	6.7.3
“Or-Equal”	6.7.1
Substitute Construction Methods of Procedures.....	6.7.2

	Article or Paragraph Number
Substitute Items	6.7.1.2
Subsurface and Physical Conditions—	
Drawings of, in or relating to.....	4.2.1.2
ENGINEER's Review	4.2.4
general	4.2
Limited Reliance by CONTRACTOR	
Authorized	4.2.2
Notice of Differing Subsurface or	
Physical Conditions	4.2.3
Physical Conditions	4.2.1.2
Possible Contract Documents Change	4.2.5
Possible Price and Times Adjustments	4.2.6
Reports and Drawings.....	4.2.1
Subsurface and	4.2
Subsurface Conditions at the Site.....	4.2.1.1
Technical Data.....	4.2.2
Supervision—	
CONTRACTOR's responsibility	6.1
OWNER shall not supervise.....	8.9
ENGINEER shall not supervise	9.2,9.13.2
Superintendence.....	6.2
Superintendent, CONTRACTOR's resident	6.2
Supplemental costs.....	11.4.5
Supplementary Conditions—	
definition of.....	1.39
principal reference to	1.10,1.18,2.2,2.7,4.2,4.3,5.1, ...6.3,5.4,5.6-5.9,5.11,6.8,6.13,7.4,8.11,9.3,9.10
Supplementing Contract Documents.....	3.6
Supplier—	
definition of.....	1.40
principal references to	3.7,6.5,6.8-6.11, 6.20,6.24,9.13,14.12
Waiver of Rights	6.11
Surety—	
consent to final payment.....	14.12,14.14
ENGINEER has no duty to.....	9.13
Notification of	10.1,10.5,15.2
qualification of	5.1-5.3
Survival of Obligations	6.34
Suspend Work, OWNER May	13.10,15.1
Suspension of Work and Termination—	
CONTRACTOR May Stop Work or	
Terminate	15.5
OWNER May Suspend Work.....	15.1
OWNER May Terminate.....	15.2-15.4
Taxes—Payment by CONTRACTOR.....	6.15
Technical Data—	
Limited Reliance by CONTRACTOR.....	4.2.2
Possible Price and Times Adjustments.....	4.2.6
Reports of Differing Subsurface and	
Physical Conditions	4.2.3
Temporary construction facilities	4.1
Termination—	
by CONTRACTOR	15.5
by OWNER	8.8,15.1-15.4
by ENGINEER's employment	8.2
Suspension of Work-in general	15
Terms and Adjectives.....	3.4
Tests and Inspections—	

Article or Paragraph Number	Article or Paragraph Number
Access to the Work, by others	13.2
CONTRACTOR's responsibilities.....	13.5
cost of.....	13.4
covering Work prior to.....	13.6-13.7
Laws and Regulations (or).....	13.5
Notice of Defects	13.1
OWNER May Stop Work	13.10
OWNER's independent testing	13.4
special, required by ENGINEER	9.6
Timely notice required.....	13.4
Uncovering the Work at ENGINEER's request	13.8-13.9
Times—	
Adjusting.....	6.6
Change of Contract	12
Adjusting.....	6.6
Computation of	17.2
Contract Times—definition of.....	1.12
day	17.72
Milestones	12
Requirements—	
appeals	16
clarifications, claims and disputes	9.11,11.2,12
commencement of contract times	2.3
preconstruction conference.....	2.8
schedules	2.6,2.9,6.6
starting the Work	2.4
Title, Warranty of	14.3
Uncovering Work	13.8-13.9
Underground Facilities, Physical Condition—	
definition of.....	1.41
Not Shown or Indicated	4.3.2
protection of.....	4.3,6.20
Shown or Indicated	4.3.1
Unit Price Work—	
claims	11.9.3
definition of.....	1.42
general.....	11.9,14.1,14.5
Unit Prices—	
general.....	11.3.1
Determination for.....	9.10
Use of Premises	6.16,6.18,6.30.2.4
Utility owners	6.13,6.20,7.1-7.3,13.2
Utilization, Partial	1.28,5.15,6.30.2.4,14.10
Value of the Work.....	11.3
Values, Schedule of	2.6,2.8-2.9,14.1
Variations in Work—Minor	
Authorized	6.25,6.27,9.5
Visits of Site—by ENGINEER.....	9.2
Waiver of claims—on Final Payment.....	14.15
Waiver of rights by insured parties	5.11,6.11
Warranty and Guarantee, General—by CONTRACTOR.....	6.30
Warranty of Title, CONTRACTOR's.....	14.3
Work—Access to	13.2
by others,	7
Changes in the	10
Continuing the	6.28
CONTRACTOR May Stop Work or Terminate.....	15.5
Coordination of.....	7.4
Cost of the	11.4-11.5
definition of.....	1.43
neglected by CONTRACTOR.....	13.14
other Work.....	7
OWNER May Stop Work.....	13.10
OWNER May Suspend Work.....	13.10,15.1
Related, Work at Site.....	7.1-7.3
Starting the	2.4
Stopping by CONTRACTOR.....	15.5
Stopping by OWNER.....	15.1-15.4
Variation and deviation authorized. minor.....	3.6
Work change Directive—	
claims pursuant to.....	10.2
definition of.....	1.44
principal references to	3.5.3,10.1-10.2
Written Amendment—	
definition of.....	1.45
principal references to	1.10,3.5,5.10,5.12,6.6.2,6.8.2, 6.19,10.1,10.4,11.2,12.1,13.12.2,14.7.2
Written Clarifications and Interpretations.....	3.6.3,9.4,9.11
Written Notice Required—	
by CONTRACTOR	7.1,9.10-9.11,10.4,11.2,12.1
by OWNER	9.10-9.11,10.4,11.2,13.14

GENERAL CONDITIONS

ARTICLE 1—DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1.10. *Contract Documents*—The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agree-

ment, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to Paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1 and 4.2.2.2 are not Contract Documents.

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

1.12. *Contract Times*—The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.

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

1.14. *defective*—An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection. Reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.29. *PCBs*—Polychlorinated biphenyls.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.44. *Work Change Directive*—A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23.A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

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

ARTICLE 2—PRELIMINARY MATTERS

Delivery of Bonds:

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

Copies of Documents:

2.2. OWNER shall furnish to CONTRACTOR up to ten 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.

Commencement of Contract Times; Notice to Proceed:

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

Effective Date of the Agreement, whichever date is earlier.

Starting the Work:

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

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents, and check and verify pertinent figures shown thereon and all applicable field measurements, CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

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

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

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

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

2.7. Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8. Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference

attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6. Procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

2.9. Unless otherwise provided in the Contract Documents; at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore. CONTRACTOR's schedule of Shop Drawings and Samples submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3—CONTRACT DOCUMENTS; INTENT,
AMENDING, REUSE

Intent:

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

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases, which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with the meaning. Clarifi-

cations and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

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

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

3.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5. CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

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

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

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's consultants, agents or employees any duty or authority to supervise or direct the furnishing or

performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing of performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

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

3.5.1. a formal Written Amendment.

3.5.2. a Change Order Directive (pursuant to paragraph 10.4), or

3.5.3. a Work Change Directive (pursuant to Paragraph 10.1).

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

3.6.1. a Field Order (pursuant to paragraph 9.5),

3.6.2. ENGINEER's approval of a Shop Drawing or Sample (Pursuant to paragraphs 6.26 and 6.270, or

3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any

of the Drawings, Specifications or other documents (or copies of an thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

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

Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify and encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures to permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2. Subsurface and Physical Conditions:

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

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

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

4.2.2. *Limited Reliance by CONTRACTOR Authorize:* Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance of such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

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

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

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

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

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

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

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

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

CONTRACTOR shall, promptly after becoming award thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. *ENGINEER'S Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR of ENGINEER's findings and conclusions.

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

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

4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.12.3.1 through 4.2.3.4, inclusive:

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

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and

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

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

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

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

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

4.3. *Physical Conditions—Underground Facilities:*

4.3.1. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site based on

information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions.

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

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

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

Reference Points:

4.4. OWNER shall provide engineering surveys to establish reference points for construction, which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations

without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or location, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present 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 conditions and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefore as provided in Articles 11 and 12.

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

4.5.4. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractor, ENGINEER, ENGINEER's

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

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

ARTICLE 5—BONDS AND INSURANCE

Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws and Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance

companies that are dully licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary conditions.

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

CONTRACTOR'S Liability Insurance:

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

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

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

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

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

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

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

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

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds:

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

5.4.9. include completed operations insurance:

5.4.10 include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 5.12, 6.16 and 6.31 through 6.33;

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

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

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

OWNER's Liability Insurance:

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

Property Insurance:

5.6. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insur-

ance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary conditions or required by Laws and Regulations). This insurance shall:

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

5.6.2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils and may be specifically required by the Supplementary Conditions;

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

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

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

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

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

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

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

5.11. Waiver of Rights:

5.11.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have 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, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

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

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

5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire

or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds

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

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

Acceptance of Bonds and Insurance; Option to Replace:

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

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

Partial Utilization—Property Insurance:

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

ARTICLE 6—CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

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

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

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitable qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and

CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

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

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

Progress Schedule:

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

6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

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

6.7. Substitutes and "Or-Equal" Items:

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

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

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

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

6.7.2. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by

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

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

Concerning Subcontractors, Suppliers and Others:

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

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such

substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject *defective Work*.

6.9.1 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other person and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

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

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

6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants and all other additional insureds for all losses and damages 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. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance

of the Work or the incorporation in the Work of any invention, design, process product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids., or, if there are not Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

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

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

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of

the project which are applicable during the performance of the Work.

Use of Premises:

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

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

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

Record Documents:

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

the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

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

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

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

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

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, 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 (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial completion).

Safety Representative:

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and

responsibilities shall be the prevention of accidents and the maintaining and supervising of precautions and programs.

Hazard Communication Programs:

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

Emergencies:

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

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.25.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

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

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

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

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

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

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

6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

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

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called EN-

ENGINEER'S attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with requirements of paragraph 6.25.1.

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

Continuing the Work:

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

6.30. CONTRACTOR'S General Warranty and Guarantee:

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

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

6.30.1.2. normal wear and tear under normal usage.

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

6.30.2.1. observations by ENGINEER;

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

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

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

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

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

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

6.30.2.8. any correction of defective Work by OWNER.

Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations. CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER'S Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architect, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage; (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, 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, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

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

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

Survival of Obligations:

6.34. All representations, indemnifications, warranties and guarantees made in, required by or given accordance with the

Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7—OTHER WORK

Related Work at Site:

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

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

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

Coordination:

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

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

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

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

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

ARTICLE 8—OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 9—ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

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

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or

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

Project Representative:

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

Clarifications and Interpretations:

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

Authorized Variations in Work:

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

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or

that ENGINEER believes will be not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

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

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

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

Determinations for Unit Prices:

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

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant

to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws and Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

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

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

9.13.3. ENGINEER will not be responsible for the acts or omission of CONTRACTOR or of any Sub-contractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

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

ARTICLE 10—CHANGES IN THE WORK

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

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

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

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

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

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

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

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

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

ARTICLE 11—CHANGE OR CONTRACT PRICE

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

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will

be valid if not submitted in accordance with this paragraph 11.2.

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

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3. inclusive):

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

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

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

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

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the

cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraph 11.4, 11.5, 11.6 and 11.7. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.4.5. Supplemental costs including the following:

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

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

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

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

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

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

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

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

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

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

11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4—all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

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

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

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

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

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

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

11.6.1. a mutually acceptable fixed fee: or

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

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

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

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

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

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

11.6.2.5. 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 11.6.2.1 through 11.6.2.5, inclusive.

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

Cash Allowances:

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

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

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

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

11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

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

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

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

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

11.9.3.3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result

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

ARTICLE 12—CHANGE OF CONTRACT TIMES

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

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

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

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii)

delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 12.

**ARTICLE 13—TESTS AND INSPECTION:
CORRECTION, REMOVAL OR
ACCEPTANCE OF DEFECTIVE WORK**

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

Access to Work

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

Tests and Inspections:

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

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

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

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

13.4.3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

Uncovering Work:

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

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

OWNER May Stop the Work:

13.10. If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work

shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

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

13.12. *Correction Period:*

13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws and 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 instruction: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

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

13.12.3. Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so, CONTRACTOR shall

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

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14—PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and

will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

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

CONTRACTOR's Warranty of Title:

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

Review of Applications for Progress Payment:

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

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

14.5.1 the Work has progressed to the point indicated.

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion, which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive/certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utili-

ties, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

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

Partial Utilization:

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

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

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

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all

particulars in which this inspection reveals that the Work is incomplete or *defective*. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, in 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 release in full and an affidavit of CONTRACTOR that: (i) the release 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 in indemnify OWNER against any Lien.

Final Payment and Acceptance:

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

CONTRACTOR.

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for the portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

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

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

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

ARTICLE 15—SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

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

OWNER May Terminate:

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

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Laws and Regulations of any public body having jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

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

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

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

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

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

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

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

15.4.4. for reasonable expenses directly attributable to termination.

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

CONTRACTOR May Stop Work or Terminate:

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

ARTICLE 16—DISPUTE RESOLUTION

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

such rights or remedies as either may otherwise have under the Contract Documents or by Laws and Regulation in respect of any dispute.

ARTICLE 17—MISCELLANEOUS

Giving Notice:

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

Computation of Times:

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

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

Notice of Claim:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of 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, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3. shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

17.4. The Duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulation, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

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

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**EXHIBIT GC-A to General Conditions of the
Agreement Between OWNER and CON-
TRACTOR Date _____
For use with EJCDC No. 1910-8 (1990 ed.)**

DISPUTE RESOLUTION AGREEMENT

OWNER and CONTRACTOR hereby agree that Article 16 of the General Conditions to the Agreement between OWNER and CONTRACTOR is amended to induce the following agreement of the parties:

16.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in the Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier or (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the

American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.4.3. the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontract required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER or ENGINEER's Consultants that does not otherwise exist.

16.6. the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

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16.7. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraph 16.1 through 16.6, unless delay in initiating arbitra-

tion would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

SECTION 00800

SPECIAL CONDITIONS

I. SCOPE

Insurance, certificates, Contractor's insurance responsibility, commencement, construction schedule, Engineer's responsibility, acceptance for maintenance, Owner's financial responsibility, and Owner's payment responsibility and late payment penalty.

II. INSURANCE

Contractor shall obtain, pay for, and keep in force the following minimum insurance effective in all localities where Contractor may perform the work hereunder, with such carriers as shall be acceptable to Owner.

- A. **Statutory Workmen's Compensation** covering all state and local requirements and Employer's Liability Insurance covering all persons employed by the Contractor in connection with this agreement.

The limits for "A" above shall not be less than:

- (1) Employees Liability limits of \$1,000,000/1,000,000/1,000,000
- (2) Some Contracts may require USL&H or maritime coverage. This should be checked out with the Council.
- (3) **St. John the Baptist Parish shall be waived.**
- (4) No excluded classes of personnel or employees shall be allowed on St. John the Baptist's Parish premises.

- B. **Comprehensive General Public Liability**, including:

Contractual liability assumed by this agreement.

Contractor's Contingent (protective).

Personal & advertising liability.

Completed operations.

Medical payments.

The limits for "B" above shall not be less than:

- (1) \$1,000,000 each occurrence limit
- (2) \$2,000,000 general aggregate limit other than products – completed operations
- (3) \$1,000,000 personal and advertising injury limit
- (4) \$2,000,000 products/completed operations aggregate limit
- (5) \$50,000 fire damage limit
- (6) \$5,000 medical expense limit (desirable but necessary)
- (7) \$1,000,000 CSL each occurrence with no annual aggregate will be acceptable in lieu of 1+2 above. Must include BFCGL endorsement.
- (8) **St. John the Baptist Parish shall be named and waived.**

- (9) Some Contracts may require Protection and Indemnity Coverage. This should be checked with St. John the Baptist Parish.

- C. **Comprehensive Automobile Liability** covering all owned, hired, and other non-owned vehicles of the Contractor.

The limits for "C" above shall not be less than:

- (1) \$1,000,000 CSL
(2) **St. John the Baptist Parish shall be named and waived.**

III. **CERTIFICATES**

Prior to starting the work, the Contractor shall deliver to the Engineer, certificates in triplicate evidencing that the insurance required in Section SC-02 above is in effect. Such certificates shall provide that the Insurer shall give the Owner fifteen (15) days written notice of any material change in or cancellation of such insurance.

IV. **CONTRACTORS INSURANCE RESPONSIBILITY**

The Contractor at his expense shall maintain adequate physical damage insurance in the amounts and against the perils desired by the Contractor on all items of Contractor's equipment including tools which are owned or rented by the Contractor or for which the Contractor is liable and which are not to remain as part of the permanent construction.

V. **COMMENCEMENT OF WORK**

The Contractor shall start the work within ten days after he is mailed a "Notice to Proceed". The eleventh calendar days after the Notice is mailed shall be the first day counted in the time allowed for completion.

VI. **TIME OF COMPLETION, CONSTRUCTION, SCHEDULE AND DAMAGES**

Time is of the essence of the Contract, and all of the work is to be completed within the time limit set in the Contractor's Proposal and incorporated in the Contract.

Immediately after execution and delivery of the contract, and before the first partial payment is made the Contractor shall deliver to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivision or work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule.

In the event that the progress of the work should fall behind this schedule, the Contractor shall immediately start working longer hours, or shall employ additional men and equipment on the project or both, as necessary to assure completion of the project within the specified time limit.

If the Contractor shall be delayed in the performance of the work for any unforeseeable cause beyond his control, he shall, upon written application to the Owner within five days of the beginning of such delay, be granted such extension of the time as the Owner may deem equitable and just.

If the time required for completion of the work exceeds the time stipulated in the contract, plus any additions granted by the Owner, the sum of one hundred dollars (\$300.00) per day of additional time shall be deducted from the amount paid the Contractor. This deduction is not a penalty, but a reasonable amount that is estimated the Owner will be damaged because of the Contractor's failure to complete the work within the agreed time.

VII. ENGINEER'S RESPONSIBILITY

The term "Engineer" refers to the firm of C. J. Savoie Consulting Engineers, Inc., which has been designated by the Owner as its engineering representative for this project. The Engineer's Responsibility is as stated in the General Conditions of the Contract as supplemented here. Computations of quantities that are the basis for payment estimates, both monthly and final, will be checked and approved by the Engineer. It shall be the duty of the Engineer to enforce the specifications in a fair unbiased manner.

The Engineer will furnish the street rights-of-way, and benchmarks at each end of the project. It will be the Contractor's responsibility to locate the various items to be constructed, and to establish any additional lines, grades, or elevations that may be needed.

VIII. ACCEPTANCE FOR MAINTENANCE

The Owner shall furnish the Contractor with a certificate from his source of financing that the funds are available to meet his financial obligations in connection with this Contract.

IX. OWNER'S RESPONSIBILITY

The Owner shall furnish the Contractor with a certificate from his source of financing that the funds are available to meet his financial obligations in connection with his Contract.

X. OWNER'S PAYMENT RESPONSIBILITY AND LATE PAYMENT PENALTY

The Owner agrees to pay the Contractor on or before the tenth (10) day of each month for work performed or materials delivered during the preceding calendar month as estimated by the Contractor shall submit his estimate to the Engineer no later than the last day of the preceding month and if it is necessary to make corrections or alterations to the estimate the final day for payment shall be extended for the time required to make the adjustments to the monthly payment estimate.

XI. CONTRACTOR'S INVOICING AND WARRANTY

The Contractor shall submit all partial pay invoices on or before the first (1st) day of each month, in accordance with the work schedule, to the Engineer who shall check all items for pay within ten (10) calendar days and submit for payment as he recommends to the Owner for payment. The work for each item submitted for payment must be completed in accordance with the plans and specifications and invoiced according to the unit prices or approved percentages of Lump Sum Priced Contracts in accordance with the Bidder's Proposal. Ten percent (10%) will be retained on all partial pay estimates for projects less than \$500,000.00 in cost and five percent (5%) for projects greater than \$500,000.00 in cost for construction in accordance with these plans and specifications. If all items are completed in accordance with these plans and specifications, a substantial completion shall be recorded with the Clerk of Court in the Parish where work was performed and a five percent (5%) retainage shall be withheld at that time. The remaining five percent (5%) will be paid within forty-five (45) calendar days after final acceptance of the job by the Engineer and provided all liens and other encumbrances have been shown in writing free and clear to the satisfaction of the Owner. The Contractor shall warrant this project in writing against all defective materials and workmanship, hereinafter, for a period of one (1) year from the time of acceptance of the job by the Engineer.

XII. LIENS

If at any time there shall be evidence of any lien of claims for which the Owner might become liable and which is chargeable to the Contractor, the Owner shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient for completed indemnifications against such lien or claim. In the event the Owner has already paid to the Contractor all sums due under this contract or the balance remaining unpaid is insufficient to protect the Owner, the Contractor and his surety shall be liable to the Owner for any loss so sustained.

XIII. HOLD HARMLESS AGREEMENT

The Contractor will indemnify and hold harmless the Owner and the Engineer and their agents and employees from and against all claims, damages, losses, and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claims, damage loss of expense is attributable to bodily injury, sickness, diseases, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them by be liable.