



GENERAL CONDITIONS OF THE VEGETATION MANAGEMENT CONTRACT

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 OWNER. The CONTRACTOR should review Section 00700VM 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 00700VM



SECTION 00700VM
GENERAL CONDITIONS OF THE VEGETATION MANAGEMENT
CONTRACT

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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. (Reference Section 00514 of the Project Manual)
3. *Application for Payment*--The form acceptable to OWNER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. *Not Used.*
5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
8. *Bonds*--Performance and payment bonds and other instruments of security.
9. *Change Order*--A document recommended by OWNER, or Resident Project Representative (RPR) which when signed by CONTRACTOR and OWNER authorizes an addition, deletion, or revision in the scope of Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 - 9a. *Contract Amendment*--A separate document recommended by Owner which when signed by CONTRACTOR and OWNER after the initial execution of the contract documents authorizes revised terms and conditions of the contract. Stated terms and conditions in the amendment supersede any conflicting previously stated terms and conditions.
10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
11. *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.
12. *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 Circuit Drawings, if any, as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and OWNER ' s written interpretations and clarifications issued on or after the Effective Date of the Agreement. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.01 in the case of Unit Price Work).

14. *Contract Times*--The number of calendar days or the dates stated in the Agreement to achieve Substantial Completion.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Drawings*--Part of the Contract Documents prepared or approved by OWNER or on OWNER'S behalf that graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Includes documents designated as Circuit Maps. Other CONTRACTOR produced drawings or submittals are not Drawings as so defined.

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

18. *Not Used.*

19. *Not Used.*

20. *Field Order*--A written order issued by OWNER or by OWNER'S Agent, or by Resident Project Representative on OWNER's behalf which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

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

22. *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.

23. *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.

24. *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.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.



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

27. *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.

28. *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.

29. *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.

30. *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 Knoxville Utilities Board, an independent agency of the City of Knoxville, a municipal corporation, acting through its duly authorized officers and employees.

31. *Not Used.*

32. *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. KUB 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 high.

33. *PCBs*--Polychlorinated biphenyls.

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

35. *Project*--The sum total of 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.

36. *Project Manual*--The bound documentary information prepared for bidding and performing 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.

37. *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.

38. *Resident Project Representative*--The authorized representative of OWNER who may be assigned to the Site or any part thereof (RPR).

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

40. *Not Used.*
41. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.
42. *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.
43. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part or whole of the Work at the Site.
44. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of OWNER, 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. For circuit work a Post Audit request is made by Contractor to Owner upon Substantial Completion. "Utilized for the purposes intended" means that all work is complete to specification less punch list items, final inspections, walk throughs, and Owner may enjoy the benefit(s) of the completed work. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.
46. *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.
47. *Not Used.*
48. *Unit Price Work*--Work to be paid for on the basis of unit prices.
49. *Work*--The entire completed project 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 conformance with the project scope, deliverables, and specifications, and furnishing, installing, and incorporating all materials, if any, into such work as required by the Contract Documents.
50. *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, 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 or contract Amendment following negotiations by the parties as to its effect, if any, on the Contract Terms and Conditions, Contract Price or Contract Times.
51. *Not Used.*



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, 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, 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 9.10 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 OWNER’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04

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 industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.



ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

OWNER shall furnish to CONTRACTOR up to five copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction. The Contract Documents shall be signed by the parties in the quantity as specified by OWNER.

2.03 *Commencement of Contract Times; Notice to Proceed*

The Contract Times will commence to run on the date indicated in the Notice to Proceed, known as the commence date.

2.04 *Starting the Work*

CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run. CONTRACTOR shall notify the OWNER in writing seventy-two (72) hours before starting the Work at the Site. In case of temporary suspension of Work, CONTRACTOR shall give reasonable notice before resuming Work.

2.05 *Before Starting Work*

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 OWNER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from OWNER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or RPR for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which OWNER or any additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with Article 5 herein and Section 00822 of the Contract Documents.

C. *Progress Schedule and Schedule of Values:* The CONTRACTOR shall submit a progress schedule and schedule of values, as follows:

1. *Progress Schedule.* The CONTRACTOR shall, within fourteen (14) days after receipt of the Notice to Proceed, prepare and submit to the OWNER for approval a practical schedule showing the order in which the CONTRACTOR proposes to carry on the Work, the date on which he will start the Work, and the contemplated dates for completing same. The schedule shall be in the form of a signed and dated progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion at any time.



The CONTRACTOR shall enter on the chart the actual progress at the time he submits his request for partial payment and shall immediately deliver to the OWNER four (4) copies thereof. If the CONTRACTOR fails to submit a progress chart at the time herein prescribed, the OWNER may withhold approval of progress payment estimates until such time as the CONTRACTOR submits the required progress schedule. If, in the opinion of the OWNER, the CONTRACTOR falls behind the progress schedule, the OWNER shall notify the CONTRACTOR and promptly thereafter the CONTRACTOR shall take such steps as may be necessary to improve his progress, and the OWNER may require him to increase the number of shifts or overtime operations, days at work, or the amount of work planned, or all of these, and to submit for approval such supplementary schedules or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the OWNER. All work requirements outside of Normal Work Hours must be requested in writing to the OWNER. Failure of the CONTRACTOR to comply with requirements of the OWNER under this provision shall be grounds for determination by the OWNER that the CONTRACTOR is not prosecuting the Work with such diligence as will ensure the completion within the time specified. Upon such determination a letter concerning default by the CONTRACTOR shall be forwarded to the surety company bonding the performance of the Work

The progress schedule shall be such that it can be relied upon by the CONTRACTOR and others to coordinate work, preplanning, customer notification, inspection, etc., and the sequence and interrelationship of other contracts, if any, affecting the project.

2. *Schedule of Values.* The CONTRACTOR must submit, within fourteen (14) days after receipt of the Notice to Proceed, to the OWNER a breakdown of the lump sum portion of this Contract, setting forth a unit value for each operation to be performed on the Schedule of Values to be submitted to OWNER in accordance with the Bidding Documents. The sum of the values of the operations shall equal the lump sum Contract price.

The CONTRACTOR shall also submit such other information relating to the unit prices, if the Contract Price is either entirely or partly made up of Unit Price Work, as may be required by the OWNER, CONTRACTOR shall revise the bid breakdown as directed by the OWNER. The breakdown will be used for checking the CONTRACTOR's applications for partial payment. The Schedule of Values submitted by the CONTRACTOR must contain at least the items requested by the OWNER.

2.06 *Pre Mobilization Conference*

Within 10 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, OWNER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.C, procedures, processing Applications for Payment, and maintaining required records. The CONTRACTOR must have, traffic control plans, and any environmental permits prepared and approved prior to beginning the work.

2.07 *Initial Acceptance of Schedules*

Unless otherwise provided in the Contract Documents, a conference attended by CONTRACTOR, OWNER, and others as appropriate will be held to review for acceptability to OWNER as provided below the schedules submitted in accordance with paragraph 2.05.C. 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 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 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 samples and submittals will be acceptable to OWNER and if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to OWNER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

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 executed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by OWNER or Resident Project Representative as provided in Article 9A of the Supplementary Conditions.

D. No oral agreement or conversation with any officer, agent, or employee of OWNER, 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 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 a fully completed Project at the Contract Price which is fully functional and ready for use by OWNER within the Contract Time.

F. Dimensions and other details shown on the Drawings suitable or unsuitable are not to be construed as being restrictive. OWNER's decision concerning compliance with specifications will be final.

G. Neither party, nor its respective counsel, shall be deemed the drafter of the Agreement, and all provisions of the Agreement shall be construed in accordance with the fair meaning, and not strictly construed for or against either party.

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 (or on the Effective Date of the Agreement if there were no 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 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, or any 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 6.16) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER 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 resources required to properly perform 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.

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. Field Order; 2. Not Used; or 3. OWNER'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 Owner or Owner'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. This prohibition will survive the final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining the executed Agreement, but all other sets of Contract Documents shall be returned to OWNER upon request at the completion of the Work.



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

4.01 *Availability of Lands*

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

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record not limited to legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's 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 facilities or storage of materials and equipment.

4.02 *Physical Conditions*

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

B. *Not Used*

C. *Not Used*

4.03 *Differing Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any 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 is materially inaccurate, then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments*

1. The Contract Price, scope of work, or the Contract Times, or all, will be equitably adjusted to the extent that the existence of such differing physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet the qualification described in paragraph 4.03.A; and



b. with respect to Work, if any, that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.01.

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

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

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment (see paragraph 4.02.A); or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor. However, OWNER, and OWNER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

The information and data shown or not in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER 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, including calling 811 locating service for root system removal.
- c. coordination of the Work with the owners of such Underground Facilities, including OWNER,
- 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 or others.

4.05 *Reference Points*

At its sole option, OWNER may provide surveys to establish reference points for to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the



established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to Resident Project Representative whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of any Hazardous Environmental Condition identified at the Site, if any.

B. *Not Used*

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

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult or retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. The Contract Times will be extended for an amount of time equal to the period between when OWNER receives notice of a hazardous condition from the CONTRACTOR and the notice delivered by OWNER to CONTRACTOR to resume work.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work.

G. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, OWNER'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 attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.G shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence.

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*



A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions. Bonds of Surety must be approved by OWNER. Insurance policies must be issued by an insurance company with a minimum Best's rating of A-, vii.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain.

B. Failure of OWNER to demand such certificates or other evidence of full compliance with these insurance requirements or failure of OWNER to identify a deficiency from evidence provided shall not be construed as a waiver of CONTRACTOR's obligation to maintain such insurance.

C. By requiring such insurance and insurance limits herein, OWNER does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to OWNER in the Contract Documents.

5.04 *CONTRACTOR's Liability Insurance*

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages arising out of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;



3. claims for damages arising out of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
5. claims for damages arising out of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages arising out of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER and, if identified elsewhere in the Contract Documents, OWNER's Consultants, and any other individuals or entities, all of whom, if required in the Supplemental Conditions, shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in Section 0822 of the Contract Documents or required by Laws or Regulations, whichever is greater;
3. include completed operations insurance;
4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 4.06(G), 6.07, 6.11, and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);
6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and
7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two (2) years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and two (2) years thereafter).
8. comply with all other insurance requirements for this Project as set forth in Section 00822 of the Contract Documents.

5.05 *Partial Utilization, Acknowledgment of Property Insurer*

If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work no such use or occupancy shall commence before the insurers providing the property insurance pursuant to the insurance requirements as set forth in Section 00822 of the Contract Documents have



acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

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 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 by OWNER or OWNER's representative shall be binding on CONTRACTOR. The requirements of Article 6.01.B herein shall be subordinate to any conflicting Specification, Agreement, or Contract Requirements.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to execute 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 OWNER or Resident Project Representative. No matter when the Work is performed, CONTRACTOR shall fully comply with all local, state and federal laws, regulations, and ordinances.

6.03 *Services, Materials, and Equipment*

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

B. All materials incorporated into the Work shall be as specified or, if not specified, shall be of good quality except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by OWNER, CONTRACTOR shall furnish satisfactory evidence as to the source, kind, and quality of materials. All materials shall be stored, applied, installed, protected, in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*



A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.05 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to the Resident Project Representative or OWNER for acceptance (to the extent indicated in paragraph 2.05) proposed adjustments in the progress schedule that will not result in changing the Contract Times. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

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

6.05 *Substitutes and "Or-Equals"*

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

1. *"Or-Equal" Items:* If in OWNER'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 OWNER as an "or-equal" item, in which case review and approval of the proposed item may, in OWNER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. *Not Used*

b. *Not used*

2. *Substitute Items*

a. If in OWNER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow OWNER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. OWNER 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 OWNER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as OWNER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to OWNER, who in turn will provide for review of a proposed substitute item that CONTRACTOR seeks to furnish or use. OWNER will provide CONTRACTOR written response to request.

B. *Not Used*

C. *Not Used*



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

E. *Not Used.*

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. The CONTRACTOR whose bid is successful, and any other contractor submitting a bid who is so requested shall within 5 days after the Bids are opened submit to OWNER 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. The OWNER who after due investigation has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, may before the Notice of Award is given request the apparent successful bidder to submit an acceptable substitute, without an increase in Bid price.

1. If the apparent successful bidder declines to make any such substitution, OWNER may award the contract to the next lowest qualified bidder that proposes to use acceptable Subcontractors, Suppliers and other persons and organizations. The declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any bidder. Any Subcontractor, Supplier and other person or organization listed and to whom OWNER does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER subject to revocation of acceptance after the Effective Date of the Agreement as provided elsewhere in the Contract Documents.

2. No acceptance by OWNER of any Subcontractor, Supplier or other persons or organizations shall constitute a waiver of any right of OWNER to reject defective work.

C. CONTRACTOR shall be fully responsible to OWNER 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 and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER 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, or Resident Project Representative through CONTRACTOR.



F. The divisions and sections of the Specifications and the identifications of any Drawings or Circuit Maps 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 Contract Documents for the benefit of OWNER.

6.07 *Patent Fees and Royalties*

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device 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 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, OWNER'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 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.

6.08 *Permits*

Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER, nor Resident Project Representative 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 attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor.



6.10 *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 OWNER or the CONTRACTOR in connection with the Work.

6.11 *Use of Site and Other Areas*

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

1. CONTRACTOR shall confine equipment, materials, 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 equipment or other materials. 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, OWNER'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 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, 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 and be in accordance with the contract document Specifications.

C. *Not Used*

D. *Not Used:*

6.12 *Record Documents*

CONTRACTOR shall maintain in a safe place at the Site record copies of all Drawings, Specifications, Instruction Manuals, Procedures, specific Work Instructions, or any other documentation as required by law, regulatory agencies, or the Contract Documents. Contractor's on site workforce shall provide said documentation to OWNER or OWNER's agents immediately upon request.

6.13 *Safety and Protection*

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

1. all persons who may be affected by the Work;



2. all the Work and materials and equipment to be used therein; 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 the Work.

The presence on Site of OWNER, and/or the Resident Project Representative in no way relieves CONTRACTOR of CONTRACTOR's safety obligations. In accordance with generally accepted 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 OHSA, 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 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the sole acts or omissions of OWNER or OWNER'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 paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

C. CONTRACTOR shall comply with OWNER'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 (6.13.C.1) at all times and CONTRACTOR shall meet all PPE requirements listed in this section (6.13.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 high.. In cases of conflict PPE required by regulatory agencies shall prevail otherwise Minimum required PPE shall be worn at all times.

2. **Alternate or Additional PPE:** Contractor shall perform a Job Hazard Analysis for each task of the contracted project. Contractor shall present a copy of the Job Hazard Analysis to OWNER for review or approval upon request. Contractor shall ensure all alternate or additional PPE identified in the Job Hazard Analysis is used as required and meets all of the conditions specified in Sections 6.13.B and 6.13.C.

3. **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 (6.13.C.4) 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.

4. 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.

5. 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.

6. Authority of Owner to Stop Work and Clear the Work Site: Owner shall have the authority to enforce Contractor's use of KUB 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. Failure of Contractor to comply with the PPE requirement shall be considered a breach of contract. 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.

7. 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. Owner shall not be responsible for supplying PPE to Contractor.

8. 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.

6.14 *Safety Representative*

CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give OWNER 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.

6.17 *Not Used*



6.18 *Continuing the Work*

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

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, OWNER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective or incomplete.

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 OWNER or Resident Project Representative;
2. recommendation by 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;
5. any acceptance by OWNER or any failure to do so;
6. any issuance of a notice of acceptability by OWNER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, Resident Project Representative, OWNER'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 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 Sub-contractor, 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, or Resident Project Representative, or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts of any kind.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of OWNER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them (except for Resident Project Representative who is serving as OWNER's representative on Site) 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 7 - OTHER WORK

7.01 *Related Work at Site*

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

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to 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.



7.02 *Coordination*

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

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

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

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR either by itself or through Resident Project Representative.

8.02 *Furnish Data*

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

8.03 *Pay Promptly When Due*

OWNER shall make payments to CONTRACTOR when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.04 *Lands and Easements*

OWNER’s duties, if any, in respect of providing lands and easements are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER’s identifying and making available to CONTRACTOR copies of reports, if any, of physical conditions to the Site.

8.05 *Change Orders*

OWNER is obligated to execute Change Orders as indicated in paragraph 10.01.

8.06 *Inspections, and Approvals*

OWNER’s responsibility in respect to certain inspections, and approvals is set forth in paragraph 13.03.

8.07 *Limitations on OWNER’s Responsibilities*

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



8.08 *Undisclosed Hazardous Environmental Condition*

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

8.09 *Evidence of Financial Arrangements*

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

ARTICLE 9 – RESIDENT PROJECT REPRESENTATIVE'S STATUS DURING MAINTENANCE

9.01 *OWNER'S Representative*

When a third party entity is identified as Resident Project Representative in the Agreement, such Resident Project Representative will be OWNER's representative for inspection and other related matters during the work period. The duties and responsibilities and the limitations of authority of Resident Project Representative during work are set forth in the Contract Documents and will not be changed without written consent of OWNER.

9.02 *Visits to Site*

A. When requested by OWNER, Resident Project Representative will make visits to the Site in order to observe the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, Resident Project Representative, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Resident Project Representative will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Resident Project Representative's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and observations, Resident Project Representative will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. Resident Project Representative's visits and observations are subject to all the limitations on Resident Project Representative's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of Resident Project Representative's visits or observations of CONTRACTOR's Work Resident Project Representative 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. See Article 9A of Section 00800 Supplemental Conditions, if provided, setting forth additional duties and responsibilities of the Resident Project Representative when designated by OWNER.

9.03 *Alternate Project Representative*

If OWNER designates another representative or agent as Resident Project Representative to represent OWNER at the Site who is not OWNER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Not Used*

9.05 *Authorized Variations in Work*

Only after approval by OWNER, Resident Project Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on CONTRACTOR, who shall perform the Work involved promptly.

9.06 *Rejecting Defective Work*

Resident Project Representative will have authority to disapprove or reject Work which Resident Project Representative believes to be defective, or that Resident Project Representative believes will not produce a completed Project that conforms to the Contract Documents. Resident Project Representative will also have authority to require special inspection of the Work whether or not the Work is completed.

9.07 *Not used*

9.08 *Determinations for Unit Price Work*

Resident Project Representative and OWNER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR, if Unit Price Work is applicable to this Project. Resident Project Representative will review with CONTRACTOR the preliminary determinations on such matters before OWNER renders a written decision thereon. OWNER's written decision thereon will be final and binding (except as modified by OWNER to reflect changed factual conditions or more accurate data) upon CONTRACTOR.

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

Resident Project Representative or OWNER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, if applicable to the Project, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred to OWNER in writing with a request for a formal decision.

9.10 *Limitations on Resident Project Representative's Authority and Responsibilities*

A. Resident Project Representative's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Resident Project Representative 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 Resident Project Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Resident Project Representative 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. Resident Project Representative 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. Resident Project Representative will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. Resident Project Representative will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Resident Project Representative's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to



determine generally that their content complies with the requirements of, and in the case of certificates of inspections, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to OWNER's Consultants, and assistants.

ARTICLE 10 - CHANGES IN THE WORK

10.01 *Authorized Changes in the Work*

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

B. Additional Work performed without authorization of a Change Order executed by the OWNER will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time.

C. OWNER may execute appropriate Change Orders prepared by Resident Project Representative covering changes in the Work which are required by OWNER.

10.02 *Notification to Surety*

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

ARTICLE 11 – UNIT PRICE WORK

11.01 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, the estimated quantities of items of Unit Price Work are not guaranteed. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by Resident Project Representative in conjunction with OWNER subject to the provisions of paragraph 9.08.

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 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment.

B. In connection with any proposal for a change in the Contract Price, the CONTRACTOR shall furnish a price breakdown, itemized as required by OWNER. Unless otherwise directed, the breakdown shall be in sufficient



detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the Change Order, whether such work was deleted, added, or changed. Any amount claimed for subcontractors shall be supported by a similar price breakdown. The proposal shall include a breakdown of all costs on behalf of the CONTRACTOR and his subcontractors and suppliers for all costs and markup directly or indirectly attributable to the change(s) ordered, for all delays related thereto, and for performance of the change within the time frame stated. In addition, if the proposal includes a time extension request, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified to the OWNER. The OWNER may accept or reject the proposal or may negotiate a different price with the CONTRACTOR. Any change in the Contract Price must be in writing and must be signed by the OWNER and CONTRACTOR.

12.02 *Change of Contract Times*

The Contract Times may only be changed by a Change Order or by a Written Amendment. All times stated in the Contract Documents are of the essence of the Agreement.

12.03 *Delays Within CONTRACTOR's Control*

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

12.04 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. CONTRACTOR must request a time extension in writing within seven calendar days of such cause for delay.

B. Normal weather conditions for the season in which the Work is being performed are not a basis for an extension of Contract Time. In computing claims for delays as a result of weather, only abnormal conditions will justify a delay. Computation shall be made as follows:

1. Baseline Data: The following number of days for each month is the agreed upon averaged number of days for normal weather events for the greater Knoxville, TN area. Freeze days are days where the daily high temperature does not exceed 32 deg F. Rain days are days where the daily rainfall is greater than 0.03 inches. Snowfall is to be converted to liquid precipitation. The following number of days for each month represent standard normal weather conditions for that month:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Freeze	4	1	0	0	0	0	0	0	0	0	1	2
Rain	10	9	12	9	10	10	9	7	7	6	9	10

2. Definition for the time period of a Day: Weather event days start at 00:00 and end at 24:00 Eastern Standard Time or Eastern Standard Daylight Savings Time as applicable .

3. Allowable Work Days: Allowable work days are Monday through Friday excluding holidays plus any other days that are requested by Contractor and approved by OWNER plus any other days required by contract.

4. Actual Normal Weather Days: Actual normal weather days are the Baseline Data Days divided by the number of Calendar Days in the month and multiplied by the Allowable Work Days. Round the result up to the nearest full day.



5. For rain or snow days, subtract the Actual Normal Weather Days from the number of days on which at least 0.1 inches of rain or snow (Liquid Measure) was reported for that month. A positive result indicates the number of weather delay days Contractor may request OWNER to add to the contract term. Requests must be made in accordance with 12.04.A

6. For freeze days, subtract the Actual Normal Weather Days from the number of days on which the daily high temperature was reported to be 32 degrees F or less. A positive result indicates the number of weather delay days Contractor may request OWNER to add to the contract term. Requests must be made in accordance with 12.04.A

7. In the event any given rain/snow day also qualifies as a freeze day then Contractor shall not make a claim for two weather days. Coincident weather days shall be counted as one weather day.

8. For the purpose of determining temperatures and quantities of snow and of rain, records from The National Weather Service, McGhee Tyson AP, shall control.

9. Partial Contract Months: For partial months whereby the contract term does not span the entire month, the Actual Normal Weather Days (12.04.B.4) shall be further reduced by dividing by the number of Calendar days in the month and multiplying by the number of Calendar days in the contract for that month.

12.05 *Delay Damages*

A. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or
2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.05 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - INSPECTIONS; CORRECTION, REWORK OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

Prompt notice of all defective Work of which OWNER or Resident Project Representative has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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



13.03 *Inspections*

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

B. OWNER shall employ inspectors or pay for the services of inspectors to perform all inspections, or approvals required by the Contract Documents except:

1. *Not Used;*
2. *Not Used; and*
3. as otherwise specifically provided in the Contract Documents.

C. *Not used.*

D. *Not Used.*

E. *Not Used.*

F. *Not used.*

13.04 *Not used.*

13.05 *OWNER May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

CONTRACTOR shall correct all defective Work, whether or not completed. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of 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).

13.07 *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 OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work re-



moved and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of 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. *Not used*

C. *Not used*

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to Resident Project Representative's recommendation of final payment) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by 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. If any such acceptance occurs prior to Resident Project Representative's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from OWNER to correct defective Work as required by Resident Project Representative in accordance with paragraph 13.06 or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and OWNER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of 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 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of rework or repairs associated with CONTRACTOR's defective Work.

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



ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

The schedule of values established as provided in paragraph 2.05.C.2. will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to OWNER. Progress payments on account of Unit Price Work, when applicable to the Project, will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 10 days before the date established in the Agreement for each progress payment (but not more often than once a month), CONTRACTOR shall submit to Resident Project Representative for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

B. *Review of Applications*

1. The OWNER or his Resident Project Representative will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. The OWNER will check the CONTRACTOR's estimate, and the OWNER will make payment to the CONTRACTOR if it approves such Application for Payment and retain only such amounts as may be justified by specific circumstances and provisions of the Contract Documents. The completed work less previous payments will determine the amount due. Payment terms for this Agreement will be **NET 30 DAYS** from the date of approval by OWNER of CONTRACTOR's Application for Payment, no exceptions. Retained amounts, if provided for in the contract documents, shall be limited to the following:

a. Withholding of not more than 5% of the payment claimed until the Work is substantially complete;

b. When the Work is substantially complete the withheld amount may at the OWNER's discretion be reduced below 5%.

3. By recommending any such payment Resident Project Representative will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Resident Project Representative in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither Resident Project Representative's review of CONTRACTOR's Work for the purposes of recommending payments nor Resident Project Representative's recommendation of any payment, including final



payment, will impose responsibility on Resident Project Representative to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on Resident Project Representative to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. Resident Project Representative may refuse to recommend the whole or any part of any payment if, in Resident Project Representative's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. Resident Project Representative may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Resident Project Representative's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work requires correction;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. Resident Project Representative has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Reduction in Payment

1. OWNER may refuse to make payment of the full amount recommended by Resident Project Representative because:

- a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling OWNER to a set-off against the amount recommended; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by Resident Project Representative, OWNER must give CONTRACTOR immediate written notice (with a copy to Resident Project Representative) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

14.03 *CONTRACTOR's Warranty of Title*



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

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that OWNER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, Resident Project Representative, CONTRACTOR, shall make an inspection of the Work to determine the status of completion. If OWNER does not consider the Work substantially complete, OWNER will notify CONTRACTOR in writing giving the reasons therefor. If OWNER considers the Work substantially complete, OWNER 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. At the time of delivery of the tentative certificate of Substantial Completion OWNER will deliver to CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR. This paragraph is in addition to and secondary to OWNER's Vegetation Management procedures and specifications for Post Work Audit inspection procedures.

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

14.05 *Not used*

14.06 *Final Inspection*

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, OWNER, Resident Project Representative, CONTRACTOR will promptly make a final inspection and OWNER will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. This paragraph is in addition to and secondary to OWNER's Vegetation Management procedures and specifications for Post Work Audit inspection procedures.

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of OWNER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, schedules, guarantees, Bonds, or other evidence of insurance certificates of inspection, marked-up record documents, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all



payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of Resident Project Representative's observation of the Work during final inspection, and OWNER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, OWNER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, OWNER will process the Application for Payment. At the same time OWNER will also give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, OWNER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after approval by OWNER of the final Application for Payment and accompanying documentation, the amount recommended by Resident Project Representative will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage, if any, stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to OWNER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

14.10 Right to Audit

The OWNER reserves the right to review, on demand and without notice, all records associated with the Contract of which payments are based to include, but not be limited to: accounting records, salaries, records of time, material invoices, subcontractor invoices, other records of actual expenses incurred; computer hard drives, tape backups and other storage devices; and official correspondence related to the Contract. Records subject to audit may also include those records necessary to evaluate and verify direct and indirect costs (including but not limited to overhead allocations) as they may apply to costs associated with the Work. To substantiate all Application for Payment amounts, CONTRACTOR shall maintain such records in accordance with generally accepted accounting



principles and practices for 5 years following the final payment made under this Contract or all pending matters are closed, whichever is later. OWNER or their designee may examine the records during normal business hours for the purpose of conducting audits and examinations and making copies, excerpts and transcripts to the extent required to verify the cost incurred for the completion of the Work.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

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

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
3. CONTRACTOR's disregard of the authority of Resident Project Representative or
4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed as to their reasonableness and, when so approved by OWNER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

15.03 *OWNER May Terminate For Convenience*

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



1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.

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

15.04 *CONTRACTOR May Stop Work or Terminate*

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

15.05 *Removal of Equipment.* In the case of termination of this Agreement for any cause whatsoever before completion, the CONTRACTOR, if notified to do so by the OWNER, shall promptly remove any part or all of CONTRACTOR's equipment and supplies from the property of OWNER and the Site, failing which OWNER shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *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.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them 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.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

END OF SECTION

[HOME](#)