

00700
GENERAL CONDITIONS
TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01: Defined Terms 00700-1
1.02: Terminology 00700-4
1.03: Defined Abbreviations 00700-4

ARTICLE 2 – PRELIMINARY MATTERS

2.01: Delivery of Bonds 00700-5
2.02: Copies of Documents 00700-5
2.03: Commencement of Contract Times;
Notice to Proceed 00700-5
2.04: Starting the Work 00700-6
2.05: Before Starting Construction 00700-6
2.06: Preconstruction Conference 00700-7
2.07: Initial Acceptance of Schedules 00700-7

**ARTICLE 3 – CONTRACT DOCUMENTS; INTENT,
AMENDING, REUSE**

3.01: Intent 00700-7
3.02: Reference Standards 00700-7
3.03: Reporting & Resolving Discrepancies 00700-8
3.04: Amending & Supplementing Contract
Documents 00700-8
3.05: Reuse of Documents 00700-9

**ARTICLE 4 – AVAILABILITY OF LANDS;
SUBSURFACE & PHYSICAL CONDITIONS;
REFERENCE POINTS**

4.01: Availability of Lands 00700-9
4.02: Subsurface & Physical Condition 00700-9
4.03: Differing Subsurface or Physical
Conditions 00700-9
4.04: Underground Facilities 00700-10
4.05: Reference Points 00700-11
4.06: Hazardous Environmental Conditions
At Site 00700-11

ARTICLE 5 – BONDS & INSURANCE

5.01: Performance, Payment &
Other Bonds 00700-13
5.02: Licensed Sureties & Insurers 00700-13
5.03: Certificates of Insurance 00700-13
5.04: Contractor's Liability Insurance 00700-14
5.05: Owner's Liability Insurance 00700-15
5.06: Property Insurance 00700-15
5.07: Waiver of Rights 00700-16

5.08: Receipt & Application of
Insurance Proceeds 00700-16
5.09: Acceptance of Bonds and Insurance;
Option to Replace 00700-17
5.10: Partial Utilization, Acknowledgement
of Property Insurer 00700-17
5.11: Deductible Provisions 00700-17

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01: Supervision and Superintendence 00700-17
6.02: Labor; Working Hours 00700-18
6.03: Services, Materials & Equipment 00700-18
6.04: Progress Schedule 00700-19
6.05: Substitutes and "Or-Equals" 00700-19
6.06: Concerning Subcontractors, Suppliers
And Others 00700-20
6.07: Patent Fees and Royalties 00700-22
6.08: Permits 00700-22
6.09: Laws & Regulations 00700-22
6.10: Taxes 00700-22
6.11: Use of Site & Other Areas 00700-23
6.12: Record Documents 00700-23
6.13: Safety & Protection 00700-23
6.14: Safety Representative 00700-24
6.15: Hazard Communication Program 00700-24
6.16: Emergencies 00700-24
6.17: Shop Drawings & Samples 00700-25
6.18: Continuing the Work 00700-26
6.19: Contractor's General Warranty &
Guarantee 00700-26
6.20: Indemnification 00700-26
6.21: Testing 00700-27
6.22: Contractor's Title to Material 00700-27
6.23: Coordination of Utility Relocations 00700-27
6.24: Drug-Free Workplace 00700-28
6.25: Past-Incident Injury Testing 00700-28

ARTICLE 7 – OTHER WORK

7.01: Related Work at Site 00700-28
7.02: Coordination 00700-29

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01: Communications to Contractor..... 00700-29
8.02: Replacement of Engineer 00700-29
8.03: Furnish Data 00700-29
8.04: Pay Promptly when Due 00700-29
8.05: Lands & Easements;
Reports and Tests 00700-29
8.06: Insurance..... 00700-29
8.07: Change Orders 00700-29
8.08: Inspections, Tests & Approvals 00700-29
8.09: Limitations on Owner’s Responsibilities . 00700-29
8.10: Undisclosed Hazardous
Environmental Condition 00700-30

**ARTICLE 9 – ENGINEER’S STATUS
DURING CONSTRUCTION**

9.01: Owner’s Representative 00700-30
9.02: Visits to Site..... 00700-30
9.03: Project Representative 00700-30
9.04: Clarification & Interpretations 00700-30
9.05: Authorized Variations in Work 00700-30
9.06: Rejecting Defective Work 00700-31
9.07: Shop Drawings, Change Orders
And Payments 00700-31
9.08: Determinations for Unit Price Work 00700-31
9.09: Decisions on Requirements of Contract
Documents & Acceptability of Work 00700-31
9.10: Limitations of Engineer’s Authority and
Responsibilities..... 00700-31

ARTICLE 10 – CHANGES IN WORK; CLAIMS

10.01: Authorized Changes in the Work 00700-32
10.02: Unauthorized Changes in the Work..... 00700-32
10.03: Execution of Change Orders 00700-32
10.04: Notification to Surety..... 00700-33
10.05: Claims & Disputes 00700-33

**ARTICLE 11 – PAYMENT FOR WORK PERFORMED;
COST OF THE WORK; SIGNIFICANT CHANGES IN
THE CHARACTER OF THE WORK**

11.01: Payment for Work Performed 00700-33
11.02: Cost of Extra Work /
Force Account Work 00700-34
11.03: Payment for Work Not Tested 00700-37
11.04: Significant Changes in the Character
Of the Work 00700-37
11.05: Cash Allowances 00700-38

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

12.01: Change of Contract Price 00700-38
12.02: Change of Contract Times..... 00700-39
12.03: Delays Beyond Contractor’s Control..... 00700-39

12.04: Delays Within Contractor’s Control 00700-39
12.05: Delays Beyond Owner’s and Contractor’s
Control..... 00700-39
12.06: Delay Damages..... 00700-39

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

13.01: Notice of Defects 00700-40
13.02: Access to Work 00700-40
13.03: Tests and Inspections 00700-40
13.04: Uncovering Work 00700-40
13.05: Owner May Stop the Work 00700-41
13.06: Correction of Removal of
Defective Work..... 00700-41
13.07: Correction Period 00700-41
13.08: Acceptance of Defective Work 00700-42
13.09: Owner May Correct Defective Work..... 00700-42

**ARTICLE 14 – PAYMENTS TO CONTRACTOR AND
COMPLETION**

14.01: Schedule of Values 00700-43
14.02: Progress Payments..... 00700-43
14.03: Contractor’s Warranty of Title 00700-45
14.04: Substantial Completion 00700-45
14.05: Partial Utilization 00700-45
14.06: Final Inspection 00700-46
14.07: Final Payment and Acceptance 00700-46
14.08: Final Completion Delayed 00700-47
14.09: Waiver of Claims 00700-47

**ARTICLE 15 – SUSPENSION OF WORK;
CANCELLATION OF WORK AND TERMINATION**

15.01: Owner May Suspend Work 00700-47
15.02: Owner May Cancel Work 00700-47
15.03: Owner May Terminate for Cause 00700-48
15.04: Owner May Terminate for
Convenience 00700-48
15.05: Contractor May Stop Work or
Terminate 00700-49
15.06: Termination Due to
National Emergency 00700-49

ARTICLE 16 – DISPUTE RESOLUTION

16.01: Methods & Procedures..... 00700-49

ARTICLE 17 – MISCELLANEOUS

17.01: Giving Notice 00700-49
17.02: Computation of Times 00700-49
17.03: Cumulative Remedies 00700-49
17.04: Survival of Obligations 00700-50
17.05: Controlling Law 00700-50

ARTICLE 1 GENERAL

1.01 – Defined Terms

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

Addenda: Written or graphic instruments issued prior to the opening of Bids that clarify, correct, or change the Bidding Requirements or the Contract Documents.

Agreement: The written instrument that is evidence of the Agreement between Owner and Contractor covering the Work.

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

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.

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

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

Bidding Requirements: The Notice of Hearing and Letting, Instructions to bidders, Bid security form, if any, and the Bid form with any supplements.

Bonds: Performance and payment Bonds and other instruments of security.

Calendar Day: Every day shown on the calendar.

Change Order: A document recommended by Engineer that 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.

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

Contract: The entire and integrated written Agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or Agreements, whether written or oral.

Contract Documents: The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, Advertisement to Bid, Instructions to Bidders, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by Owner to Contractor are not Contract Documents.

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 11.01 in the case of Unit Price Work).

Contract Times: The number of days or the dates stated in the Agreement to: complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

Contractor: The individual or entity with whom Owner has entered into the Agreement.

Cost of the Work: See paragraph 11.01.A for definition.

- Drawings:* That part of the Contract Documents prepared or approved by Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- Effective Date of the Agreement:* The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- Engineer:* Jurisdictional Engineer or duly authorized representative of the Owner.
- Engineer's and Owner's Consultants:* A person, firm or corporation having a Contract with Engineer or Owner to furnish services as Engineer's or Owner's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- Field Order:* A written order issued by Engineer that requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- General Requirements:* Sections of Division 1 (1000 Series) of the Technical Specifications. The General Requirements pertain to all sections of the Specifications.
- Hazardous Environmental Condition:* The presence at the Site of Asbestos, PCBs (polychlorinated biphenyls), Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- 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.
- 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.
- Late Start Date:* A Calendar Day shown on the proposal form specifying the latest date on a Contract that a Contractor is to commence Work.
- Liens:* Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- Milestone:* A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Final of all the Work.
- Notice of Award:* The written notice by Owner to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
- Notice of Hearing and Letting:* The written notice by Owner setting the time, date and location for the public hearing pertaining to the drawings, Project Manual, and opinion of cost, and the information required in the notice to bidders as required by the Iowa State Code.
- Notice to Proceed:* A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
- Owner:* The individual, entity, public body, or authority with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
- Partial Utilization:* Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- Petroleum:* Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
- Project:* The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
- Project Manual:* The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

- 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.
- Resident Project Representative:* The authorized representative of Engineer or Owner who may be assigned to the Site or any part thereof.
- 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.
- Shop Drawings:* All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- Site:* Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- Special Provisions:* That part of the Contract Documents that amends or supplements the Specifications.
- Specifications:* That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
- Subcontractor:* An individual or entity having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
- Substantial Completion:* The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be used for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- Supplementary Conditions:* That part of the Contract Documents that amends or supplements these General Conditions.
- 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.
- Underground Facilities:* All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- Unit Price Work:* Work to be paid for on the basis of unit prices.
- Work:* The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
- Work Change Directive:* A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
- Working Day:* Any Calendar Day, exclusive of Saturdays, Sundays, or a recognized legal holiday, upon which weather or other conditions (not under the control of the Contractor) will permit construction operations to proceed for not less than $\frac{3}{4}$ of a normal Work day in the performance of a controlling item of Work.

Written Amendment: A written statement modifying the Contract Documents, signed by Owner and Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

1.02 – Terminology

A. Intent of Certain Terms or Adjectives

1. **Whenever in the Contract Documents the terms as allowed, “as approved,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “Proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.**
2. *Day:* The word "day" shall constitute a Calendar Day of 24 hours measured from midnight to the next midnight
3. *Defective:* The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
4. *Furnish, Install, Perform, Provide:*
 - a. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - b. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - c. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - d. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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

1.03 – Defined Abbreviations

Wherever the following abbreviations are used in these specifications or in the Contract Documents, they are to be construed the same as the respective expressions represented:

AAN – American Association of Nurserymen	EPA – Environmental Protection Agency
AAR – Association of American Railroads	FHWA – Federal Highway Administration
AASHTO (or AASHO) American Association of State Highway and Transportation Officials	FR – Federal Register
ACI – American Concrete Institute	FSS – Federal Specifications and Standards
AIA – American Institute of Architects	GSA – General Services Administration
	IAC – Iowa Administrative Code

ANSI – American National Standards Institute	ID – Identification
APWA – American Public Works Association	IEEE – Institute of Electrical and Electronics Engineers
ASCE – American Society of Civil Engineers	IES – Illuminating Engineering Society
ASLA – American Society of Landscape Architects	ITE – Institute of Transportation Engineers
ASTM - American Society of Testing and Materials	MUTCD – Manual on Uniform Traffic Control Devices
AWPA – American Wood Preservers Association	NEMA – National Electrical Manufacturers Association
AWS – American Welding Society	NFPA – National Fire Protection Association
AWWA – American Water Works Association	SAE – Society of Automotive Engineers
CFR – Code of Federal Regulations	UL – Underwriters’ Laboratories, Inc.
DNR – Department of Natural Resources	US – United States
DOT – Department of Transportation	USC – United States Code

Abbreviations may be used for materials and classes of Work :

AC – Asphalt Cement	HMA – Hot Mix Asphalt
ACC – Asphalt Cement Concrete	PCC – Portland Cement Concrete
BSC – Bituminous Seal Coat	PLS – Pure Live Seed

ARTICLE 2 PRELIMINARY MATTERS

2.01 – Delivery of Bonds

When contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish.

2.02 – Copies of Documents

Owner shall furnish to Contractor up to ten (10) copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 – Commencement of Contract Times; Notice to Proceed

- A.** The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed, or on such date as the Contractor mobilizes, whichever date is earlier. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier, and the Contract Completion Date(s) / Milestone(s) will be maintained, as specified in the Agreement
- B. The Contractor will be charged a full Working Day for a Working Day as defined in Article 1.01. The Contractor will be charged ½ a Working Day when weather or other conditions beyond the control of the Contractor permit Work for at least one-half but less than three-quarters of a Working Day. The Contractor will not be charged a Working Day when weather or other conditions beyond the control of the Contractor prevent Work less than one-half a Working Day. Working Days will be charged beginning with the following circumstances:**
- 1. When a Specified Starting Date is used.**
 - When a Late Start Date is used and the Contractor has not started Work by the Late Start Date.
 - 3. When a starting date has been agreed to at the preconstruction conference for projects with an approximate starting date**
 - When the Contractor is working at the time for the issuance of the Notice.
 - 5. When early Work waiver is approved, as having been issued at the time of Site availability, as documented in the Project records.**
 - 6. When the Site becomes available for Work prior to the Site Availability Date.**
 - 7. When the Contractor begins Work prior to the Late Start Date.**

- C. In the event of adverse weather when Work on a Project is ready to be started or resumed and the Contractor is not on the Project, Working Days will not be charged during the inclement weather period provided the Contractor starts Work as soon as weather and ground conditions permit Work to be started or resumed.
- D. Working Days will not be charged for Sundays and recognized legal holidays the Contractor does not Work. Working Days will be charged for Sundays and recognized legal holidays the Contractor does Work.
- E. Working Days will not be charged for Saturdays the Contractor does Work, unless a six day workweek is specified in the Contract Documents.
- F. Working Days will be charged for cure time of pavement and structural concrete when it is the controlling item of Work.

2.04 – Starting the Work:

Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to Effective Date of the Agreement.

2.05 – Before Starting Construction:

- A. **Contractor's Review of Contract Documents:** Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby; however, Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.
- B. **Preliminary Schedules:** Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for Engineer's timely review.
 - 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; (updates of the progress schedule shall be provided with pay requests).
 - 2. A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such.
 - 3. A proposed listing of subcontractors and major material and equipment Suppliers.
 - 4. A schedule of unit costs for machinery, tools and equipment.
 - 5. Actual wage rates for hourly laborers, timekeepers, supervisors and superintendents to be engaged in the Work.
 - 6. Contractor personnel responsible for Project, including but not limited to:
 - a. Superintendent.
 - b. Certified pipelayer or plumber
 - c. Contact person for emergencies during non-working hours.
- C. **Evidence of Insurance:** Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, as applicable, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance that either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.
- D. The Contractor shall not be required to submit Schedule of Values on unit price Contracts (unless they contain lump sum items). The Bid will be considered the Schedule of Values for a unit price Contract.

2.06 – Preconstruction Conference:

Unless waived by the Owner in writing, 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 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 – Initial Acceptance of Schedules:

- A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment, a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with paragraph 2.05.B. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.**
 - 1. The progress schedule will be acceptable to the Engineer if it is a critical path method schedule and it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefore.**
 - 2. Contractor's schedule of Shop Drawing and Sample submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.**
 - 3. Contractor's schedule of values (where applicable) will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the lump sum Work.**
- B. Subsequent pay requests shall be accompanied by updated schedules of progress and Shop Drawing submissions.**

ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 – Intent

- A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.**
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.**
- C. Engineer shall provide clarifications and interpretations of the Contract Documents as provided in Article 9.**

3.02 – Reference Standards

Standards, Specifications, Codes, Laws, and Regulations:

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, Specification, manual, code, or Laws or Regulations in effect 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.**
- B. No provision of any such standard, Specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such**

provision or instruction be effective to assign to Owner, Engineer, or any of Engineer's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 – Reporting and Resolving Discrepancies

- A. **Reporting Discrepancies:** If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, Specification, manual or code, or of any instruction of any Supplier, Contractor shall report it to Engineer in writing at once. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that Contractor shall not be liable to Owner or Engineer for failure to report any such conflict, error, ambiguity or discrepancy unless Contractor knew or reasonably should have known thereof.
- B. **Resolving Discrepancies:**
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. The provisions of any standard, Specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - 2. **Provisions for resolving any conflict, error, ambiguity, or discrepancy within the Contract Documents shall be as follows:**
 - a. The technical specifications shall govern regarding quality of materials and workmanship.
 - b. The drawings shall govern for the dimension and location information.
 - c. Special provisions of the Contract Documents shall take precedence over technical specifications in the Cedar Rapids Metropolitan Area Standard Specifications for Public Improvements
 - d. Special details in the Contract Documents shall take precedence over details in the Cedar Rapids Metropolitan Area Standard Details for Public Improvements.
 - e. **In descending order, change orders and addenda, including attachments thereto, shall take precedence over any other contract document.**
- C. **Unauthorized Correction of Discrepancy:** If Contractor proceeds with Work that Contractor had actual knowledge or should have known that a conflict, error, ambiguity or discrepancy existed as indicated above, correction of Work constructed without such notification to Engineer shall be at Contractor's expense, (except in an emergency as authorized by paragraph 6.16).

3.04 – Amending and Supplementing Contract Documents:

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) Engineer's approval of a Shop Drawing or Sample; or (iii) Engineer's written interpretation or clarification.

3.05 – Reuse of Documents:

Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect Contract with Owner: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adoption by Engineer. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

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

4.01 – Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site, Contractor may make a Claim therefore as provided in paragraph 10.05.**
- B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. Written documentation of permission to access any additional lands shall be executed by the property owner or their authorized agent. Original Agreements shall be submitted to the Engineer prior to entering the additional land.**

4.02 – Subsurface and Physical Condition

- A. Reports and Drawings: The Supplementary Conditions identify:**
 - 1. Those reports of explorations and tests of Subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and**
 - 2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.**
- B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer, or any of Engineer's Consultants with respect to:**
 - 1. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or**
 - 2. Other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or**
 - 3. Any Contractor interpretation of or conclusion drawn from any 'technical data' or any such other data, interpretations, opinions, or information.**

4.03 – Differing Subsurface or Physical Conditions

- A. Notice: If Contractor believes that any Subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:**
 - 1. Is of such a nature as to establish that any "technical data" on which Contractor**

2. **is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or**
 3. **Is of such a nature as to require a change in the Contract Documents; or**
 4. **Differs materially from that shown or indicated in the Contract Documents; or**
 4. **Is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents. Then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.**
- B. Engineer's Review: After receipt of written notice as required by paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.**
- C. Possible Price and Times Adjustments:**
1. **The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:**
 - a. **Such condition must meet any one or more of the categories described in paragraph 4.03.A; and**
 - b. **With respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.01**
 2. **Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:**
 - a. **Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated Contract; or**
 - b. **The existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or**
 - c. **Contractor failed to give the written notice within the time and as required by paragraph 4.03.A.**
 3. **If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefore as provided in paragraph 10.05. However, Owner, Engineer, and Engineer's Consultants shall not be liable to Contractor for any Claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.**

4.04 – Underground Facilities

- A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:**
1. **Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and**
 2. **The cost of all of the following will be included in the Contract Price, and**

Contractor shall have full responsibility for:

- a. Reviewing and checking all such information and data
- b. Locating all Underground Facilities shown or indicated in the Contract Documents
- c. Coordination of the Work with the owners of such Underground Facilities, including Owner, during construction
- d. The safety and protection of all such Underground Facilities and repairing any damages thereto resulting from the Work
- e. Coordinating with Underground Facilities constructed by all entities during the Project.

B. Not Shown or Indicated:

1. **If an Underground Facility is uncovered or revealed at or contiguous to the Site that was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.**
2. **If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefore as provided in paragraph 10.05.**

4.05 – Reference Points

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

4.06 – Hazardous Environmental Conditions at Site

- A. **Reports and Drawings: Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been used by the Engineer in the preparation of the Contract Documents.**
- B. **Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any Claim against Owner, Engineer or any of Engineer's Consultants with respect to:**

1. **The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or**
 2. **Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or**
 3. **Any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.**
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site that was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. **If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.**
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefore as provided in paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefore as provided in paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this paragraph 4.06.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 BONDS AND INSURANCE

5.01 – Performance, Payment and Other Bonds

- A. 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 two years after the Work is fully accepted by the Owner. This is to provide for the correction of defects in workmanship and materials set forth in the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.
- B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act
- C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, Contractor shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.
- D. The forms of the Performance and Payment Bonds attached hereto shall be used for the Contract. Note instructions thereon as to the form applicable. Each form contemplates one corporate surety only. In case co-sureties or individual sureties will be furnished, proper forms therefore shall be obtained.
- E. Every Bond must name the Owner as obligee.
- F. If the principal is an individual, his/her full name and residence shall be inserted in the body thereof, and he/she shall sign the Bonds with his/her usual signature on the line opposite the scroll seal. If the principals are partners, their individual names shall appear in the body of the Bonds, with the recital that they are partners comprising a firm, naming it, and all the members of the firm shall execute the Bonds as individuals.
- G. The signature of a witness shall appear in the appropriate places, attesting the signatures of each individual party to the Bonds.
- H. If the principal is a corporation, the name of the state in which incorporated shall be inserted in the appropriate place in the body of the Bonds, and said instrument shall be executed and attested under the corporate seal as indicated on the form. If the corporation has no seal, the fact shall be stated, in which case a scroll or adhesive seal shall appear following the corporate name. This also applies to execution by surety.
- I. The date of the Bonds must not be prior to the date of the Contract for which given.
- J. A power of attorney, authorizing the execution of the Bonds by an attorney-in-fact, or agent, shall be attached to one executed counterpart of the Bonds.

5.02 – Licensed Sureties and Insurers

All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from non-assessable insurance companies licensed to do business in the State of Iowa and currently rated "**B+**" or better by the A.M. Best Company **currently, and for the most recent three (3) years. The insurer must also have combined capital and unassigned surplus of at least One Hundred Million Dollars (\$100,000,000).** All policies shall be written on an occurrence basis and not on a claims-made form.

5.03 – Certificates of Insurance

- A. 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) that Contractor is

required to purchase and maintain. The name of the Project and Contract shall be listed on the Certificates of Insurance

- B. On projects in which the Contractor must provide traffic control, the insurance certificate shall specifically state said insurance is applicable to the installation and maintenance of construction traffic control.

5.04 – Contractor’s Liability Insurance

- A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from Claims set forth below that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. Claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. Claims for damages insured by reasonably available personal injury liability coverage that 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. 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
 - 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.
- B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:
 - 1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Owner, Engineer, Engineer’s and Owner’s Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all Claims covered thereby;
 - 2. Include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 - 3. Include products and completed operations insurance;
 - 4. Include independent contractors’ coverage;
 - 5. Include premises and operations insurance;
 - 6. Include contractual liability insurance covering Contractor's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;
 - 7. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance

- furnished by the Contractor pursuant to paragraph 5.03 will so provide);
8. Remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
 9. With respect to completed operations insurance, 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).

5.05 – Owner’s Liability Insurance

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

5.06 – Property Insurance

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, Engineer, Engineer’s and Owner’s Consultants, and any other individuals or entities identified in SC-1.21 of the Supplementary Conditions (Section 00800), and officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;
 2. be written on a builder’s risk policy form to include insurance for physical loss or damage to the work, temporary buildings, false work, and materials, and equipment in transit, and insure against at least the following perils or causes of loss: fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow or ice, building collapse, glass breakage, debris removal, demolition occasioned by enforcement of Laws and Regulations, theft by forcible entry with visible damage to gain entry, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;
 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, from the time Contractor takes possession of them until they are tested and installed by Contractor and the Project is accepted as complete under an endorsement to this policy or in the form of Installation Floater Insurance of the all risk type;
 5. allow for Partial Utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.
- B. The Contractor shall be held responsible for the care of materials and the Work.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts. The risk of loss within deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within deductible amounts, each may purchase and maintain it at the purchaser's own expense.
- E. The Contractor may self-insure builders risk coverage on infrastructure projects, but must purchase builder's risk insurance on buildings and equipment being built or modified as part of this project. This insurance must be listed on the Contractor's certificate of insurance provided to the Owner. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems outside the water and sewage treatment plants, dams and lighting systems.
- F. The Contractor shall make no charge for delays due to damage to the Work, whether covered by insurance or not.

5.07 – Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Contractor, Subcontractors, Engineer, Engineer's and Owner's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Engineer, Engineer's and Owner's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) 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.
- B. Owner waives all rights against Contractor, Subcontractors, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:
 - 1. loss due to business interruption, loss of use, or other consequential loss that extends 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
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during Partial Utilization pursuant to paragraph 14.05, after final payment pursuant to paragraph 14.07.

5.08 – Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit 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.

- B. Owner shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner shall make settlement with the insurers in accordance with such Agreement as the parties in interest may reach. If no such Agreement among the parties in interest is reached, Owner shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner shall give bond for the proper performance of such duties.

5.09 – Acceptance of Bonds and Insurance; Option to Replace:

If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 – Partial Utilization, Acknowledgement of Property Insurer:

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

5.11 – Deductible Provisions:

Contractor shall pay all deductible provisions of insurance. The maximum deductible shall be \$5,000.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

6.01 – Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. 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 Owner or Engineer in the design or Specification of a specific means, method, technique, sequence, or procedure of construction that 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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent thereto 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 given to or received from the superintendent shall be binding on Contractor.

6.02 – Labor; Working Hours

- A. Contractor shall provide efficient and competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Any person employed on the Work who shall refuse or neglect to obey the directions of the Engineer or Resident Project Representative, or who shall be deemed incompetent or disorderly, or who shall commit trespassing upon public or private property in the vicinity of the Work, shall be re-assigned off the Project Site when the Engineer so orders and shall not return unless express permission be given by the Engineer.
 - 1. Local labor shall be given preference so far as practicable.
 - 2. The Contractor shall not employ or hire any of the City's employees without permission of the Engineer.
 - 3. The methods, equipment and appliances used on the Work and the labor employed shall be such as will produce a satisfactory quality of Work and shall be adequate to complete the Contract within the specified time limit.
- B. **EQUAL EMPLOYMENT OPPORTUNITITES:** During the performance of the Contract the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, and as subject to local ordinance, 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 Sunday, or any legal holiday without Owner's written consent given after prior written notice to Engineer. Work on Saturday shall be permitted with appropriate notice to Engineer. If a City Inspector is required to be present on the job Site on a Sunday or Holiday, the wages for the Resident Project Representative will be deducted from the Contractor's progress payment for that month. However, if this Work and the Resident Project Representative's presence on the job is the result of a requirement of the Contract Documents and not a convenience to the Contractor, this shall not apply.

6.03 – Services, Materials and Equipment

- A. Unless otherwise specified in the General Requirements, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used,

cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents. Suppliers shall be deemed to implicitly warrant that their products and all component materials incorporated into them are suitable and fit for the intended use of such products and shall be free from defect in material, workmanship or design, such warranty to run to the benefit of Owner and Engineer. The foregoing applies whether the products or their component materials are specified in the Contract Documents or are of Supplier's design.

6.04 – Progress Schedule

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

- A. Contractor shall submit to Engineer for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (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. Proposed adjustments to the progress schedules shall be submitted with pay requests.
- B. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 – Substitutes and “Or-Equals”

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Specification or description is intended to establish the type, function, appearance, and quality required. Unless the Specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below

- 1. “Or-Equal” Items: If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. In the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;
 - 3) Contractor certifies that there is no increase in cost to the Owner; and
 - 4) Contractor certifies that it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.
- 2. Substitute Items
 - a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.
 - b. Contractor shall submit sufficient information as provided below to allow Engineer to

determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

- c. The procedure for review by Engineer will be as set forth in the following paragraph, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.
 - d. Contractor shall first make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct Contract with Owner for Work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and Claims of other contractors affected by any resulting change, all of which will be considered by Engineer in evaluating the proposed substitute item. Engineer may require Contractor to furnish additional data about the proposed substitute item.
- B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, Contractor may furnish or use a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by Engineer will be similar to that provided in the preceding paragraph.**
- C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. Engineer will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or used until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.**
- D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.**
- E. Engineer's Cost Reimbursement: Engineer will record time required by Engineer and Engineer's Consultants in evaluating substitute proposed or submitted by Contractor pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct Contract with Owner for Work on the Project) occasioned thereby. Whether or not Engineer approves 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.**
- F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.**

6.06 – Concerning Subcontractors, Suppliers and Others

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in paragraph 6.06.B), whether**

- initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, 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 individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect Contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate Agreement between Contractor and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such Agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the Agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, Engineer's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 – Patent Fees and Royalties

Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that 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, partners, employees or agents, and other consultants of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any Agreement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 – Permits

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 that are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Contractor shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 – Laws and Regulations:

- A.** Contractor shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B.** If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be Contractor's 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 3.03.
- C.** Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in paragraph 10.05.

6.10 - Taxes

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 that are applicable during the performance of the Work. Contractor is responsible to obtain exemptions from State and Local Option Sales and Use tax included in the project on items included in the Project, or to obtain reimbursement for Sales and Use Tax paid. Contractor shall not include Sales and Use Tax in Contractor's bid.

6.11 – Use of Site and Other Areas

- A. Limitation on Use of Site and Other Areas:**
- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.**
 - 2. Should any Claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the Claim by arbitration or other dispute resolution proceeding or at law.**
 - 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any Claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.**
- B. Removal of Debris and other Material During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, unsuitable material, surplus excavated material, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.**
- C. Cleaning: Prior to final walk through inspection of the Work Contractor shall clean the Site and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.**
- D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.**

6.12 – Record Documents

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 in good order and annotated to show 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.

6.13 – Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:**
- 1. all persons on the Site or who may be affected by the Work;**
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and**
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not**

designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or 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 individual or entity directly or indirectly employed by any of them). Contractor's duties and responsibilities for safety and for protection of the Work continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with paragraph 14.07.B that the Work is acceptable.

6.14 – Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- B. During excavation and trenching, Contractor shall also keep at the Site at all times during its progress a competent person to comply with OSHA trenching and excavation requirements. The competent person shall be one who is capable of identifying existing and predictable hazards in the surrounds, or working conditions that are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.
- C. Contractor shall designate a qualified and experienced traffic control representative at the site whose duties and responsibilities shall be traffic control and shall handle all emergencies, the verification of the placement and maintenance of all signs, barricades, lights, and other traffic control measures.
- D. **All CONTRACTORS shall be required to have weekly safety meetings. All successful bidders shall submit an electronic copy of the safety program to the City along with all Material Safety Data Sheets for products to be used on the City project. Any person engaged in construction on public improvement projects shall possess a certificate of completion showing that said person has successfully completed a ten-hour Occupational Safety and Health Administration (OSHA) or a similar program for on-site employees which includes a course in construction safety and health approved by OSHA. Any on-site employee found on a work site subject to this section without documentation of the successful completion of the course required under the previous paragraph shall be afforded fifteen (15) days to produce such documentation before being subject to removal from the project.**

6.15 – Hazard Communication Program

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

6.16 - Emergencies

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

by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 – Shop Drawings and Samples

- A. Contractor shall submit Shop Drawings to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as Engineer may require and in the number of copies specified in the Supplementary Conditions and/or technical specifications. 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 services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by paragraph 6.17.E.
- B. Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as Engineer may require to enable Engineer to review the submittal for the limited purposes required by paragraph 6.17. E. The numbers of each Sample to be submitted will be as specified in the Supplementary Conditions and/or Technical Specification.
- C. Where a Shop Drawing or Sample is required by the Contract Documents including the technical specifications and/or the approved schedule of Shop Drawings and Sample submittals as required by paragraph 2.07, 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.
- D. **Submittal Procedures**
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:
 - a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
 - c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and
 - d. Contractor shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
 - 2. Each submittal shall bear a stamp or specific written indication that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 - 3. At the time of each submittal, 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.
- E. **Engineer's Review**
 - 1. Engineer will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to Engineer. 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.
 - 2. Engineer's review and approval will not extend to means, methods, techniques, sequences,

or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

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

F. Re-submittal Procedures:

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

6.18 – Continuing the Work

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

6.19 – Contractor's General Warranty and Guarantee

- A. 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:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any acceptance by Owner or any failure to do so;
 6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

6.20 - Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Engineer, Engineer's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such Claim, cost, loss, or damage:
 1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction

- of tangible property (other than the Work itself), including the loss of use resulting therefrom; and
2. is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.
- B. Regarding indemnification, it shall be understood that public employees are agents of the municipal Owner. In carrying out the provisions of the Contract, there shall be no personal liability of public officials and public employees.
 - C. In any and all Claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
 - D. The indemnification obligations of Contractor under paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:
 1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 – Testing

The Contractor shall be responsible to complete construction assurance testing (in accordance with the Technical Specifications) in a timely manner and as the construction progresses. Except as allowed by the Engineer, Contractor shall not wait until all quantities are constructed, prior to initiating testing. Payment for Work that has not been tested in a timely manner shall be subject to the payment provisions of Paragraph 11.03.

6.22 – Contractor's Title to Material

No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the Work, free from all liens, claims or encumbrances.

6.23- Coordination of Utility Relocations

The Contractor shall be responsible for coordination of the utility relocations by other contractors and private utility companies within the Project Site and that are required to be completed prior to the construction of the Work within this Contract.

6.24 – Drug-free Workplace

- A. The City of Cedar Rapids Public Improvement Project Safety and Health Management Plan shall be adopted as part of these specifications, and all CONTRACTORS and SUBCONTRACTORS of any tier shall be subject to the terms and conditions thereof.
- B. It is understood that the CONTRACTORS and SUBCONTRACTORS will be responsible for the pre-employment drug screening of all its employees to be assigned to a City project.
- C. All employees shall be tested no greater than 90 days prior to the start of the project and shall be in a standard random pool tested monthly.
- D. If a CONTRACTOR can prove they are involved in a drug testing policy that meets these minimum requirements, they shall not be required to incur further testing. All employees who receive a positive report from pre-employment or random drug screen will not be employed on any City project.

6.25 – Post Incident Injury Testing

- A. Employees whose performance could have contributed to an incident resulting in property damage or personal injury shall be drug tested. Testing shall occur no later than forty-eight (48) hours after the incident.

ARTICLE 7 OTHER WORK

7.01 – Related Work at Site

- A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct Contracts therefore, or have other Work performed by utility owners. If such other Work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other Work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other Work, a Claim may be made therefore as provided in paragraph 10.05.
- B. 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 other 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 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 properly connect or otherwise make its several parts come together and properly integrate with such other Work. Contractor shall not endanger any Work of others by cutting, excavating, or otherwise altering their Work and will only cut or alter their Work with the written consent of Engineer and the others whose Work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct Contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon Work performed by others under this Article 7, Contractor shall inspect such other Work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other Work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other Work as fit

and proper for integration with Contractor's Work except for latent defects and deficiencies in such other Work.

7.02 – Coordination

- A. If Owner intends to contract with others for the performance of other Work on the Project at the Site, the following will be set forth in Supplementary Conditions:**
 - 1. The individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;**
 - 2. The specific matters to be covered by such authority and responsibility will be itemized; and**
 - 3. The extent of such authority and responsibilities will be provided.**
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.**

ARTICLE 8 OWNER'S RESPONSIBILITIES

8.01 – Communications to Contractor

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

8.02 – Replacement of Engineer

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

8.03 – Furnish Data

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

8.04 – Pay Promptly When Due

Owner shall make payments to Contractor in accordance with Article 14.

8.05 – Lands and Easements; Reports and Tests

Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been used by Engineer in preparing the Contract Documents.

8.06 - Insurance

Owner's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 – Change Orders

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

8.08 – Inspections, Tests and Approvals

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

8.09 – Limitations on Owner's Responsibilities

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

8.10 – Undisclosed Hazardous Environmental Condition

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

ARTICLE 9 ENGINEER'S STATUS DURING CONSTRUCTION

9.01 – Owner's Representative

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.

9.02 – Visits to Site

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03- Project Representative

If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 – Clarifications and Interpretations

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Engineer may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on Owner and Contractor. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefore as provided in paragraph 10.05.

9.05 – Authorized Variations in Work

Engineer may authorize minor variations in the Work from the requirements of the Contract Documents that 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 and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

9.06 – Rejecting Defective Work

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

9.07 – Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority as to Shop Drawings and Samples, see paragraph 6.17.
- B. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.08 – Determinations for Unit Price Work

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

9.09 – Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to Engineer in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.
- B. When functioning as interpreter and judge under this paragraph 9.09, 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 this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any that have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by Owner or Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 – Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in Contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Except as noted in paragraph 14.05.A.1, Engineer will not supervise, direct, control, or

- have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
 - D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
 - E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to Engineer's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 CHANGES IN THE WORK; CLAIMS

10.01 – Authorized Changes in the Work

- A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 – Unauthorized Changes in the Work

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

10.03 – Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders (or Written Amendments) recommended by Engineer covering:
 - 1. changes in the Work that are: (i) ordered by Owner pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08 or Owner's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times that are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times that embody the substance of any written decision rendered by Engineer pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.

10.04 – Notification to Surety

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. The amount of each applicable Bond will be adjusted to reflect the effect of any such change

10.05 – Claims and Disputes

- A. **Notice:** Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 10 Calendar Days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the Engineer and the other party to the Contract within 30 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- B. **Engineer's Decision:** Engineer will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. Engineer's written decision on such Claim, dispute, or other matter will be final and binding upon Owner and Contractor unless
 1. an appeal from Engineer's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or
 2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from Engineer's written decision is delivered by Owner or Contractor to the other and to Engineer within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Final Completion, whichever is later (unless otherwise agreed in writing by Owner and Contractor), 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.
- C. If Engineer does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 PAYMENT FOR WORK PERFORMED; COST OF THE WORK; SIGNIFICANT CHANGES IN THE CHARACTER OF THE WORK

11.01 – Payment for Work Performed

- A. **Items of Work performed which are covered by definite prices in the Contract:**
 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 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 performed

- by the Contractor will be made by Engineer subject to the provisions of paragraph 9.08. Lump sum amounts shall be reimbursed as specified in the Contract Documents.
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.
 3. Owner of Contractor may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:
 - a. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly as defined in paragraph 11.04 from the estimated quantity of such item indicated in the Agreement;
 - b. there is no corresponding adjustment with respect to any other item or Work; and
 - c. if Contractor believes the 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.
- B. Extra Work: Extra Work ordered by the Engineer, or a quality or class not covered by the Contract, will be paid for either at an agreed price, time and material basis, or on a force account basis.**
1. **Agreed Price Basis: For extra Work ordered by the Engineer and preformed on an agreed price basis, the Engineer and the Contractor shall enter into a written agreement before the Work is undertaken. This written agreement shall describe the extra Work that is to be done and shall specify the agreed price or prices therefore.**
 2. **Time and Material Basis: For extra Work performed on a time and material basis, the Contractor shall receive the rate of wage (or scale) agreed to in writing with the Engineer before beginning Work for each and every hour that laborers, timekeepers, supervisors, and superintendents are actually engaged in Work. The Contractor's allowed markup on Work by a Subcontractor shall be in accordance with paragraph 11.02.A.3.**

11.02 – Cost of Extra Work / Force Account Work

- A. Costs Included: 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. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project.**
1. **Payroll Costs:**
 - a. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner. Payroll costs shall include:
 - 1) the rate of wage (or scale) agreed to in writing with the Engineer and/or Owner BEFORE BEGINNING Work for each and every hour that laborers, timekeepers, supervisors and superintendents are actually engaged in the Work.
 - 2) When required by a collective bargaining agreement or other employment contract generally applicable to classes of labor employed in the Work, payroll costs shall also include health and retirement benefits, bonuses, sick leave,

vacation and holiday pay, applicable thereto.

- b. On force account Work, an amount equal to 35 percent of the sum of the bare payroll cost items in paragraph 11.02.A.1.a will also be paid to the Contractor. The 35 percent shall cover compensation for furnishing the necessary small tools for Work, together with all other overhead items of expense.
- c. The wage of the superintendent, timekeeper, or supervisor who is employed partly on force account Work and partly on other Work shall be prorated between two classes of Work according to the number of persons shown by the payrolls as employed on each class of Work.

2. Costs of Materials and Equipment

- a. 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.
- b. For materials used on force account Work, the Contractor shall receive the actual cost of materials delivered on the Work, including the freight and handling charges as shown by original receipted bills, to which cost shall be added a sum equal to 15 percent thereof.
- c. Rental rate for machinery, tools or equipment (except small hand tools which may be used) and fuel and lubricants shall be based on the average monthly rental rate in the RENTAL RATE BLUE BOOK published by Dataquest Incorporated. The Engineer and Contractor shall agree on a rental rate in writing before extra Work of force account basis is performed. Profit percentage shall not be added to the rental rate.

3. Cost of Subcontractors

- a. Payments made by Contractor to Subcontractors for Work performed by Subcontractors: If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this paragraph 11.02.
- b. The maximum percentage markup to be allowed to a prime contractor for extra Work (including force account Work) performed by the Subcontractor shall be limited to two tiers of Subcontractors and shall be in accordance with the following:
 - 1) 10 percent on the first \$50,000, with a \$100 minimum.
 - 2) 5 percent on the portion over \$50,000

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.

5. Costs of Bonds, Insurance and Taxes: For property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and social security taxes on the force account Work, the Contractor shall receive the actual cost, to which 10 percent will be added. The Contractor shall furnish evidence of the rate or rates paid for such bond, insurance, and tax.

6. Supplemental costs including the following:

- a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not

- owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of Contractor.
- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.
 - i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.
 - j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- 7. Compensation as herein provided on a force account basis shall be accepted by the Contractor as payment in full for extra Work done. It will be assumed that such payment includes the use of tools and equipment for which no rate is allowed, overhead, and profit.**
- B. Costs Excluded: The term Cost of the Work shall not include any of the following items:**
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, 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 branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.**
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's offices at the Site.**
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.**
 - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly**

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

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.
- C. **Contractor's Fee:** When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in paragraph 12.01.C.
- D. **Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.03 – Payment for Work Not Tested

- A. The Engineer reserves the right to withhold up to 20 percent of the payment for Work which had been constructed, but not timely tested per paragraph 6.21. Upon test passage, full payment will be made, less retainage amounts.

11.04 – Significant Changes in the Character of the Work

- A. The Engineer reserves the right to make, in writing, at any time during the Work, such changes in quantities and such alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities and alterations shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the Work as altered.
- B. If the alterations or changes in quantities significantly change the character of the Work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the Work or by affecting other Work cause such other Work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.
- C. If the alterations or changes in quantities do not significantly change the character of the Work to be performed under the Contract, the altered Work will be paid for as provided elsewhere in the Contract.
- D. The term "significant change" shall be construed to apply when one or more of the following circumstances occur:
1. When the character of the Work, as altered, differs materially in kind or nature from that involved or included in the original proposed construction and amounts to Contract changes of more than \$50,000 or 10 percent of the original awarded amount.
 2. When an item or Work, with a Bid amount greater than \$25,000, is increase in excess 125 percent or decrease below 75 percent of the original Contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess or 125 percent of the original Contract item quantity, or is a case of a decrease below 75 percent, to the actual amount of Work performed.
 3. When an entire Contract item is deleted, amounting to a \$25,000 change or more.
 4. All price adjustments.
 5. Overruns and underruns amounting to \$50,000 or more on any one Contract item.
 6. Liquidated damages.

11.05 – Cash Allowances

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

- A. 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
- B. Contractor's cost 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.
- C. 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.

ARTICLE 12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 – Change of Contract Price

- A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.01.A); or
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and Agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01.B).
- C. Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:
 1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on various portions of the Cost of the Work, as described in paragraph 11.02, shall be determined.
 - a. 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 Subcontractor who actually performs the Work, at whatever tier, will be paid a fee per paragraphs 11.02.A.1 and 11.02.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee (as stated in paragraph 11.03) of the amount paid to the next lower tier Subcontractor;
 - b. no fee shall be payable on the basis of costs itemized under paragraphs 11.02.A.4, 11.02.A.5, and 11.02.B;
 - c. the amount of credit to be allowed by Contractor to Owner for any change that results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - d. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.c, inclusive.

12.02 – Change of Contract Times

- A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of paragraph 10.05.**
- B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.**

12.03 – Delays Beyond Contractor’s Control

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 12.02.A. 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.

12.04 – Delays Within Contractor’s Control

The Contract Times (or Milestones) will not be extended due to delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

12.05 – Delays Beyond Owner’s and Contractor’s Control

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.

12.06 – Delay Damages

- A. In no event shall Owner or Engineer be liable to Contractor, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:
 - 1. delays caused by or within the control of Contractor; or**
 - 2. delays caused or within the control of the Owner, which run concurrently with delays caused by or within the control of the Contractor.**
 - 3. delays beyond the control of both Owner and Contractor including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other Work as contemplated by Article 7.****
- B. The Owner and/or Engineer shall have a minimum of 48 hours upon receipt of written request for clarification from Contractor (and as per Articles 3.03 and 4.03) to respond with direction to minor issues, which cause the temporary suspension of the Contractor’s Work, either in entirety or a portion thereof. The Contractor shall not be entitled to delay Claims during the 48 hour review period by Owner and/or Engineer. Individual review times shall not be added cumulatively to determine overall Project delays. Each review is a unique and exclusive event.**
- C. Nothing in this paragraph 12.06 bars a change in Contract price pursuant to this Article 12 to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible.**

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

13.01 – Notice of Defects

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

13.02 – Access to Work

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 Site and 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.

13.03 – Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.**
- B. Owner is responsible to have performed all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;**
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and**
 - 3. as otherwise specifically provided in the Contract Documents.****
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.**
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.**
- E. If any Work (or the Work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.**
- F. Uncovering Work as provided in paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.**

13.04 – Uncovering Work

- A. If any Work is covered contrary to the request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and be restored at Contractor's expense.**
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, Contractor**

shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and for 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. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in paragraph 10.05. If, 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. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefore as provided in paragraph 10.05.

13.05 – Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- B. In the case of a risk of health and safety to the general public, the Engineer may issue a written notice to the Contractor to suspend the Work.
- C. **TEMPORARY SUSPENSION OF THE WORK:** The Engineer shall have authority to suspend the Work wholly or in part for such period, or periods of time, as he may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as is necessary due to the failure of the Contractor to carry out orders given to perform any or all provisions of the Contract.

13.06 – Correction or Removal of Defective Work

- A. Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of Work of others).
- B. Defective Work shall be corrected within the time period set forth in the Engineer's notice of same to Contractor.

13.07 – Correction Period

- A. If within two years after the date of Final Acceptance by the Owner or such longer period of time as may be prescribed by Laws or Regulations or by the term of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the Work of others or other land or areas resulting 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 repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of Work of others) will be paid by Contractor.

- B. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for a period of one year, beyond the original correction period of paragraph 13.07.A.
- C. Contractor's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 – Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment) prefers to accept it, Owner may do so. Contractor shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefore as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 – Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct and remedy any such deficiency.
- B. 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.
- C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefore as provided in

paragraph 10.05. Such Claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of Work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the period of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 13.09.

ARTICLE 14 PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 – Schedule of Values

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

14.02 – Progress Payments

A. Application for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), Contractor shall submit 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 or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - 1) the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

- 2) the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. **By recommending any such payment Engineer will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to 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.**
4. **Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work. Additionally, said review or recommendation will not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.**
5. **Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner referred to in paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:**
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Written Amendment or Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.
- C. Payment Becomes Due ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.**
- D. Reduction in Payment**
 1. **Owner may refuse to make payment of the full amount recommended by Engineer because:**
 - a. Claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.
 2. **If Owner refuses to make payment of the full amount recommended by Engineer,**

Owner must give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 – Contractor's Warranty of Title

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

14.04 – Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is complete (except for items specifically listed by Contractor as incomplete). Promptly 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 ready for its intended use, Engineer will notify Contractor in writing giving the reasons therefore, in the form of a punch list of items to be completed or corrected before final inspection and payment.
- B. Owner shall have the right to exclude Contractor from that portion of the Site after it has been occupied by the Owner for utilization, but Owner shall allow Contractor reasonable access to complete or correct items on the punch list.

14.05 – Partial Utilization

- A. Use by Owner at Owner's option of any completed part of the Work that has specifically been identified in the Contract Documents, or that 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 final completion of all the Work subject to the following conditions:
 1. The Engineer shall have control of the order in which the various parts of the construction Work are to be performed. The order of Work as determined by the Contractor will be followed except where the Engineer determines that such order would not be to the best interests of the general public. The Contractor shall complete any portion or portions of the work in such order of time as the Engineer may require. The Owner shall have the right to take portions of and use any completed or partially completed portions of the Work, at any time, but such taking possession and use shall not be deemed an acceptance of the work so taken or used or any part thereof. If such prior use increases the cost of or delays the Work, the Contractor shall be entitled to such extra compensation or extension of time, or both, as the Engineer may determine.
 2. 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. If Contractor agrees that such part of the Work can be used as intended, Contractor will certify to Owner and Engineer that the Owner may use such 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. 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 ready for Partial Utilization, Engineer will notify Owner and Contractor in writing giving the reasons therefore.
 3. No occupancy or separate operation of part of the Work may occur prior to

compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 – Final Inspection

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

14.07 – Final Payment and Acceptance

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7;
 - b. consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
4. Final application for payment shall be accompanied by Record Drawings and related information maintained by Contractor during Project Work as described in Article 6.12.

B. Review of Application and Acceptance

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

C. Payment Becomes Due:

1. **Payment Becomes Due:** Thirty days after the final acceptance of the Work by resolution of the City Council of the respective jurisdiction (Owner), the amount recommended by Engineer will become due and, when due, will be paid by Owner to Contractor.

14.08 – Final Completion Delayed

- A. When 95 percent of the Work has been performed to the satisfaction of the Engineer, including consideration of the Contract period, and it is apparent that conditions beyond the control of the Contractor will delay the completion of the Contract for more than 60 Calendar Days, the Contractor may request a supplemental Contract for the uncompleted portion of Work on the same terms as those of the original Contract. If the Owner agrees, and the surety for the Contractor consents to the extension of the bond for the time required to complete the supplemental Contract, the supplemental Contract will be issued. After the Contract has been entered into, full payment will be made for the Work completed except under circumstances that would prejudice the rights of those who have filed Claims.
- B. The unpaid moneys held by the Owner as a retainer of the original Contract Price will be due and payable to the Contractor thirty (30) Calendar Days after the date of approval of the supplemental Contract by the City Council of the respective jurisdictional Owner, except as provided for the release and adjudication of Claims.

14.09 – Waiver of Claims - The mailing and acceptance of final payment will constitute:

- A. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
- B. a waiver of all Claims by Contractor against Owner other than those previously made in writing that are still unsettled.

ARTICLE 15 SUSPENSION OF WORK; CANCELLATION OF WORK AND TERMINATION

15.01 – Owner May Suspend Work

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

15.02 – Owner May Cancel Work

- A. The Owner shall have the right to cancel any or all items from the Contract when unforeseen circumstances, unanticipated design changes, or other reasons beyond the control of the Contractor prevent or unreasonably delay completion of the Contract or certain items of the Contract, or when the Owner determines that cancellation is in the public or national interest.
- B. The Contractor may be prevented from starting work on a Contract or an identified phase of a Contract as a result of a delay caused by the Owner or others.
- C. When the delay prevents the Contractor's starting work on the Contract or an identified phase of the Contract for 30 calendar days, the Contractor may request cancellation of the delaying work items by written notice to the Engineer, stating the reasons therefore.
- D. Within 30 calendar days from the date of the request, the Engineer will eliminate or minimize, if possible, the cause for the delay and issue a notice to proceed, redefine the basis on which the Work is to proceed, or cancel the Contract or phase of the

Contract.

- E. The Contractor shall not use delays that occur prior to starting work or an identified phase of the Work as a basis of a claim against the Owner except for an extension of Contract period.**

15.03 – Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);**
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;**
 - 3. Contractor's disregard of the authority of Engineer; or**
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.****
- B. If one or more of the events identified in paragraph 15.02.A occur, Owner may, after giving Contractor (and the surety, if any) seven days written notice, 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 that 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 (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such Claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such Claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.**
- C. 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 that may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.**

15.04 – Owner May Terminate for Convenience

- A. 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 Contract. In such case, Contractor shall be paid (without duplication of any items):
 - 1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;**
 - 2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;**
 - 3. for all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all****

- court or arbitration or other dispute resolution costs) incurred in settlement of terminated Contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.05- Contractor May Stop Work or Terminate

If, through no act or fault of Contractor, the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or Engineer fails to act on any Application for Payment within 30 days after it is submitted, or Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude Contractor from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

15.06 – Termination Due to National Emergency

The Owner and Contractor may terminate the Contract under written Agreement (as provided in the current Code of Iowa), in the event that declaration of a National Emergency by the Federal Government of the United States makes continuation of the Contract impractical.

ARTICLE 16 DISPUTE RESOLUTION

16.01 – Methods and Procedures

- A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.
- B. Any legal actions shall be filed in District Court of Linn County, Iowa.

ARTICLE 17 MISCELLANEOUS

17.01 – Giving Notice

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

17.02 – Computation of Times

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

17.03 – Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be

construed in any way as a limitation of, any rights and remedies available to any or all of them that are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 – Survival of Obligations

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

17.05 – Controlling Law

- A. This Contract is to be governed by the law of the state of Iowa.
- B. Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion of correction.

END OF SECTION 00700