



**UTILITY GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT
FOR TDOT PROJECTS**

As Modified and Supplemented by

The Knoxville Utilities Board using the

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT
(1996 Edition)

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By

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NOTE: The STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT (1996 Edition) prepared by the Engineers Joint Contract Documents Committee has been modified and supplemented by the Knoxville Utilities Board, the UTILITY. The CONTRACTOR should review Section 00700TDOT thoroughly prior to submission of a bid or proposal and prior to executing the Agreement with the OWNER for Work as described in the Bidding and Contract Documents.

Section 00700TDOT



SECTION 00700TDOT
UTILITY GENERAL CONDITIONS, TDOT PROJECTS

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ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.
2. *Agreement*--The written instrument that is evidence of the agreement between OWNER and CONTRACTOR covering the Work.
3. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
5. *Change Order*--A document recommended by OWNER or Resident Project Representative which when signed by CONTRACTOR and OWNER authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
6. *Claim*--A demand or assertion by OWNER, UTILITY or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
7. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
8. *Contract Documents*— The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Utility Field Change Requests, and OWNER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents.
9. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement.
10. *Contract Times*--The number of calendar days or the dates stated in the Agreement to achieve Substantial Completion.
11. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.



12. *Drawings*--Part of the Contract Documents prepared or approved by OWNER that graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

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

14. *Field Change Request*--A written order issued by OWNER or by UTILITY or by Resident Project Representative on OWNER's behalf, or by Utility Resident Project Representative on UTILITY's behalf which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

15. *General Provisions*--specifically, Part 1 of the "Standard Specifications for Road and Bridge Construction", dated January 1, 2015 issued by the Tennessee Department of Transportation (OWNER), and including all Supplemental Provisions required for the Project.

16. *General Requirements*--Sections of Division 1 of the Project Manual. The General Requirements pertain to all sections of the Specifications.

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

18. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time. Additionally, Hazardous Waste shall also have the meaning provided by Tennessee Code Annotated § 68-212-101, et seq.

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

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

21. *Normal Work Hours*--The hours between 7:00 AM and 5:00 PM, Monday through Friday unless otherwise approved by the OWNER. Work outside of these times must be scheduled through and approved by the OWNER.

22. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

23. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

24. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed. The term "OWNER" shall mean the Department of Transportation of the State of Tennessee.

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

26. *Personal Protective Equipment, (PPE)*--Industry standard recognized safety equipment that is worn by all individuals on site to provide personal protection from hazards encountered at the work site and to be worn in compliance with Contractor's required Job Hazard Analysis. UTILITY required minimum PPE consists of the appropriate class reflective vest standard for the type of work under contract, American National Standards Institute (ANSI) approved safety glasses with side shields, American National Standards Institute (ANSI) approved hard hat and safety-toed boots which are over the ankle and a minimum of six inches (15.24 centimeter) high.
27. *PCBs*--Polychlorinated biphenyls.
28. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit/15.56 degrees Celsius and 14.7 pounds per square inch/10.14 Newtons per square centimeter absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
29. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
30. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
31. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
32. *Resident Project Representative*--The authorized representative of OWNER who may be assigned to the Site or any part thereof.
33. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
34. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
35. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER or UTILITY upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER or UTILITY which are designated for the use of CONTRACTOR.
36. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
37. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site. The term includes one who furnishes material worked to a special design according to the drawings and specifications of the Work, but does not include one who merely furnishes material not so worked.
38. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of OWNER and UTILITY, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.



39. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

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

41. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems, whether or not reflected in the Contract Documents.

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

43. *UTILITY*--Specifically for the Work of utility relocation, this shall mean the public utility that owns, operates and maintains the utility facilities, who has entered into a separate agreement with OWNER to manage the Work of the Project. The term "UTILITY" shall mean the Knoxville Utilities Board, an independent agency of the City of Knoxville, a municipal corporation, acting through its duly authorized officers and employees.

44. *UTILITY's Consultant*--An individual or entity having a contract with UTILITY to furnish services as an independent professional associate or consultant with respect to the Project, who may or may not have input into design matters.

45. *Utility Resident Project Representative*--The authorized representative of UTILITY who may be assigned to the Site or any part thereof

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

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

48. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable", "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of OWNER, Resident Project Representative, or UTILITY as to the Work, it is intended that such action or determination will be solely to



evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to OWNER, UTILITY, Resident Project Representative and Utility Resident Project Representative any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.03 or any other provision of the Contract Documents.

B. Day

1. The word “day”, unless otherwise indicated in the Contract Documents, shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to UTILITY’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 11.01 or 11.02).

D. Furnish, Install, Perform, Provide

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Copies of Documents*

Copies of all construction documents and specifications shall be furnished by OWNER, not by UTILITY, for the Work of this Project.

2.02 *Before Starting Construction*

A. *CONTRACTOR’s Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures



therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to Resident Project Representative and UTILITY any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Resident Project Representative before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or UTILITY for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

2.03 *Preconstruction Conference*

Before any Work at the Site is started, a conference attended by CONTRACTOR, OWNER, UTILITY, Resident Project Representative, Utility Resident Project Representative and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.04, procedures for handling Shop Drawings and other submittals, daily utility reports and maintaining required records. The CONTRACTOR must have building permits, traffic control plans, and any environmental permits prepared and approved prior to beginning the work.

2.04 *Initial Acceptance of Schedules*

Unless otherwise provided in the Contract Documents, a conference attended by CONTRACTOR, OWNER, UTILITY and others as appropriate will be held to review for acceptability to OWNER and UTILITY as provided below the schedules submitted in accordance with OWNER's established procedures. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to OWNER.

1. The progress schedule will be acceptable to OWNER and UTILITY if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on OWNER or UTILITY responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefore.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to OWNER and UTILITY if it provides a workable arrangement for reviewing and processing the required submittals.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

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

C. Clarifications and interpretations of the Contract Documents shall be issued by OWNER through the Resident Project Representative.

D. No oral agreement or conversation with any officer, agent, or employee of UTILITY, either before or after execution of the Agreement, shall affect or modify any of the terms or obligations contained in any of the Contract Documents.



E. The CONTRACTOR has thoroughly reviewed: 1. the Specifications, Drawings and all other Contract Documents; 2. the Site; all surface and subsurface conditions which might have an effect on the Work; and 3. such other information about the Project and the Work as the CONTRACTOR deems necessary. Having made such reviews, subject only to the delays caused by OWNER, the CONTRACTOR shall deliver the fully completed Work of the Project at the Contract Price which is fully functional and ready for use by OWNER and UTILITY within the Contract Time.

F. Dimensions and other details shown on the Drawings suitable or unsuitable for a particular manufacturer are not to be construed as being restrictive. Any substitute material and/or equipment so offered for approval must be accompanied by complete and detailed specifications, data sheets, and performance record with fully dimensioned drawings. UTILITY's decision concerning compliance with specifications will be final.

3.02 *Reference Standards*

Standards, Specifications, Codes, Laws, and Regulations

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or UTILITY, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, UTILITY, or any of UTILITY's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to OWNER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 5.12) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated the established policies and procedures of OWNER; provided, however, that CONTRACTOR shall not be liable to OWNER or UTILITY for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof. The aforementioned notwithstanding, CONTRACTOR shall be solely responsible for coordination of all figures, dimensions, elevations, etc., required to properly install the Work and interface with all new and existing components of the Work.

B. Resolving Discrepancies

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

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



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

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: 1. Written Amendment; 2. Change Order; or 3. Work Change Directive. As provided in OWNER's General Provisions, Contract Price and Contract Time may be changed only by a Supplemental Agreement or Construction Change.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: 1. Utility Field Change Request; 2. UTILITY's approval of a Shop Drawing or Sample; or 3. UTILITY's written interpretation or clarification.

3.05 *Reuse of Documents*

CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under the direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of UTILITY or UTILITY's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER or UTILITY and specific written verification or adaptation by UTILITY. This prohibition will survive the final payment, completion, and acceptance of the Work, or termination or completion of the Contract.

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

4.01 *Availability of Lands*

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

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

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The CONTRACTOR shall work with each individual landowner to make necessary arrangements to gain access to the Project Right-of-Way. The CONTRACTOR shall provide releases from the landowners in a form acceptable to OWNER and UTILITY, substantiating the CONTRACTOR has satisfied all requirements for damages and other arrangements. Easements may not be used until UTILITY and OWNER approve all releases in writing.



4.02 *Subsurface and Physical Conditions*

A. *CONTRACTOR's Responsibility:* It is each bidder's responsibility to ascertain all subsurface and physical conditions affecting the Work. NO ADJUSTMENT IN CONTRACT PRICE OR CONTRACT TIMES SHALL BE AWARDED IN CONNECTION WITH SUCH SUBSURFACE AND PHYSICAL CONDITIONS OF THE SITE

B. *Reports and drawings:* The Supplementary Conditions identify:

1. those reports, if any, of explorations and tests of subsurface conditions at or contiguous to the Site that UTILITY has used in preparing the Contract Documents; and

2. those drawings, if any, of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that UTILITY or UTILITY's Consultant has used in preparing the Contract Documents.

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

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

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

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

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.02.B. & C. is materially inaccurate, then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 5.12), notify OWNER in writing about such condition. OWNER may forward such notification to UTILITY for review. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *UTILITY's Review:* After receipt of written notice if supplied by OWNER in accordance with paragraph 4.03.A, UTILITY will promptly review the pertinent condition, determine the desirability of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing of UTILITY's recommendations.

4.04 *Underground Facilities*

The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to UTILITY or UTILITY's Consultant by the owners of such Underground Facilities, including UTILITY, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:



1. OWNER and UTILITY shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities,
 - c. coordination of the Work with the owners of such Underground Facilities, including UTILITY, during construction,
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work, and
 - e. any such repairs shall be expedited in order to reduce the impact caused to OWNER, UTILITY or others.

4.05 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” CONTRACTOR may not rely upon or make any Claim against OWNER, UTILITY or any of UTILITY’s Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.

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

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.12); and (iii) notify OWNER (and promptly thereafter confirm such notice in writing). Mitigation of such Hazardous Environmental Conditions shall be handled per the policies and procedures of OWNER.



E. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, UTILITY, UTILITY's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.05.E shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence.

F. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES

5.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and UTILITY except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

5.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, layout, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during Normal Work Hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent given after prior written request to Resident Project Representative. No matter when the Work is performed, CONTRACTOR shall fully comply with all local, state and federal laws, regulations, and ordinances.

5.03 *Services, Materials, and Equipment*

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees



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

5.04 *Substitutes and "Or-Equals"*

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

1. *"Or-Equal" Items:* If in UTILITY's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by UTILITY as an "or-equal" item, in which case review and approval of the proposed item may, in UTILITY's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 5.04.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment UTILITY determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER or UTILITY; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in UTILITY's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 5.04.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow UTILITY to determine the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. UTILITY will not accept requests for review of proposed substitute items of material or equipment from anyone other than CONTRACTOR through OWNER.

c. The procedure for review by UTILITY will be as set forth in paragraph 5.04.A.2.d, as supplemented in the General Requirements and as OWNER or UTILITY may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to OWNER, who in turn will provide such written application to UTILITY for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in

connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by UTILITY in evaluating the proposed substitute item. UTILITY may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by UTILITY. CONTRACTOR shall submit sufficient information to allow UTILITY, in UTILITY's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by UTILITY will be similar to that provided in subparagraph 5.04.A.2.

C. *UTILITY's Evaluation:* UTILITY will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 5.04.A and 5.04.B. UTILITY will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until UTILITY's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." OWNER will advise CONTRACTOR in writing of any negative determination.

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

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

5.05 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 5.05.B), whether initially or as a replacement, against whom UTILITY may have reasonable objection. CONTRACTOR shall not be required by UTILITY to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. The CONTRACTOR whose bid is successful, and any other contractor submitting a bid who is so requested shall submit to OWNER and UTILITY a list of all such Subcontractors, Suppliers and other persons and organizations proposed for those portions of the Work for which such identification is required. An experience statement shall accompany such list with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, person or organization if requested by OWNER or UTILITY. No acceptance by OWNER or UTILITY of any Subcontractor, Supplier or other persons or organizations shall constitute a waiver of any right of OWNER or UTILITY to reject defective work.

C. CONTRACTOR shall be fully responsible to OWNER and UTILITY for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or UTILITY and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or UTILITY to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.



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

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with OWNER, UTILITY, Resident Project Representative or Utility Resident Project Representative through CONTRACTOR.

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

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the OWNER's General Provisions for the benefit of OWNER and UTILITY.

5.06 *Patent Fees and Royalties*

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or UTILITY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, UTILITY, UTILITY's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

5.07 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER, Resident Project Representative, Utility Resident Project Representative nor UTILITY shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work that it is contrary to Laws or Regulations, or which causes OWNER to violate Laws or Regulations, CONTRACTOR shall bear all fines, penalties (stipulated or otherwise), claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.



5.08 *Taxes*

Unless otherwise provided in the Contract Documents, CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. It is the CONTRACTOR's responsibility to determine the extent of liability for and to pay any sales or uses taxes required to be paid on any materials supplied by either the UTILITY or the CONTRACTOR in connection with the Work.

5.09 *Use of Site and Other Areas*

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

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

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

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

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

C. *Cleaning:* At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials used in performing the Work of the Project, and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.10 *Record Documents*

CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Utility Field Change Requests, and written interpretations and clarifications affecting the Work of the Project in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to UTILITY for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to UTILITY.



5.11 *Safety and Protection*

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

1. all persons who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

The presence on Site of OWNER, UTILITY and/or the Utility Resident Project Representative in no way relieves CONTRACTOR of CONTRACTOR's safety obligations. In accordance with generally accepted construction practices, the CONTRACTOR will be solely and completely responsible for safety conditions at the Site, including but not limited to the safety of all persons and property during performance of the Work. This requirement will apply continuously throughout the performance of the Work and is not be limited to normal working hours.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards and shall comply with all mandatory PPE requirements for such safety and protection. Applicable Laws and Regulations governing the work include but are not limited to OSHA, TOSHA, NEC, ANSI, and NFPA. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 5.11.A.2 or 5.11.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the sole acts or omissions of OWNER or UTILITY or UTILITY's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and OWNER has issued a notice to CONTRACTOR in accordance with OWNER's policies and procedures the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

C. CONTRACTOR shall comply with UTILITY's separate requirement to have all persons on the work site wear at least a minimum of Personal Protective Equipment (PPE) conforming to the requirements listed in section (5.11.C.1) at all times and CONTRACTOR shall meet all PPE requirements listed in this section (5.11.C)

1. Minimum Required PPE (PPE): Minimum required PPE consists of the appropriate class reflective vest standard for the type of work under contract, American National Standards Institute (ANSI) approved safety glasses with side shields, American National Standards Institute (ANSI) approved hard hat and safety-toed boots which are over the ankle and a minimum of six inches (15.24 centimeters) high. In cases of conflict PPE required by regulatory agencies shall prevail otherwise Minimum required PPE shall be worn at all times.

2. Required use of PPE: The minimum PPE requirement extends to all work site personnel including but not limited to Contractor's workforce, supervision, suppliers, vendors, inspectors, truck drivers, equipment operators, rental company employees, guests, and subcontractors and any other personnel associated with the work



who are present at the work site, and who are outside of an enclosed equipment cab, enclosed vehicle cab, office trailer, toilet facility, or other designated area (5.11.C.3) which is not considered part of the work itself. Contractor shall direct all non essential personnel and the general public to remain outside of the areas of the work site where work is in progress at all times.

3. Contractor may, at Contractor's discretion, designate and cordon off or otherwise clearly mark parking areas, break areas, and other non work areas within the work site where PPE is not required. Such areas shall have unobstructed access for entry and exit of the worksite and be clear of the work in progress. The work in progress includes but is not limited to any area where work is partially complete, work has started, work is not finished, restoration is not finished, material storage and laydown areas, staging areas, and equipment.

4. Contractor Requirement to Stop Work: Contractor shall not allow work to continue if PPE is not available and not used by all persons associated with the work.

5. Authority of UTILITY to Stop Work and Clear the Work Site: UTILITY or Utility Resident Project Representative shall have the authority to enforce Contractor's use of UTILITY's required PPE up to and including OWNER or OWNER's representative(s) authority to stop work and require Contractor's on-site supervision to require Contractor's workforce, supervision, suppliers, vendors, inspectors, truck drivers, equipment operators, rental company employees, guests, or subcontractors to don required PPE before resuming work. Contractor shall not be allowed additional work days, monetary compensation, or time for completion of the project resulting from work stoppage due to inadequate PPE.

6. Maintenance of PPE: Contractor shall ensure that all PPE whether supplied by Contractor or supplied by others, being used on the work site meets all industry standard requirements and is in good working order at all times. PPE used by persons on the work site shall have no functional defects. PPE requiring calibration, testing, or certification shall have copies of the latest such calibration, testing, or certification available on site and such calibration, testing, or certification shall not be expired. UTILITY shall not be responsible for supplying PPE to Contractor.

7. Use as Designed: All PPE shall be used as designed. No part or parts of the PPE shall be altered or defeated in use. PPE shall be properly sized, fitted, and adjusted for each person.

5.12 *Emergencies*

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

5.13 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to OWNER who in turn will submit to UTILITY for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as UTILITY may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show UTILITY the services, materials, and equipment CONTRACTOR proposes to provide and to enable UTILITY to review the information for the limited purposes required by paragraph 5.13.E.

B. CONTRACTOR shall also submit Samples to OWNER for review and approval by UTILITY in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified



clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as UTILITY may require to enable UTILITY to review the submittal for the limited purposes required by paragraph 6.13.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to UTILITY as required by paragraph 2.04, any related Work performed prior to UTILITY's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

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

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

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

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

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

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

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

E. UTILITY's Review

1. UTILITY will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to UTILITY. UTILITY'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. UTILITY's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. UTILITY's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called OWNER's and UTILITY's attention to each such variation at the time of each submittal as



required by paragraph 5.13.D.3 and UTILITY has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by UTILITY relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 5.13.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by UTILITY 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 UTILITY on previous submittals.

5.14 *Continuing the Work*

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with UTILITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by OWNER.

5.15 *CONTRACTOR's General Warranty and Guarantee*

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

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

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

1. observations by UTILITY or Utility Resident Project Representative;
2. recommendation by Utility Resident Project Representative or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by OWNER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER or UTILITY;
5. any acceptance by OWNER or UTILITY or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by UTILITY;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by UTILITY.



5.16 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, Resident Project Representative, UTILITY, Utility Resident Project Representative, UTILITY's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and all of the above from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or mediation or other dispute resolution costs) arising out of or relating to the performance of the Work, including but not limited to any failure of CONTRACTOR, its officers, agents, employees to observe local, state, and federal laws and regulations (including but not limited to Labor Laws and Minimum Wage Laws), provided that any such claim, cost, loss, or damage:

1. is attributable to actual or alleged bodily injury, sickness, disease, or death, or to injury to or destruction of tangible or intangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any alleged negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations; provided such claim, loss, or damage is not due to the sole negligence of any such indemnified individual or entity.

B. In any and all claims against OWNER, Resident Project Representative, or UTILITY or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 5.16.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts of any kind.

C. The indemnification obligations of CONTRACTOR under paragraph 5.16.A shall not extend to the liability of UTILITY and UTILITY's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 6 - OTHER WORK

6.01 *Related Work at Site*

A. UTILITY may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then written notice thereof will be given to CONTRACTOR prior to starting any such other work; and



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

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 6, CONTRACTOR shall inspect such other work and promptly report to OWNER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

6.02 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, UTILITY shall have sole authority and responsibility for such coordination.

ARTICLE 7 – UTILITY'S RESPONSIBILITIES

7.01 *Communications to Contractor*

Except as otherwise provided in these General Conditions, UTILITY shall issue all communications to CONTRACTOR through Resident Project Representative or Utility Resident Project Representative.

7.02 *Furnish Data*

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

7.03 *Lands and Easements; Reports and Tests*

UTILITY's duties, if any, in respect of providing lands and easements are set forth in paragraph 4.01. Paragraph 4.02 refers to UTILITY's identifying and making available to CONTRACTOR copies of reports, if any, of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by UTILITY or UTILITY's Consultant in preparing the Contract Documents.

7.04 *Inspections, Tests, and Approvals*



UTILITY's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 10.03.

7.05 *Limitations on UTILITY's Responsibilities*

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

7.06 *Undisclosed Hazardous Environmental Condition*

UTILITY's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.05.

7.07 *Utility Representation:* Per the policies and procedures of OWNER, the UTILITY will provide a Utility Resident Project Representative as outlined in Article 8.

ARTICLE 8 – UTILITY RESIDENT PROJECT REPRESENTATIVE

8.01 *UTILITY Resident Project Representative*

When requested by OWNER, UTILITY will furnish a Utility Resident Project Representative (URPR) to assist OWNER and UTILITY in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Utility Resident Project Representative and assistants will be as provided in this Article 8 and shall not be extended without the written consent of UTILITY and the Resident Project Representative. The URPR is UTILITY's employee or agent at the Site, who will act as directed by and under the supervision of UTILITY and will confer with OWNER and UTILITY regarding URPR's actions. URPR's dealings in matters pertaining to the on-site Work shall in general be with the OWNER, UTILITY and CONTRACTOR, keeping all parties advised as necessary. URPR's dealing with Subcontractors shall only be through or with full knowledge and approval of the CONTRACTOR. TDOT Circular Letter 105-07.04 provides guidance for the required inspection procedures during construction, including those outlined in this Article 8.

8.02 *Duties and Responsibilities of URPR*

A. Schedules.

URPR shall review the progress schedule, the schedule of Shop Drawings and sample submittals prepared by the CONTRACTOR; and consult with OWNER and UTILITY concerning acceptability.

B. Conferences and Meetings

URPR shall attend meetings, such as preconstruction conferences, progress meetings, job conferences, and other project related meetings with CONTRACTOR and any Subcontractor that may be performing portions of the Work.

C. Liaison

1. URPR shall serve as UTILITY's liaison with the OWNER and CONTRACTOR, working principally through the CONTRACTOR's superintendent; and assist in understanding the intent of the utility



Contract Documents; and assist the UTILITY in service as the UTILITY's liaison with the CONTRACTOR when the CONTRACTOR's operations affect UTILITY's on-site operations.

2. URPR shall assist in obtaining from UTILITY additional details or information, when required for proper execution of the Work.

D. Shop Drawings and Samples

1. URPR shall record date of receipt of Shop Drawings and samples and maintain documentation for certification and acceptance of same, including Buy America requirements. UTILITY at its sole discretion may assign this responsibility to UTILITY's Consultant who will act as UTILITY's agent in reviewing submittals.

2. URPR shall receive samples that are furnished at the Site by the CONTRACTOR, and notify UTILITY of availability of samples for examination.

3. URPR shall advise OWNER, UTILITY and CONTRACTOR of the commencement of any portion of the Work requiring a Shop Drawing or sample if UTILITY has not approved the submittal.

E. Review of Work, Rejection of Defective Work, Inspections and Tests

1. URPR shall conduct on-site observations of the Work in progress to assist OWNER and UTILITY in determining if the Work is, in general, proceeding in accordance with the Contract Documents.

2. URPR shall report to the OWNER and UTILITY whenever the URPR believes that any portion of the Work is unsatisfactory, faulty, or defective or does not conform to the Contract Documents or has been damaged or does not meet the requirements of any inspections, tests, or approval required to be made; and advise OWNER and UTILITY or work the URPR believes should be corrected or rejected, or should be uncovered for observation, or requires special testing, inspection or approval.

3. URPR shall verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel and that CONTRACTOR maintains adequate records thereof; and observe, record, and report to OWNER and UTILITY appropriate details relative to the test procedures and start-ups.

4. URPR shall accompany visiting inspectors representing public or other agencies having jurisdiction over the project; record the outcome of these inspections; and report to OWNER and UTILITY.

F. Interpretation of Contract Documents

URPR shall report to the OWNER and UTILITY when clarifications and interpretations of the Contract Documents are needed and transmit to the CONTRACTOR clarifications and interpretations as issued by the UTILITY.

G. Determinations for Unit Price Work

URPR and UTILITY, in consultation with Resident Project Representative, will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. URPR will review with CONTRACTOR the preliminary determinations on such matters before UTILITY renders a written decision thereon (by completion of TDOT Form DT-1716 for that estimate period or otherwise).



H. Modifications

1. URPR may authorize minor variations in the Work from the requirements of these Contract Documents that do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accompanied by a Utility Field Change Request and will be binding on UTILITY and CONTRACTOR, who shall perform the Work involved promptly. If CONTRACTOR believes that a Utility Field Change Request justifies an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR shall follow the policies and procedures of OWNER in requesting additional funds or time to perform those portions of the Work.

2. URPR shall consider and evaluate CONTRACTOR's suggestions for modifications in the drawings or specification and report with the URPR's recommendations to UTILITY. URPR shall then transmit to CONTRACTOR decisions as issued by UTILITY.

I. Records and Reports

1. URPR shall maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Utility Field Change Requests and additional Drawings issued subsequent to the execution of the Agreement, UTILITY's clarifications and interpretations of the Contract Documents, progress reports, and other project related documents.

2. URPR shall maintain TDOT Form DT-0667 Project Utility Diary on a daily basis, recording descriptions of Work performed with their quantities and stations of installed items, CONTRACTOR or Subcontractor labor classifications and hours on the job site, materials used, materials removed, and transportation and equipment used in the performance of the Work.

3. URPR shall complete "Installed Item Certification" portion of TDOT Form DT-1716 (Utility Item Certification/Final Acceptance) and submit it each estimate period, as directed by OWNER or Resident Project Representative. This form will be signed to certify the items installed during that estimate period meet all applicable specifications.

4. URPR shall complete and attach TDOT Form DT-1716A (Summary of Installed Utility Items) to DT-1716 and submit it each pay period, as directed by OWNER or Resident Project Representative. This form will be used to summarize, by project number, the utility items installed during that estimate period.

5. URPR shall complete "Final Acceptance of Work" portion of TDOT Form DT-1716 and submit it to the Resident Project Representative when the utility relocation work is complete.

6. When UTILITY is relocating at its own expense or under a lump sum reimbursement contract, the "Description of Work Performed" section of TDOT Form DT-0667 will be the only notation required. The notation shall indicate if the relocation is a non-reimbursable or lump sum reimbursement contract.

7. URPR shall report immediately to OWNER and UTILITY's safety representative upon the occurrence of any accident.

J. Certificates, Maintenance and Operation Manuals

During the course of the Work, URPR shall verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to UTILITY for review and acceptance.



K. Completion

Before OWNER issues a Certificate of Substantial Completion and before completing the “Final Acceptance of Work” portion of TDOT Form DT-1716, URPR shall submit to CONTRACTOR and Resident Project Representative a list of items requiring completion or correction. Once this list of items has been completed by CONTRACTOR, URPR shall immediately conduct a final inspection in the company of CONTRACTOR and UTILITY. If any items remain to be completed or corrected, they shall be identified at that time. URPR shall then observe that all items on final list have been completed or corrected and shall make recommendations to UTILITY concerning acceptance of the Work.

8.03 *Limitations on URPR’s Authority and Responsibilities*

A. Neither URPR’s authority or responsibility under this Article 8 or under any other provision of the Contract Documents nor any decision made by URPR in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by URPR shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by URPR to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

C. URPR will not accept Shop Drawings or sample submittals from anyone other than OWNER, Resident Project Representative or CONTRACTOR.

D. URPR will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

E. The limitations upon authority and responsibility set forth in this paragraph 8.03 shall also apply to UTILITY’s Consultants, and assistants.

ARTICLE 9 – UNIT PRICE WORK

9.01 *Unit Price Work*

A. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by Utility Resident Project Representative in conjunction with UTILITY and OWNER subject to the provisions of paragraph 8.02.G.

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



ARTICLE 10 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

10.01 Notice of Defects

Prompt notice of all defective Work of which OWNER or UTILITY has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 10.

10.02 Access to Work

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

10.03 Tests and Inspections

A. CONTRACTOR shall give Utility Resident Project Representative timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

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

1. for inspections, tests, or approvals covered by paragraphs 10.03.C and 10.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 10.04.B shall be paid as provided in said paragraph 10.04.B; and
3. as otherwise specifically provided in the Contract Documents.

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

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

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

F. Uncovering Work as provided in paragraph 10.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given Utility Resident Project Representative timely notice of CONTRACTOR's intention to cover the same and Utility Resident Project Representative has not acted with reasonable promptness in response to such notice.

10.04 *Uncovering Work*

A. If any Work is covered prior to observation by the UTILITY, it must, if requested by UTILITY, be uncovered for Utility Resident Project Representative's observation and replaced at CONTRACTOR's expense.

B. If UTILITY considers it necessary or advisable that covered Work be observed by URPR or inspected or tested by others, CONTRACTOR, at OWNER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as UTILITY may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) 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. If, however, such Work is not found to be defective, CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction, subject to the policies and procedures of OWNER and its General Provisions.

10.05 *Correction or Removal of Defective Work*

CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Utility Resident Project Representative or UTILITY, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

10.06 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by UTILITY or permitted by Laws and Regulations as contemplated in paragraph 5.09.A is found to be defective, CONTRACTOR shall promptly, without cost to UTILITY or OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by UTILITY, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, UTILITY may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. 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 policies and procedures of OWNER or its General Provisions.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 10.06, 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.



D. CONTRACTOR's obligations under this paragraph 10.06 are in addition to any other obligation or warranty. The provisions of this paragraph 10.06 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

10.07 *Acceptance of Defective Work*

If, instead of requiring correction or removal and replacement of defective Work, UTILITY (and, prior to Utility Resident Project Representative's Final Acceptance of Work) prefers to accept it, UTILITY may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to UTILITY's evaluation of and determination to accept such defective Work (such costs to be approved by Resident Project Representative as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence

10.08 *UTILITY May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from OWNER to correct defective Work or to remove and replace rejected Work as required by UTILITY or Resident Project Representative in accordance with paragraph 10.05 or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, UTILITY may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. 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) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 10.08 will be charged against 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 CONTRACTOR's defective Work.

ARTICLE 11 - COMPLETION

11.01 *Substantial Completion*

When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and UTILITY in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that OWNER and UTILITY issue a certificate of Substantial Completion. Promptly thereafter, OWNER, UTILITY, Utility Resident Project Representative, and CONTRACTOR shall make an inspection of the Work to determine the status of completion. If UTILITY does not consider the Work substantially complete, UTILITY will notify CONTRACTOR in writing giving the reasons therefor. If UTILITY considers the Work substantially complete, UTILITY will prepare a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment.

11.02 *Partial Utilization*

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

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



agrees that such part of the Work is substantially complete, CONTRACTOR will certify to UTILITY that such part of the Work is substantially complete and request UTILITY to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify UTILITY in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request OWNER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, UTILITY, Utility Resident Project Representative and CONTRACTOR shall make an inspection of that part of the Work to determine its status of completion. If UTILITY does not consider that part of the Work to be substantially complete, UTILITY will notify CONTRACTOR in writing giving the reasons therefor. If UTILITY considers that part of the Work to be substantially complete, the provisions of paragraph 14.01 will apply with respect to certification of Substantial Completion of that part of the Work.

11.03 *Final Inspection*

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

ARTICLE 12 - DISPUTE RESOLUTION

12.01 *Methods and Procedures*

Dispute resolution methods and procedures, if any, shall be as set forth in the General Provisions. If no method and procedure has been set forth by OWNER, UTILITY and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 13 - MISCELLANEOUS

13.01 *Giving Notice*

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, or by a recognized package delivery service (FedEx, UPS, Airborne Express) to the last business address known to the giver of the notice. Faxed notice is recognized if the party transmitting the notice maintains a fax confirmation receipt and follows up such faxed notice with a notice delivered by the aforementioned means.

13.02 *Computation of Times*

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

13.03 *Cumulative Remedies*

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this



paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

13.04 *Survival of Obligations*

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

13.05 *Controlling Law*

This Contract is to be governed by the law of the State of Tennessee.

END OF SECTION