

# GENERAL CONDITIONS

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## **ARTICLE 1 - DEFINITIONS**

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

**1.1** Addenda - Written or graphic instruments issued prior to the receipt of Proposals or the opening of Bids that clarify, correct or change the proposal or bidding requirements or the Contract Documents.

**1.2** Agreement - Prescribed form, Standard Form of Agreement.

**1.3** Bid Documents - The advertisement or invitation for bids, instructions to bidders, the bid form, the Contract Documents and Addenda.

**1.4** Calendar Day - Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall only be conducted with prior express written consent of the OWNER.

**1.5** Change Directive - A written directive to the CONTRACTOR, signed by the OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.

**1.6** Change Orders - Written agreements entered into between the CONTRACTOR and the OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement and within the Contract term.

**1.7** Claim - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

**1.8** Contract - The Contract represents the entire and integrated agreement between the OWNER and the CONTRACTOR for performance of the Work, as evidenced by the Contract Documents.

**1.9** Contract Amount - The amount payable by the OWNER to the CONTRACTOR for completion of the Work in accordance with the Contract Documents.

**1.10** Contract Documents - Invitation to Bid, Instructions to Bidders, General Conditions, Supplemental General Conditions (if any), Special Conditions (if any), Technical Specifications, Project Manual, Drawings, Addenda and Change Orders.

**1.11 Contract Time** - The number of days allowed for completion of the Work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period. A day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

**1.12 CONTRACTOR** - The individual, firm, corporation, or other business entity with whom the OWNER has entered into the Contract.

**1.13 Date of Execution** - Date of last signature of the parties to the Agreement.

**1.14 Drawings** - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by the CONTRACTOR and which have been approved by the OWNER. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.

**1.15 Engineer** - The OWNER's design professional identified as such in the Contract.

**1.16 Equal** - The terms "equal" or "approved equal" shall have the same meaning.

**1.17 Field Order** - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.

**1.18 Final Acceptance** - The stage in the Contract process when, in the OWNER's opinion, Final Completion of the Work has been attained and a Certificate of Acceptance approved by the OWNER is issued.

**1.19 Final Completion** - The stage in the progress of the Work when, in the OWNER's opinion, the entire Work has been completed, the CONTRACTOR's obligations under the Contract Documents have been fulfilled, and the OWNER is processing or has made final payment to the CONTRACTOR, as evidenced by a Certificate of Acceptance approved by the OWNER.

**1.20 Inspector** - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.

**1.21 Legal Holidays**

**1.22** The following are recognized by the OWNER:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January

President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

**1.22.1** If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**1.22.2** If Christmas Eve falls on a Saturday or a Sunday, the preceding Friday is observed as the Christmas Eve holiday.

**1.22.3** If Christmas Day falls on a Saturday or a Sunday, the following Monday is observed as the Christmas Day holiday.

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

**1.24** Notice to Proceed - A Written Notice given by the OWNER to the CONTRACTOR fixing the date on which the Contract Times will commence to run and on which the CONTRACTOR shall start to perform the CONTRACTOR's obligations under the Contract Documents.

**1.25** OWNER – The City of Schertz, acting through its City Manager or his/her designee, officers, agents or employees to administer design and construction of the Project.

**1.26** Owner's Representative - The designated representative of the OWNER. Such designation shall be provided to ENGINEER and CONTRACTOR in writing.

**1.27** Partial Occupancy or Use - Use by the OWNER of a partially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

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

**1.29** Project Manual - That portion of the Contract Documents which may include the following: introductory information; bidding requirements, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings; Project Safety Manual; and Addenda.

**1.30** Proposal Documents - The advertisement or invitation for Proposals, Instruction to Offerors, the Proposal form, the Contract Documents and Addenda.

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

**1.32** Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for the CONTRACTOR and submitted by the CONTRACTOR as required by the Contract Documents.

**1.33** Specifications - Those portions of the Contract Documents consisting of written technical descriptions as applied to the Work, which set forth to the CONTRACTOR, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship, equipment and services in order to render a completed and useful project.

**1.34** Substantial Completion - The stage in the progress of the Work when the Work, or designated portions thereof, is sufficiently complete in accordance with the Contract Documents so that the OWNER can utilize the Work for its intended purpose or use.

**1.35** Subcontractor - An individual, firm, or corporation having a direct contract with the CONTRACTOR for the performance of a part of the Work.

**1.36** Sub-subcontractor - A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work.

**1.37** Superintendent - The representative of the CONTRACTOR authorized in writing to receive and fulfill instructions from Owner's Representative, and who shall supervise and direct construction of the Work.

**1.38** Supplier - An individual or entity having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the CONTRACTOR or any Subcontractor.

**1.39** Time Extension Request - A request for time extension on a form acceptable to the OWNER.

**1.40** Work - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

**1.41** Working Day - Any day of the week, not including Saturdays, Sundays, or Legal Holidays, in which conditions not under the CONTRACTOR's control will permit work for at least seven (7) hours of the Working Times. Upon authorization by the Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and in that event a Working Day will be counted for each such day.

**1.42** Working Times - Times of day(s) during which work may be performed. Unless authorized by OWNER, all Work shall be performed between 8:00 a.m. and 5:00 p.m. on weekdays. If authorized by the OWNER between 8:00 a.m. and 5:00p.m. on Saturdays, Sundays or Legal Holidays. When the CONTRACTOR has been authorized to perform Work during hours outside Working Times, such hours shall be considered time worked on Working Day contracts. Notwithstanding the preceding, emergency work may be done without prior permission only as provided in paragraph 6.11.5 herein.

**1.43** Written Notice - Written communication between the OWNER and the CONTRACTOR. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or to the CONTRACTOR's duly authorized representative, or if such Written Notice is delivered to or sent by registered or certified mail to the attention of Owner's Representative or to the CONTRACTOR's duly authorized representative at the last business address known to the party giving notice. Written Notice sent or transmitted by electronic mail or facsimile must be actually received to be considered delivered and to comply with notice requirements herein. Transmission done by electronic mail or facsimile does not constitute delivery.

## **ARTICLE 2 - PRELIMINARY MATTERS**

### **2.1 Delivery of Agreement, Bonds, Insurance, and Other Documentation:**

**2.1.1** Within ten (10) Calendar Days after written notification of award of Contract, the CONTRACTOR shall deliver to the OWNER signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of the Contract.

### **2.2 Copies of Documents:**

**2.2.1** The OWNER shall furnish to the CONTRACTOR three (3) printed copies of the Contract Documents and one (1) copy in electronic portable document format (PDF) unless otherwise specified. Additional printed copies will be furnished, upon request, at the cost of reproduction.

### **2.3 Commencement of Contract Times; Notice to Proceed:**

**2.3.1** The Contract Time(s) will begin to run on the day indicated in the Notice to Proceed.

### **2.4 Before Starting Construction:**

**2.4.1** No Work shall be done at the site prior to the preconstruction conference without the OWNER's approval. Before undertaking each part of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to OWNER & ENGINEER any conflict, error, ambiguity or discrepancy which the CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby. Should Contractors perform the Work after discovery of such a conflict without reporting the conflict or before receipt of a clarification or interpretation by Engineer, Contractor will be solely liable for any correction or other measures that may be required to overcome the conflict or bring the Work into compliance with the Contract Documents.

**2.4.2** The CONTRACTOR shall submit the following to Owner's Representative for review and approval no later than the preconstruction conference:

- .1** a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, identifying when all Subcontractors will be utilized, and taking into consideration any limitations on Working Hours;
- .2** a preliminary schedule of Shop Drawing and sample submittals;
- .3** a preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work;
- .4** a letter designating CONTRACTOR's Superintendent;
- .5** a letter from the CONTRACTOR and Subcontractor(s) listing any salaried specialists;
- .6** if applicable, a letter designating the "Competent Person(s)" on general safety and trench safety measures;
- .7** if applicable, a trench safety system plan;
- .8** if applicable, a plan illustrating proposed locations of temporary facilities;

- .9 if applicable, a traffic control plan;
- .10 a completed Non-Use of Asbestos Affidavit (Prior to Construction); and
- .11 if applicable, a letter designating the Texas Registered Professional Land Surveyor that shall be employed for any portion of the Work required by the Contract Documents to be performed by a RPLS.

**2.5 Preconstruction Conference:**

**2.5.1** Prior to commencement of Work at the site, a preconstruction conference attended by the CONTRACTOR, Owner's Representative and others will be held.

**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

**3.1 Intent:**

**3.1.1** The intent of the Contract Documents is to include all information necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CONTRACTOR shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In cases of disagreement, the following order of precedence shall govern (top item receiving priority of interpretation):

- Standard Form of Agreement
- Addenda to the Contract Documents
- General Conditions
- Performance and Payment Bonds
- Request for Proposal and any Contract Forms
- Technical Specifications
- Drawings (figured dimensions shall govern over scaled dimensions)

**3.1.2** Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**3.2 Reporting and Resolving Discrepancies:**

**3.2.1** If, during the performance of the Work, the CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, the CONTRACTOR shall immediately report it to ENGINEER in writing, and the CONTRACTOR shall not proceed with the Work affected thereby until an amendment or



supplement to the Contract Documents has been issued by one of the methods indicated in section 3.3. The CONTRACTOR shall be liable to the OWNER for failure to report any such conflict, error, ambiguity or discrepancy of which the CONTRACTOR knew or reasonably should have known.

### **3.3 Amending and Supplementing Contract Documents:**

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

- .1 Change Order.
- .2 Change Directive.

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

- .1 Field Order.
- .2 Review of a Shop Drawing or sample.
- .3 Written interpretation or clarification.

### **3.4 Reuse of Documents Prohibited:**

**3.4.1** The CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the 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 consultants, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of the OWNER and ENGINEER.

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

### **4.1 Availability of Lands:**

**4.1.1** The OWNER shall furnish, as indicated in the Contract Documents, all required rights to use the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of the CONTRACTOR. The OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which the CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the

OWNER, unless otherwise provided in the Contract Documents. If the OWNER fails to furnish these lands, rights-of-way or easements in a timely manner, the CONTRACTOR may make a Claim for adjustments in the Contract Times. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of spoils, materials and equipment.

## **4.2 Subsurface and Physical Conditions:**

**4.2.1** CONTRACTOR accepts the responsibility to satisfy itself as to the soil conditions and nature and type of geological formations in and through which this Project will be constructed. Such information as may be obtained from the test borings (if borings have provided) and accompanying notations shown on the plans is merely for the guidance of the CONTRACTOR and is not to be construed in any manner as a guarantee by the OWNER that such conditions of sub-surface strata are infallible.

**4.2.2** The CONTRACTOR hereby represents and covenants that it has examined the site of the proposed Work and is familiar with all of the conditions surrounding construction of the Project, having conducted all inquiries, tests and investigations deemed necessary and proper.

**4.2.3** CONTRACTOR waives any and all rights to make a claim against OWNER relating to representations related to geotechnical data provided in the contract documents, plans and specifications. The locations of the test holes, if applicable, are shown in the Geotechnical Report. Logs of these test holes are included in the Geotechnical Report. Test holes information represents subsurface characteristics to the extent indicated and only for the point location of the test hole. CONTRACTOR shall make its own interpretation of the character and condition of the materials, which will be encountered. CONTRACTOR may, at its own expense, make additional surveys and investigations as it may deem necessary to determine conditions, which will affect performance of the Work.

**4.2.4** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Contract, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions. ENGINEER will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If ENGINEER determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the CONTRACTOR shall be notified in writing, stating the reasons. If CONTRACTOR disagrees with ENGINEER'S determination, CONTRACTOR may appeal such determination to OWNER. Such appeal must be presented to OWNER with all supporting documentation evidencing CONTRACTOR'S claim for an adjustment to the Contract Amount or Contract Time within thirty (30) calendar days of

completing the Work. Any unresolved disputes arising from ENGINEER'S OR OWNER'S determination shall be resolved in accordance with Article 16.

**4.2.5** Notwithstanding any other provision of this Contract, the CONTRACTOR shall be solely responsible for the location and protection of any and all public lines and utility customer service lines in the Work area. For the purposes of this section, "public lines" means the all utility distribution and supply system within public rights-of-way or easements, and "utility customer service lines" (service) means any utility line connecting a utility customer to the utility distribution system. Generally, existing service connections within right-of-way or easements are not shown on the Drawings. The CONTRACTOR shall notify the OWNER and "One Call" and exercise due care to locate and to mark, uncover or otherwise protect all such lines in the construction zone and any of the CONTRACTOR's work or storage areas. The CONTRACTOR's obligation hereunder shall be primary and non-delegable. The CONTRACTOR shall be liable for any expenses or costs (including fines that may be levied against the OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the Work area.

#### **4.3 Reference Points:**

**4.3.1** Unless otherwise specified, the OWNER will furnish all reference points, benchmarks, survey monuments, and control points which, in the OWNER's opinion, are suitable for laying out the Work.

**4.3.2** All reference points, benchmarks, survey monuments and control points shall be carefully preserved by the CONTRACTOR by use of flags, laths or other appropriate measures and, in case of destruction or removal by the CONTRACTOR or its employees, such reference points, benchmarks, survey monuments, and control points shall be replaced by a Registered Professional Land Surveyor at the CONTRACTOR's expense. When reference points, benchmarks, survey monuments, or control points are in conflict with the Work, the CONTRACTOR will provide notice of the conflict to ENGINEER and note the location of such on a set of red-lined drawings to be maintained at all times on the jobsite. Reestablishment will be the CONTRACTOR's responsibility during or upon completion of the Work.

#### **4.4 Hazardous Materials:**

**4.4.1** The OWNER shall be responsible for any hazardous material uncovered or revealed at the site which was not shown, indicated or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. The CONTRACTOR shall immediately notify the OWNER of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

**4.4.2** The CONTRACTOR shall be responsible for any hazardous materials brought to the site by the CONTRACTOR, Subcontractor, Suppliers or anyone else for whom the CONTRACTOR is responsible.

**4.4.3** CONTRACTOR shall be responsible for securing and protecting the site and ensuring that no third-parties or other persons enter the site without authorization. CONTRACTOR shall be responsible for all costs and damages resulting from any harm or injury that is caused by hazardous materials on the site to any unauthorized entrants. CONTRACTOR shall indemnify and hold OWNER and ENGINEER harmless from any claims, costs, or damages related to a breach of this section pursuant to the INDEMNIFICATION provisions contained herein.

**4.4.4** No asbestos-containing materials shall be incorporated into the Work or brought on the Project site without prior approval of the OWNER.

## **ARTICLE 5 - BONDS AND INSURANCE**

### **5.1 Surety and Insurance Companies:**

**5.1.1** All bonds and insurance required by the Contract Documents shall be obtained from surety or insurance companies that are duly licensed by the State of Texas and authorized by the State of Texas and the Texas Department of Insurance to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to the OWNER and shall be issued by a surety that complies with the requirements of Chapter 3503 of the Texas Insurance Code.

### **5.2 Contractor Insurance Requirements**

**5.2.1** For specific insurance requirements, refer to Exhibit A to these General Conditions, OWNER's Insurance Requirements.

#### **5.2.1 General Requirements:**

- .1** CONTRACTOR shall carry insurance in the types and amounts indicated for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.
- .2** CONTRACTOR must complete and forward the required Certificates of Insurance to OWNER within ten (10) days of the Date of Execution the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the required Certificates of Insurance to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.

- .3 All endorsements naming the OWNER and ENGINEER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Schertz and Ford Engineering, Inc.
- .4 Where the OWNER and ENGINEER are additional insured shown on any policy, it is intended that policies required in the Contract, covering OWNER, ENGINEER and CONTRACTOR, shall be considered primary coverage as applicable.
- .5 If insurance policies are not written for amounts specified in Exhibit A, Owner's Insurance Requirements, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- .6 OWNER and ENGINEER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- .7 OWNER and ENGINEER reserve the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER or ENGINEER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.
- .8 CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- .9 CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- .10 CONTRACTOR shall provide OWNER and ENGINEER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- .11 If OWNER-owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.

- .12 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

### **5.3 Bonds:**

#### **5.3.1 General.**

- .1 Bonds, when required, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- .2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.
- .3 Bonds provided by CONTRACTOR shall conform to the requirements contained in Chapter 2253 of the Government Code.

#### **5.3.2 Performance Bond.**

- .1 CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER, which shall extend for the one year warranty period.

#### **5.3.3 Payment Bond.**

- .1 CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out by OWNER.

## **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

### **6.1 Supervision and Superintendence:**

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

**6.1.2** The CONTRACTOR shall have an English-speaking, competent Superintendent on the Work at all times that work is in progress. Upon OWNER'S request, the CONTRACTOR shall present the resume of the Superintendent to Owner's Representative showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. If, in the OWNER'S opinion, the proposed Superintendent does not indicate

sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work. The Superintendent shall not be replaced without written consent of the OWNER. Such consent shall not be unreasonably withheld. The Superintendent will be the CONTRACTOR's representative on the Work and shall have the authority to act on behalf of the CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to the CONTRACTOR. Either the CONTRACTOR or the Superintendent shall provide an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress.

## **6.2 Labor, Materials and Equipment:**

**6.2.1** The CONTRACTOR agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. The CONTRACTOR shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project.

**6.2.2** CONTRACTOR shall provide and pay for labor in accordance with the prevailing wage in the locality and shall not pay less than the prevailing wage.

**6.2.3** Unless otherwise specified, the CONTRACTOR shall provide and pay for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, re-testing of defective work, start-up and completion of the Work.

**6.2.4** All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by OWNER, the CONTRACTOR shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind, quantity and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents. All special or manufacturer's warranties required by the specifications shall expressly run to the benefit of the OWNER.

### **6.2.5 Substitutes and "Approved Equal" Items:**

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

- .1** "Approved Equal": If, in the OWNER's sole discretion, an item of material or an item of equipment proposed by the 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 the OWNER as an "approved equal" item, in which case review of the proposed item may, in the OWNER's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. The CONTRACTOR shall provide the OWNER with the documentation required for the OWNER to make its determination.

- .2 Substitute Items: If, in the OWNER's sole discretion, an item of material or an item of equipment proposed by the CONTRACTOR does not qualify as an "approved equal" item under paragraph 6.2.5.1.1, then it will be considered a proposed substitute item. The CONTRACTOR shall submit sufficient information to allow the OWNER to determine that the item of material or item of equipment proposed is essentially equivalent to that named and a substitute therefor.

**6.2.5.2 Substitute Construction Methods and Procedures:** If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the CONTRACTOR may with prior approval of the OWNER furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. The CONTRACTOR shall submit sufficient information to OWNER's Representative to allow the OWNER, in the OWNER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.

**6.2.5.3 OWNER's Evaluation:** The OWNER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraph 6.2.5.1.1 and paragraph 6.2.5.1.2. The OWNER will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until the OWNER's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. The OWNER may require the CONTRACTOR to furnish at the CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute. The OWNER shall not be responsible for any delay due to review time for any "approved equal" or substitute.

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

**6.2.5.5 Special Guarantee:** OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other warranty bond with respect to any substitute.

**6.2.5.6 Effect of Engineer's Determination:** If ENGINEER approves the substitution request, CONTRACTOR shall execute any required documentation and proceed with the substitution. The ENGINEER'S denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.



## **6.2.6 Shop Drawings, Samples, and Other Submittals:**

### **6.2.6.1 Shop Drawing and Sample Submittal Requirements:**

- .1** Before submitting a Shop Drawing or Sample, Contractor shall have:
  - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
  - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
  - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- .2** Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- .3** With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

**6.2.6.2 Submittal Procedures for Shop Drawings and Samples:** Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

- .1 Shop Drawings:**
  - a. Contractor shall submit the number of copies and format as required in the Specifications.
  - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information provided.
- .2 Samples:**

- a. Contractor shall submit the number of Samples required in the Specifications.
  - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal.
- .3** Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- .4** After review and approval of Submittal, Shop Drawing or Sample by Engineer in accordance with this section, Contractor may rely on the information provided by Engineer. Work performed in accordance with an approved Submittal, Shop Drawing, or Sample and the Contract Documents will be presumed to be acceptable to Owner unless an actual defect in the Work is discovered.

**6.2.6.3 Other Submittals:** Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

**6.2.6.4 Engineer's Review:**

- .1** Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of 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 of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.2.5 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
- .3** Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
- .4** Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

- .5 Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples subject to the obligations and limitations provided in section 6.2.6.4.2 above.

#### **6.2.6.5 Resubmittal Procedures:**

- .1 Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- .2 Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
- .3 If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

#### **6.3 Progress Schedule:**

**6.3.1** Unless otherwise directed, the CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.4.2.1 as it may be adjusted from time to time as provided below:

- .1 The CONTRACTOR shall submit to OWNER for acceptance proposed adjustments in the progress schedule that will not change the Contract Times or Milestones. Such adjustments will conform generally to the progress schedule then in effect.
- .2 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 Time Extension Request in accordance with Article 12.
- .3 The CONTRACTOR shall submit updated progress schedules with each application for payment showing progress in the work and the plan for the progress of the work thereafter.
- .4 A current and updated progress schedule shall be posted at the site at all times.

#### **6.4 Concerning Subcontractors, Suppliers and Others:**

**6.4.1** Assignment: The CONTRACTOR agrees to retain direct control of and give direct attention to the fulfillment of this Contract. The CONTRACTOR shall not assign this Contract without the prior written consent of the OWNER.

**6.4.2** Award of Subcontracts for Portions of the Work: The CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom the OWNER may have reasonable objection. The CONTRACTOR must provide the OWNER with a list of all Subcontractors, Suppliers, or other persons or organizations it intends to use in the Work, and such list must be provided prior to the preconstruction conference. Should the OWNER have objections, the OWNER will communicate such objections by Written Notice.

**6.4.3** The CONTRACTOR shall enter into written agreements with all Subcontractors and Suppliers which specifically bind the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER.

**6.4.4** The CONTRACTOR shall be fully responsible to the OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the CONTRACTOR just as the CONTRACTOR is responsible for the CONTRACTOR's own acts and omissions.

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

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

#### **6.5 Patent Fees and Royalties:**

**6.5.1** The CONTRACTOR shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.

**6.5.2** The CONTRACTOR shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by the OWNER.

**6.5.3** THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT AND SHALL INDEMNIFY, DEFEND, AND HOLD THE OWNER HARMLESS FROM ANY LOSS OR LIABILITY, DIRECT OR INDIRECT, ARISING WITH RESPECT TO THE CONTRACTOR'S PROCESS IN THE FORMULATION OF ITS BID OR THE PERFORMANCE OF THE WORK OR OTHERWISE ARISING IN CONNECTION THEREWITH. THE OWNER RESERVES THE RIGHT TO PROVIDE ITS OWN DEFENSE TO ANY SUIT OR CLAIM OF INFRINGEMENT OF ANY PATENT OR COPYRIGHT IN WHICH EVENT THE CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE OWNER FROM ALL COSTS AND EXPENSES OF SUCH DEFENSE AS WELL AS SATISFACTION OF ALL JUDGMENTS ENTERED AGAINST THE OWNER.

## **6.6 Permits, Fees:**

Unless otherwise provided in the Contract Documents, the CONTRACTOR shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

OWNER will obtain and pay for the following permits, licenses and/or fees, if required:

- .1 Site Development Permit.
- .2 Building Permit(s).
- .3 Texas Department of Transportation permit for work in State rights-of-way.
- .4 Railroad Utility License Agreement.

## **6.7 Laws and Regulations:**

**6.7.1** The CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work. Except where otherwise expressly required by applicable laws and regulations, neither the OWNER nor ENGINEER shall be responsible for monitoring the CONTRACTOR's compliance with any laws and regulations.

**6.7.2** The CONTRACTOR shall plan and execute its operations in compliance with all applicable Federal, State and local laws and regulations, including those concerning control and abatement of water pollution and prevention and control of air pollution.

**6.7.3** If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to laws or regulations, then the CONTRACTOR shall bear all claims, costs, losses and damages arising therefrom; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with laws and regulations, but this does not relieve the CONTRACTOR of the CONTRACTOR's obligations under Article 3.

## **6.8 Taxes:**

**6.8.1** The CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by the CONTRACTOR in accordance with the laws and regulations of the State of Texas.

**6.8.2** The OWNER is an exempt organization as defined by Chapter 11 of the Texas Tax Code and is thereby exempt from payment of sales tax. To enjoy the cost-savings benefits of its tax-exempt status, the OWNER will provide a Tax Exemption Certificate to the CONTRACTOR for use on the Project. The CONTRACTOR shall use that certificate to exempt any purchases made for the Work from taxes. All savings for the tax-exempt status will be passed on to the OWNER by the CONTRACTOR. The CONTRACTOR agrees to bind all SUBCONTRACTORS of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the OWNER.

## **6.9 Use of Premises:**

**6.9.1** The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the OWNER or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by dispute resolution proceeding or at law. THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ENGINEER, ENGINEER'S CONSULTANTS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES AND DAMAGES (INCLUDING COURT COSTS AND REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RESULTING FROM ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH OWNER OR OCCUPANT AGAINST THE OWNER, ENGINEER OR ANY OTHER PARTY INDEMNIFIED HEREUNDER TO THE EXTENT CAUSED BY OR BASED UPON PERFORMANCE OF THE WORK OR FAILURE TO PERFORM THE WORK.

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

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

**6.10 Record Documents:**

The CONTRACTOR shall maintain in a safe place at the site, or other location acceptable to the OWNER, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.5) in good order and annotated to show all changes made during construction. These record documents, together with all final samples and all final Shop Drawings, will be available to the OWNER and ENGINEER for reference during performance of the Work. Prior to Final Acceptance of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to the OWNER. Delivery of these record documents is a condition precedent to Final Completion.

**6.11 Safety and Protection:**

**6.11.1** The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, the CONTRACTOR shall submit a site security plan for approval by the OWNER. By reviewing the plan or making recommendations or comments, the OWNER will not assume liability nor will the CONTRACTOR be relieved of liability for damage, injury or loss. The 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 Work 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 but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

**6.11.2** The CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify OWNERS of adjacent property and of underground facilities, and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.11.1.2 and paragraph 6.11.1.3 caused, directly or indirectly, in whole or in part, by the CONTRACTOR, shall be remedied by the CONTRACTOR. The CONTRACTOR's duties and responsibilities

for safety and protection of the Work shall continue until such time as all the Work is finally complete.

**6.11.3 Safety Representative:** The 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. Upon request of the OWNER, the CONTRACTOR shall provide certifications or other documentation of the safety representative's qualifications.

**6.11.4 Hazard Communication Programs:** The CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws and regulations.

**6.11.5 Emergencies:**

**6.11.5.1** In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the OWNER or ENGINEER, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. The CONTRACTOR shall give Owner's Representative prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by the CONTRACTOR in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise the OWNER will not be responsible for the CONTRACTOR's emergency action.

**6.11.5.2** In the event there is an accident involving injury to any individual on or near the Work, the CONTRACTOR shall notify Owner's Representative within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for the OWNER's and ENGINEER's records, within forty-eight (48) hours of the event. Nothing in this section will relieve CONTRACTOR of its obligations and responsibilities with respect to an injury under any state and federal laws and regulations.

**6.12 Continuing the Work:**

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



### **6.13 CONTRACTOR's General Warranty and Guarantee:**

**6.13.1** The CONTRACTOR warrants and guarantees to the OWNER that all Work will be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. The CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

- .1** abuse, modification or improper maintenance or operation by persons other than the CONTRACTOR, Subcontractors or Suppliers; or
- .2** normal wear and tear under normal usage.

**6.13.2** The CONTRACTOR's obligation to perform and complete the Work in a good and workmanlike manner in accordance with the Contract Documents shall be absolute. None of the following will constitute acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

- .1** observations by OWNER and/or ENGINEER;
- .2** recommendation of any progress or final payment by OWNER;
- .3** the issuance of a certificate of Substantial Completion or any payment by the OWNER to the CONTRACTOR under the Contract Documents;
- .4** use or occupancy of the Work or any part thereof by the OWNER;
- .5** any acceptance by the OWNER or any failure to do so;
- .6** any review of a Shop Drawing or sample submittal;
- .7** any inspection, test or approval by others; or
- .8** any correction of defective Work by the OWNER.

**6.13.3** The Contractor warrants and guarantees for one (1) year from Substantial Completion, or for a longer period if expressly stated in the Contract Documents, the Work. This includes a Warranty and Guarantee against any and all defects. The Contractor must correct any and all defects in material and/or workmanship which may appear during the Warranty and Guarantee period, or any defects that occur within one (1) year of Substantial Completion even if discovered more than one (1) year after Substantial Completion, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the Owner, within a reasonable period of time, and to the Owner's satisfaction.

## **6.14 Indemnification:**

**6.14.1** THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, ITS OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AGENTS AND CONSULTANTS 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 OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RESULTING FROM 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 THE CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY ANY NEGLIGENCE OR OMISSION OF A PERSON OR ENTITY INDEMNIFIED HEREUNDER OR WHETHER LIABILITY IS IMPOSED UPON SUCH INDEMNIFIED PARTY BY LAWS AND REGULATIONS REGARDLESS OF THE NEGLIGENCE OF ANY SUCH PERSON OR ENTITY.

**6.14.2** The indemnification obligation under paragraph 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for the CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

**6.14.3** In the event the CONTRACTOR unreasonably delays progress of the work being done by others on the site so as to cause loss for which the OWNER becomes liable, then the CONTRACTOR shall reimburse the OWNER for such loss.

## **6.15 Survival of Obligations:**

**6.15.1** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

## **6.16 Force Majeure**

**6.16.1** If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. abnormal weather conditions;
3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 7); and
4. acts of war or terrorism.

## **6.17 Notice of Claim:**

**6.17.1** Should the CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the OWNER or of any of the OWNER's employees or agents or others for whose acts the OWNER is liable, a Claim will be made to the other party within ninety (90) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

## **ARTICLE 7 - OTHER WORK**

**7.1** The OWNER may perform other work related to the Project at the site by the OWNER's own forces, or let other contracts therefor, or have other work performed by utility owners. If the CONTRACTOR believes that delay or additional cost is involved because of such action by the OWNER, the CONTRACTOR may make a Claim as provided in Article 11 or Article 12.

**7.2** The CONTRACTOR shall afford other contractors who are in a contract with the OWNER and each utility owner (and the OWNER, if the OWNER is performing the additional work with the OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, the CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The CONTRACTOR shall not

endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of Owner's Representative and the other contractors whose work will be affected. The CONTRACTOR shall promptly remedy damage wrongfully caused by the CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

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

**7.4** The OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall participate with other separate contractors in reviewing their construction schedules when directed to do so. The CONTRACTOR shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the CONTRACTOR, separate contractors and the OWNER until subsequently revised.

**7.5** Unless otherwise stated herein, costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

**8.1** Prior to the start of construction, the OWNER will designate in writing a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, the OWNER shall issue all communications to the CONTRACTOR through Owner's Representative. This section shall not limit the ENGINEER'S role as the OWNER's design professional or its ability to communicate with the CONTRACTOR to ensure the Work complies with the Contract Documents.

**8.2** The OWNER will not supervise, direct, control or have authority over or be responsible for the CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto. The OWNER is not responsible for any failure of the CONTRACTOR to comply with laws and regulations applicable to furnishing or performing the Work. The OWNER is not responsible for the CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of the OWNER to discover, or object to or condemn any defective Work or material shall not release the CONTRACTOR from the obligation to properly and fully perform the Contract.

**8.3** Information or services under the OWNER's control shall be furnished by the OWNER with reasonable promptness to avoid delay in the orderly progress of the Work.

**8.4** The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to the CONTRACTOR and Completion).

**8.5 Notice of Claim:**

**8.5.1** Should the OWNER suffer injury or damage to person or property because of any error, omission or act of the CONTRACTOR or of any of the CONTRACTOR's employees or agents or others for whose acts the CONTRACTOR is liable, a Claim will be made to the other party within ninety (90) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

**ARTICLE 9 - ENGINEER STATUS DURING CONSTRUCTION**

**9.1 ENGINEER's Authority and Responsibilities:**

**9.1.1** The duties and responsibilities and the limitations of authority of ENGINEER during construction are set forth in the Contract Documents and shall not be extended without written consent of the OWNER and ENGINEER. The assignment of any authority, duties or responsibilities to ENGINEER under the Contract Documents, or under any agreement between the OWNER and ENGINEER, or any undertaking, exercise or performance thereof by ENGINEER, is intended to be for the sole and exclusive benefit of the OWNER and is not for the benefit of the CONTRACTOR, Subcontractor, Sub-subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.

**9.1.2** If the OWNER so directs, ENGINEER will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

**9.1.3** The limitations upon authority and responsibility set forth in this paragraph 9.1 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

## **9.2 ENGINEER as Owner's Representative:**

**9.2.1** The OWNER may designate the ENGINEER as the Owner's Representative. Any such designation will be made in writing to the CONTRACTOR with a copy to the ENGINEER.

## **9.3 Visits to Site:**

**9.3.1** If the OWNER so directs, ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as is 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 the CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of the OWNER to determine if the Work is proceeding in accordance with the Contract Documents. ENGINEER's efforts will be directed toward providing for the OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep the OWNER informed of the progress of the Work and will endeavor to guard the OWNER against defective Work.

## **9.4 Project Representative:**

**9.4.1** If the OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in paragraph 9.1. The OWNER may designate another representative or agent to represent the OWNER at the site who is not ENGINEER, ENGINEER's consultant, agent or employee.

**9.5** ENGINEER shall review and approve Shop Drawings and Samples in accordance with section 6.2.6.

## **9.6 Clarifications and Interpretations:**

**9.6.1** ENGINEER may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness. The CONTRACTOR may seek a written clarification or interpretation from the engineer through a written Request for Information (RFI). The ENGINEER shall respond to all RFI's promptly. If the OWNER or the CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Times, the OWNER or the CONTRACTOR may make a Claim therefor as provided in Article 11 or Article 12.

## **9.7 Rejecting Defective Work:**

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

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.1 Changes:**

**10.1.1** Without invalidating the Contract and without notice to any surety, the OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order.

**10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order.

**10.1.3** The CONTRACTOR shall not be entitled to an increase in the Contract Amount or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.3.1 and paragraph 3.3.2, except in the case of an emergency as provided in paragraph 6.11.5 or in the case of uncovering Work as provided in paragraph 13.4.

**10.1.4** Except in the case of an emergency as provided in paragraph 6.11.5, a Change Order or Change Directive is required before the CONTRACTOR commences any activities associated with a change in the Work which, in the CONTRACTOR 's opinion, will result in a change in the Contract Amount and/or Contract Times.

### **10.2 Change Orders:**

**10.2.1** The OWNER and the CONTRACTOR shall execute appropriate written Change Orders covering:

- .1** a change in the Work;
- .2** the amount of the adjustment in the Contract Amount, if any; and
- .3** the extent of the adjustment in the Contract Time, if any.

**10.2.2** An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time owed to the CONTRACTOR or the OWNER as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

### **10.3 Change Directives:**

**10.3.1** The OWNER may by written Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. A Change Directive shall be used in the absence of complete and prompt agreement on the terms of a Change Order.

**10.3.2** If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided for in paragraph 11.5.

**10.3.3** Upon receipt of a Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved.

### **10.4 Field Order:**

**10.4.1** The OWNER or ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount 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 shall be accomplished by written Field Order and shall be binding on the CONTRACTOR who shall perform the Work involved promptly.

**10.4.2** If the CONTRACTOR believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, the CONTRACTOR shall make written request to The Owner for a Change Order. Any request by the CONTRACTOR for an adjustment in Contract Amount and/or Contract Times shall be made in writing prior to beginning the work covered by the Field Order.

### **10.5 No Damages for Delay:**

**10.5.1** The CONTRACTOR shall receive no compensation for delays or hindrances to the Work. CONTRACTOR expressly waives any right to an adjustment in Contract Price for any event of delay. CONTRACTOR's sole remedy for any delay shall be limited to an adjustment in Contract Time. If delay is caused by specific orders given by the OWNER to stop work or by performance of extra Work or by failure of the OWNER to provide information, access to the work, material or necessary instructions for carrying on the Work, then such delay will entitle the CONTRACTOR to an extension of time. No such extension of time shall release the CONTRACTOR from all the CONTRACTOR's obligations hereunder which shall remain in full force until discharge of the Contract.



## **ARTICLE 11 - CHANGE OF CONTRACT AMOUNT**

**11.1** The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by the OWNER to the CONTRACTOR for performance of the Work under the Contract Documents.

**11.2** The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CONTRACTOR to such decrease.

**11.3** The Contract Amount shall only be changed by a Change Order or Change Directive. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than ninety (90) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered with the Written Notice of Claim delivered by claimant to the extent the data is available, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If the OWNER and the CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

### **11.4 Determination of Value of Work:**

**11.4.1** The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Amount will be determined by one or more of the following methods:

- .1** by application of unit prices contained in the Contract Documents to the quantities of the items involved.
- .2** by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- .3** by cost of Work plus the CONTRACTOR's fee for all overhead costs and profit (determined as provided in paragraph 11.5).

**11.4.2** A Cost of Work determined pursuant to 11.5 shall only be used if the OWNER and CONTRACTOR cannot resolve a value determination by agreement on unit pricing or lump sum.

### **11.5 Cost of Work:**

**11.5.1** If an agreement cannot be achieved before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by a Change Directive and payment will be made as follows:

- .1 For all personnel, the CONTRACTOR will receive the rate or wage specified in the prevailing wage rate determination applicable to the Project. If the rate determination does not contain burden, then burden shall be calculated as such: 55% of the base wage excluding markup for CONTRACTOR's overhead and profit. For each hour that said personnel are actually engaged in such Work, to which will be added an amount equal to twenty-five percent (25%) of the sum thereof as compensation for the CONTRACTOR's total overhead and profit will be added. No separate charge will be made by the CONTRACTOR for organization or overhead expenses. The actual cost of the CONTRACTOR's bond(s) on the extra Work will be paid based on invoices from surety. No charge for superintendence will be made unless considered necessary and ordered by the OWNER.
- .2 The CONTRACTOR will receive the actual cost, including freight charges, of the materials used on such Work, to which costs will be added a sum equal to twenty-five percent (25%) thereof as compensation for the CONTRACTOR's total overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.
- .3 For machinery, trucks, power tools, or other similar equipment agreed to be necessary by the OWNER and the CONTRACTOR, the OWNER will allow the CONTRACTOR the rate as given in the latest edition of the Associated General Contractors of America "Contractor's Equipment Cost Guide" as published by Dataquest for each hour that said tools or equipment are in use on such work, which rate includes the cost of fuel, lubricants and repairs. No additional compensation will be allowed on the equipment for the CONTRACTOR's overhead and profit.
- .4 The compensation, as herein provided for, shall be received by the CONTRACTOR and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. The CONTRACTOR and the Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by the OWNER or ENGINEER and signed by both Owner's Representative and the CONTRACTOR, with one (1) copy being retained by the OWNER and one (1) by the CONTRACTOR. Refusal by the CONTRACTOR to sign these records does not invalidate the accuracy of the record.

## **11.6 Unit Price Work:**

**11.6.1** Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Amount. Determinations of the actual quantities and classifications of unit price work performed by the

CONTRACTOR will be made by the ENGINEER. OWNER and ENGINEER will review with the CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

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

**11.6.3** Right to Verify Information: The CONTRACTOR agrees that any designated representative of the OWNER shall have the right to examine the CONTRACTOR's records to verify the accuracy and appropriateness of the pricing data used to price change proposals.

## **ARTICLE 12 - CHANGE OF CONTRACT TIMES**

### **12.1 Working Day and Calendar Day Contracts:**

**12.1.1** The Contract Times (or Milestones) shall only be changed by Change Order or Time Extension Request duly executed by both the CONTRACTOR and the OWNER. Any claim for an adjustment of the Contract Times (or Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly after the start of the occurrence or event giving rise to the delay and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered with the Written Notice of Claim, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If the OWNER and the CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Times (or Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.

**12.1.2** When the CONTRACTOR is at fault and the OWNER stops the Work so that corrections in the Work can be made by the CONTRACTOR, then no extension in time will be allowed.

**12.1.3** When the CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the OWNER and the CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be the CONTRACTOR's sole and exclusive remedy for such delay. However, adverse weather shall not be considered justification for extension of Contract Times on Calendar Day contracts except as provided for in paragraph 12.2.

**12.1.4** The OWNER will consider time extension requests and may grant the CONTRACTOR an extension of time because of:

- .1** Changes ordered in the work which justify additional time.

- .2 Failure of materials or products being at the Project site due to delays in transportation or delivery, which are not the result of the CONTRACTOR's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a recitation of acts demonstrating that such delays were beyond the control of the CONTRACTOR, including but not limited to, the CONTRACTOR's efforts to overcome such delays documented as follows:
  - a) Copy of purchase order for delayed item(s) indicating date ordered by the CONTRACTOR/Subcontractor and date purchase order received by Supplier.
  - b) If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to the CONTRACTOR, and date submittal(s) forwarded to Supplier.
  - c) Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).
  - d) Copies of all correspondence between the CONTRACTOR/ Subcontractor and Supplier indicating the CONTRACTOR/ Subcontractor's efforts to expedite item(s).
  - e) If item(s) are being purchased by a Subcontractor, provision of meeting notes, correspondence, and the like which reflect the CONTRACTOR's efforts with the Subcontractor to expedite delivery of the item(s).
- .3 When acts of the OWNER, ENGINEER, utility owners or other contractors employed by the OWNER delay progress of work through no fault of the CONTRACTOR.
- .4 Events of delay listed in section 6.16.

**12.2 Calendar Day Contracts:**

Under a Calendar Day Contract, Contractor may also be granted an extension of time because of unusual inclement weather, which is beyond the normal weather recorded and expected for [insert locality for project], Texas. Normal rainfall compiled by the State climatologist, based on U.S. Weather Bureau Records for [insert locality for project], Texas, is considered a part of the Calendar Day Contract, and is not a justification for an extension of time. Listed as follows are the mean number of days in which there occurred 0.10 inch or more of precipitation:

January.....	4 days
February.....	3 days
March.....	4 days
April.....	3 days

May.....	5 days
June.....	5 days
July.....	3 days
August.....	3 days
September.....	4 days
October.....	5 days
November.....	3 days
December.....	3 days

Rain days per month in amounts exceeding the number of days shown above may be credited as a Rain Day if a Claim is made in accordance with the general conditions and meets the following definition: a “Rain Day” is any day in which a rain event occurs at the site and is sufficient to prevent Contractor from performing units of Work critical to maintaining the project schedule.

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

**13.1 Notice of Defects:**

**13.1.1** Prompt notice of all defective Work of which the OWNER or ENGINEER has actual knowledge will be given to the CONTRACTOR. All defective Work may be rejected or corrected as provided for in Article 13.

**13.2 Access to Work:**

**13.2.1** The OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of the OWNER, independent testing laboratories and governmental agencies having jurisdiction will have unrestricted physical access to the Work site for observing, inspecting and testing. The CONTRACTOR shall provide them proper and safe conditions for such access, and advise them of the CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

**13.3 Tests and Inspections:**

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

**13.3.2** The CONTRACTOR shall employ and pay for services of an independent testing laboratory to perform all inspections, tests or approvals required by the Contract Documents except:

- .1 for inspections, tests or approvals covered by paragraph 13.3.3 below;
- .2 for re-inspecting or retesting defective Work; and
- .3 as otherwise specifically provided in the Contract Documents.

All testing laboratories shall be submitted to and approved by the OWNER.

**13.3.3** If laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, the CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish Owner's Representative the required certificates of inspection or approval. The CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the OWNER's and ENGINEER's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to the CONTRACTOR's purchase thereof for incorporation in the Work.

#### **13.4 Uncovering Work:**

**13.4.1** If any Work (or the work of others) that is to be inspected, tested or approved is covered by the CONTRACTOR without OWNER's or ENGINEER's concurrence, or if any Work is covered contrary to the OWNER's written request, it must, if requested by the OWNER or ENGINEER, be uncovered and recovered at the CONTRACTOR's expense.

**13.4.2** ENGINEER has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

**13.4.3** If any Work is covered contrary to the written request of ENGINEER, then CONTRACTOR shall, if requested by ENGINEER, uncover such Work for ENGINEER's observation, and then replace the covering, all at CONTRACTOR's expense.

**13.4.4** If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, then CONTRACTOR, upon OWNER's approval and 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, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, CONTRACTOR shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending CONTRACTOR's full discharge of

this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then CONTRACTOR may submit a Change Proposal within 30 days of the determination that the Work is not defective.

### **13.5 OWNER May Stop the Work:**

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

**13.5.2** A notice to stop the Work, based on causes listed in 13.5.1, shall not stop calendar or working days charged to the Project.

### **13.6 Correction or Removal of Defective Work:**

**13.6.1** If required by the OWNER, the CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. The CONTRACTOR shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. The CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

### **13.7 Warranty period:**

**13.7.1** If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is in need of repair, adjustment, modification, correction, or found to be defective, or if the repair of any damages to the Site, adjacent areas that CONTRACTOR has arranged to use through construction easements or otherwise, and other adjacent areas used by CONTRACTOR, is found to be defective, then CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;
2. correct such defective Work;

3. if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.

**13.7.2** If CONTRACTOR does not promptly comply with the terms of OWNER's written instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. 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 repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).

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

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

**13.7.5** CONTRACTOR's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### **13.8 OWNER May Correct Defective Work:**

**13.8.1** If the CONTRACTOR fails within a reasonable time after Written Notice of the OWNER to correct defective Work, or to remove and replace rejected Work, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the OWNER may, after seven (7) calendar days' Written Notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph, the OWNER shall proceed expeditiously. In connection with such corrective and remedial action, the OWNER may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the OWNER, its agents and employees, the OWNER's other contractors, ENGINEER and ENGINEER's consultants access to the site to enable the OWNER to exercise the rights and remedies under this paragraph. CONTRACTOR shall be liable to OWNER for all claims, costs, losses and damages incurred or sustained by the



OWNER in exercising such rights and remedies will be charged against the CONTRACTOR. 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 the CONTRACTOR's defective Work. The CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by the OWNER of the OWNER's rights and remedies hereunder.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **14.1 Application for Progress Payment:**

**14.1.1** Not more than once per month, the CONTRACTOR shall submit to ENGINEER for review an Application for Payment, in a form acceptable to the OWNER, filled out and signed by the 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.

**14.1.2** Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.

**14.1.3** Owner will pay for materials or equipment not incorporated in the work but delivered and suitably stored at the site. Unless specifically authorized by OWNER, payment for materials stored off-site will not be made unless and until those materials are delivered to the jobsite and suitably stored or incorporated into the Work.

**14.1.4** The OWNER will pay to the CONTRACTOR the total amount of approved Application for Payment, less five percent (5%) of the amount thereof, which five percent (5%) will be retained until final payment, less all previous payments and less all sums that may be retained by the OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of the CONTRACTOR, the OWNER may pay a portion of the retained amount to the CONTRACTOR. The CONTRACTOR, at the OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, the CONTRACTOR shall receive payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2.

- .1** If the Contract Agreement entered into between the OWNER and the CONTRACTOR has as Contract Sum of four-hundred thousand dollars (\$400,000) or less, the percentage to be withheld from Applications for Payment as retainage shall be increased to ten (10%) percent.

**14.1.5** Applications for Payment shall include the following documentation:

- .1** updated progress schedule;

- .2 monthly subcontractor report; and
- .3 any other documentation required under any Supplemental General Conditions.

#### **14.2 CONTRACTOR's Warranty of Title:**

**14.2.1** The 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 the OWNER not later than the time of payment to the CONTRACTOR free and clear of all liens.

#### **14.3 Review of Applications for Progress Payment:**

**14.3.1** ENGINEER will, within seven (7) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by the OWNER, or return the Application to the CONTRACTOR indicating ENGINEER's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application.

**14.3.2** ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER, based upon ENGINEER's on-site observations of the executed Work 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:

- .1 the Work has progressed to the point indicated; and
- .2 the quality of the Work is 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, and to any other qualifications stated in the recommendation).

**14.3.3** By recommending any such payment, ENGINEER will not thereby be deemed to have represented that:

- .1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;
- .2 examination has been made to ascertain how or for what purpose the CONTRACTOR has used money previously paid on account of the Contract Amount;
- .3 the CONTRACTOR's construction means, methods, techniques, sequences or procedures have been reviewed; or

- .4 that there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the OWNER or entitle the OWNER to withhold payment to the CONTRACTOR.

#### **14.4 Decisions to Withhold Payment:**

**14.4.1** The OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

- .1 defective Work not remedied;
- .2 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
- .3 damage to the OWNER or another contractor;
- .4 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .5 failure of the CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;
- .6 failure of the CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;
- .7 failure of the CONTRACTOR to submit or update construction schedules in accordance with the Contract Documents;
- .8 failure of the CONTRACTOR to maintain a record of changes on drawings and documents;
- .9 failure of the CONTRACTOR to maintain weekly payroll reports;
- .10 the CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up; or
- .11 failure of the CONTRACTOR to comply with any provision of the Contract Documents.

**14.4.2** Should OWNER withhold payment for any reason in 14.4.1, and upon removal of the basis for the withholding by CONTRACTOR, the CONTRACTOR shall resubmit a statement for the value of Work performed. Payment will be made, within thirty (30) calendar days of receipt of approved Application for Payment.

#### **14.5 Delayed Payments:**

**14.5.1** Timeliness and interest on payments due to CONTRACTOR from OWNER are subject to and shall be controlled by Chapter 2251 of the Texas Government Code.

#### **14.6 Arrears:**

**14.6.1** No money shall be paid by the OWNER upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to the OWNER; and the OWNER shall be entitled to counterclaim and offset against any such debt, claim, demand or account so in arrears and no assignment or transfer of such debt, claim, demand or account, shall affect the right of the OWNER to so offset said amounts, and associated penalties and interest if applicable, against the same.

#### **14.7 Substantial Completion:**

**14.7.1** If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, the CONTRACTOR shall notify OWNER and ENGINEER and request a determination as to whether the Work or designated portion thereof is substantially complete. If OWNER or ENGINEER does not consider the Work substantially complete, OWNER or ENGINEER will notify the CONTRACTOR giving reasons therefor. Failure on the OWNER's part to list a reason does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. After satisfactorily completing items identified by OWNER or ENGINEER, the CONTRACTOR shall then submit another request for OWNER and ENGINEER to determine substantial completion. If OWNER and ENGINEER consider the Work substantially complete, the ENGINEER will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, and shall establish responsibilities of the OWNER and the CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents. The certificate of Substantial Completion shall be signed by the OWNER and the CONTRACTOR to evidence acceptance of the responsibilities assigned to them in such certificate.

**14.7.2** After Substantial Completion the CONTRACTOR shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases CONTRACTOR may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

#### **14.8 Partial Utilization:**

**14.8.1** The OWNER, at the OWNER's sole option, shall have the right to take possession of and use any completed or partially completed portion of the Work regardless of the time for completing the entire Work. The OWNER's exercise of such use and possession shall not be construed to mean that the OWNER acknowledges that any part of the Work so possessed and used is substantially complete or that it is accepted by OWNER, and the OWNER's exercise of such use and possession shall not relieve the CONTRACTOR of its responsibility to complete all Work in accordance with the Contract Documents.

#### **14.9 Final Inspection:**

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

#### **14.10 Final Application for Payment:**

**14.10.1** The CONTRACTOR may make application for final payment following the procedure for progress payments after the CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered the following documents:

- .1** Complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents, Quantity as determined by the contract documents;
- .2** Record documents (as provided in paragraph 6.10);
- .3** Consent of surety to final payment;
- .4** Certificate evidencing that insurance required by the General Conditions will remain in force after final payment and through any warranty period;
- .5** Non-Use of Asbestos Affidavit (After Construction); and
- .6** Any other documentation called for in the Contract Documents.

#### **14.11 Final Payment and Acceptance:**

**14.11.1** If, on the basis of observation of the Work during construction, final inspection, and 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 the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will recommend the final Application for Payment and thereby

notify the OWNER, who will pay to the CONTRACTOR the balance due the CONTRACTOR under the terms of the Contract.

**14.11.2** ENGINEER will issue a letter of final acceptance to the OWNER and CONTRACTOR and must be acknowledged and accepted by the OWNER, which establishes the Final Completion date.

**14.12 Waiver of Claims:**

**14.12.1** The making and acceptance of final payment will constitute:

- .1 a waiver of claims by the OWNER against the CONTRACTOR, except claims arising from previously noticed and unsettled claims, from defective Work appearing after final inspection, from failure to comply with the Contract Documents or the terms of any warranty specified therein, or from the CONTRACTOR's continuing obligations under the Contract Documents; and
- .2 a waiver of all claims by the CONTRACTOR against the OWNER other than those previously made in writing and still unsettled.

**ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

**15.1 OWNER May Suspend Work Without Cause and for Convenience:**

**15.1.1** At any time and without cause and for convenience, the OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by written agreement or by Written Notice to the CONTRACTOR which will fix the date on which the Work will be resumed. The CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR may be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if the CONTRACTOR makes an approved Claim therefor as provided in Article 11 and Article 12.

**15.2 OWNER May Terminate Without Cause:**

**15.2.1** Upon seven (7) calendar days' Written Notice to the CONTRACTOR, the OWNER may, without cause and without prejudice to any right or remedy of the OWNER, elect to terminate the Agreement. In such case, the 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;

- .2 for all claims incurred in settlement of terminated contracts with Suppliers, Subcontractors, and others. The CONTRACTOR agrees to negotiate in good faith with Subcontractors, Suppliers and others to mitigate the OWNER's cost; and
- .3 for anticipated profits on entire Contract not previously paid. This sum shall not include any overhead or general field conditions on unperformed work.

### **15.3 OWNER May Terminate With Cause:**

#### **15.3.1** Upon the occurrence of any one or more of the following events:

- .1 if the CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents;
- .2 if the CONTRACTOR disregards laws or regulations of any public body having jurisdiction;
- .3 if the CONTRACTOR disregards the OWNER's authority;
- .4 if the CONTRACTOR fails to maintain a work force adequate to accomplish the Work within the Contract Time;
- .5 if the CONTRACTOR fails to make adequate progress and endangers successful completion of the Contract; or
- .6 if the CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

The OWNER may, after giving the CONTRACTOR (and the surety, if any) seven (7) calendar days' Written Notice terminate the services of the CONTRACTOR. The OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, the OWNER may under these circumstances exclude the CONTRACTOR from the site and take possession of the Work (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the OWNER has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the OWNER may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by the OWNER arising out of or resulting from completing the Work, such excess will be paid to the CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, the CONTRACTOR or surety shall pay the difference to the OWNER. Should OWNER proceed to complete the Work, CONTRACTOR expressly acknowledges that the OWNER is exempted from competitive bidding requirements for competition work pursuant to the terms of Texas Local Government Code Section 252.022.

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

#### **15.4 CONTRACTOR May Stop Work or Terminate:**

**15.4.1** If through no act or fault of the CONTRACTOR, the Work is suspended for a period of more than ninety (90) calendar days by the OWNER or under an order of court or other public authority, or (except during disputes) ENGINEER fails to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) the OWNER fails for sixty (60) calendar days after it is submitted to pay the CONTRACTOR any sum finally determined by the OWNER to be due, then the CONTRACTOR may, upon fifteen (15) calendar days' Written Notice to the OWNER, and provided the OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from the OWNER payment on the same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) ENGINEER has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) the OWNER has failed for sixty (60) calendar days after it is submitted to pay the CONTRACTOR any sum finally determined by the OWNER to be due, the CONTRACTOR may upon fifteen (15) calendar days' Written Notice to the OWNER stop the Work until payment of all such amounts due the CONTRACTOR, including interest thereon. The provisions of this paragraph 15.4 are not intended to preclude the CONTRACTOR from making a Claim under Article 11 and Article 12 for an increase in Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to the CONTRACTOR's stopping Work as permitted by this paragraph.

### **ARTICLE 16 - DISPUTE RESOLUTION**

#### **16.1 Filing of Claims:**

**16.1.1** Claims arising from the circumstances identified in the Contract Documents or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within ninety (90) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general nature of the Claim. Notice of the amount of the Claim with supporting data if not delivered with the notice, shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled.

**16.1.2** Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, OWNER and the CONTRACTOR shall meet to discuss the Claim, after



which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to:

- .1 submit additional supporting data requested by the other party;
- .2 modify the initial Claim; or
- .3 request Alternative Dispute Resolution.

## **16.2 Alternative Dispute Resolution:**

**16.2.1** If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. The OWNER reserves the right to include ENGINEER as a party.

**16.2.2** Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) calendar days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker empowered to negotiate on behalf of their organization. The purpose of this and subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) calendar days of the first meeting, unless mutually agreed otherwise. This step may be waived by written agreement of both parties, in which event the parties may proceed directly to mediation as described below.

### **16.2.3** Mediation:

**16.2.3.1** If the procedure described in paragraph 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. The parties agree to select within thirty (30) calendar days one (1) mediator trained in mediation skills, to assist with resolution of the dispute. The OWNER and the CONTRACTOR agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert.

**16.2.3.2** The OWNER and CONTRACTOR may agree to suspend or abate the mediation requirement until such time that the Project is complete such that multiple claims that might have remained unresolved during the course of the Project may be negotiated and mediated jointly.

**16.2.3.3** If Mediation is unsuccessful, the parties may litigate any remaining claims or disputes in a court of competent jurisdiction.

## **ARTICLE 17 – RIGHT TO AUDIT**

### **17.1 Right to Audit:**

**17.1.1** Whenever the OWNER enters into any type of contractual arrangement with the CONTRACTOR, then the CONTRACTOR's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. The OWNER's representative, or an outside representative engaged by the OWNER, may perform such audits. The CONTRACTOR shall maintain all records relating to this Agreement for four (4) years from the date of final payment under this Agreement.

**17.1.2** The OWNER shall have the exclusive right to examine the records of the CONTRACTOR. The term "records" as referred to herein shall include any and all information, materials and data of every kind and character, including without limitation records, books, papers, documents, contracts, schedules, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the OWNER's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as computer-readable data if it can be made available), written policies and procedures, time sheets, payroll registers, cancelled checks, personnel file data, correspondence, general ledger entries, and any other record in the CONTRACTOR's possession which may have a bearing on matters of interest to the OWNER in connection with the CONTRACTOR's dealings with the OWNER (all of the foregoing are hereinafter referred to as "records"). In addition, the CONTRACTOR shall permit interviews of employees as well as agents, representatives, vendors, subcontractors and other third parties paid by the CONTRACTOR to the extent necessary to adequately permit evaluation and verification of the following:

- a) The CONTRACTOR's compliance with contract requirements;
- b) The CONTRACTOR's compliance with the OWNER'S business ethics policies;  
and
- c) If necessary, the extent of the Work performed by the CONTRACTOR at the time of contract termination.

**17.1.3** The CONTRACTOR shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this Article 17 by securing the requirements hereof in a written agreement between the CONTRACTOR and payee. Such requirements include a flow-down right of audit provision in contracts with payees that also apply to subcontractors and sub-subcontractors, material suppliers, etc. The CONTRACTOR shall cooperate fully and shall require Related Parties and all of the CONTRACTOR's subcontractors to cooperate fully in furnishing or in making available to the OWNER from time to time whenever requested, in an expeditious manner, any and all such information, materials, and data.

**17.1.4** The OWNER's authorized representative or designee shall have reasonable access to the CONTRACTOR's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article 17.

**17.1.5** If an audit inspection or examination in accordance with this Article 17 discloses overpricing or overcharges of any nature by the CONTRACTOR to the OWNER in excess of one-half of one percent (.5%) of the total contract billings, then the reasonable actual cost of the OWNER's audit shall be reimbursed to the OWNER by the CONTRACTOR. Any adjustments and/or payments, which must be made as a result of any such audit or inspection of the CONTRACTOR's invoices and/or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the OWNER's findings to the CONTRACTOR.

## **ARTICLE 18 – MISCELLANEOUS**

### **18.1 Venue and Choice of Law:**

**18.1.1** In the event of any suit at law or in equity involving the Contract, venue shall be in the district court in the county in which the Project is located. The laws of the state of Texas shall apply to Contract interpretation and enforcement.

### **18.2 Extent of Agreement:**

**18.2.1** This Contract represents the entire and integrated agreement between the OWNER and the CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral.

### **18.3 Cumulative Remedies:**

**18.3.1** The rights and remedies available to the parties are not to be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations, by special warranty or guarantees 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.

### **18.4 Severability:**

**18.4.1** If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being

the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

## **18.5 Independent Contractor**

**18.5.1** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The CONTRACTOR's services shall be those of an independent contractor. The CONTRACTOR agrees and understands that the Contract does not grant any rights or privileges established for employees of the OWNER.

## **18.6 Non-Boycott of Israel**

18.6.1 The City of Schertz may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that; (i) it does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract. (Texas Government Code chapter 2270) by accepting these General Conditions and any associated contract, the CONTRACTOR verifies that it does not Boycott Israel, and agrees that during the term of this contract will not Boycott Israel as that term is defined in the Texas Government Code Section 808.001, as amended.

**18.6.2** Relevant definitions from the bill: "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

**18.6.3** "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

## **End of General Conditions**