



**July 21, 2025**

**Construction Memorandum No. 2025.01**

**TO: All DPW Engineering and Construction Staff, Consultants,  
and Contractors**

**THRU: Nathan S. Sheets  
Deputy Director - Engineering  
Department of Public Works – City of Indianapolis**

**FROM: Jayson Watt, CQM, CPII  
Administrator of Construction Services  
Department of Public Works – City of Indianapolis**

**RE: General Conditions for Construction Contracts, Retainage**

**EFFECTIVE: July 1, 2025**

In response to House Bill 1033 regarding retainage requirements, the Department of Public Works (DPW) has updated the City of Indianapolis Standard General Conditions for Construction Contracts. As of July 1, 2025, retainage changed from the Owner withholding 10% of each Progress Payment to 6% until the Work or designated portion thereof is fifty percent (50%) complete. This applies to all City of Indianapolis DPW projects contracted on or after the effective date.

These modifications to the amount of retainage are important to align with industry standards and legislative changes. The revisions to the General Conditions Article 13 – Payments to Contractor and Complete, Section 13.5 Retainage can be found on <https://www.indy.gov/activity/public-works-specifications-and-manuals>



**CITY OF INDIANAPOLIS  
STANDARD GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS  
JULY 2025**

Table of Contents

**ARTICLE 1 - ABBREVIATIONS AND DEFINITIONS**

1.1	Abbreviations	G-1
1.2	Definitions	G-3

**ARTICLE 2 - PRELIMINARY MATTERS**

2.1	Delivery of Agreements	G-11
2.2	Delivery of Insurance and Bonds	G-11
2.3	Copies of Documents	G-11
2.4	Commencement of Contract Time: Notice to Proceed	G-11
2.5	Starting the Project	G-12
2.6	Before Starting Construction	G-12
2.7	Initial Schedule and Submissions	G-12
2.8	Preconstruction Conference	G-13
2.9	Finalizing Schedules	G-14

**ARTICLE 3 - CONTRACT DOCUMENTS**

3.1	Integration of Contract Documents	G-14
3.2	Intent and Meaning	G-14
3.3	Duty to Report Discrepancies	G-15
3.4	Major Modifications	G-15
3.5	Minor Deviations	G-15
3.6	Reuse of Documents	G-15
3.7	CONTRACTOR Responsibility	G-15

**ARTICLE 4 - AVAILABILITY OF LANDS: PHYSICAL CONDITIONS**

4.1	Availability of Lands	G-16
4.2	Subsurface and Physical Conditions (Excluding Underground Facilities)	G-16
4.3	Differing Subsurface or Physical Conditions	G-16
4.4	Underground Facilities	G-17
4.5	Reference Points and Layout	G-18
4.6	Lines and Grades	G-19
4.7	Hazardous Materials	G-20
4.8	Rights in and Use of Materials found in the Project Site	G-21

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

5.1	Performance and Payment Bonds	G-22
5.2	Warranty Bond	G-22
5.3	Substitute Bonds	G-22
5.4	CONTRACTOR's Liability Insurance	G-22
5.5	OWNER's Protective Insurance	G-25
5.6	Property Insurance	G-25
5.7	Waiver Subrogation	G-25
5.8	Acceptance of Insurance	G-26
5.9	Partial Utilization Property Insurance	G-26
5.10	No Limit to Liability	G-26

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

6.1	Supervision	G-26
6.2	Resident Superintendent	G-26
6.3	Personnel and Work Hours	G-26
6.4	Full Responsibility	G-27
6.5	General Standards of Quality	G-27
6.6	Adjusting Progress Schedule	G-28
6.7	Substitute or "or Equal" Items	G-28
6.8	Engagement of Subcontractors, Suppliers, and Others	G-28
6.9	Responsibility for Others	G-29
6.10	Allocation of Work	G-29
6.11	Subcontractor Provisions	G-29
6.12	Patent Fees and Royalties	G-29
6.13	Permits	G-30
6.14	Laws and Regulations	G-30
6.15	Taxes	G-31
6.16	Use of Premises	G-31
6.17	Control of Waste	G-31
6.18	Loads on Structures	G-32
6.19	As-Built Drawings	G-32
6.20	Safety and Protection	G-33
6.21	Emergencies	G-34
6.22	Shop Drawings and Working Drawings	G-34
6.23	Continuing the Works	G-37
6.24	Allocation of Risk and Indemnification	G-37
6.25	Subcontractor and other Liens	G-38
6.26	Installation of Utility Service	G-38
6.27	Damage Survey and Correction	G-38
6.28	Damage Notification	G-38
6.29	Apprentices	G-38
6.30	Conformance with Plans and Specifications	G-39
6.31	Documentation	G-40

## **ARTICLE 7 – WORK BY THIRD PARTIES**

7.1	Separate Work by Others	G-40
7.2	Inspecting Other Work	G-40
7.3	Coordination	G-41

## **ARTICLE 8 – OWNER’S, CONSTRUCTION INSPECTOR’S AND ENGINEER’S STATUS DURING CONSTRUCTION**

8.1	OWNER’s Representative	G-41
8.2	Visits to Site	G-41
8.3	Project Representation	G-42
8.4	Clarifications and Interpretations	G-42
8.5	Authorized Variations in Work	G-42
8.6	Rejecting Defective Work	G-42
8.7	CONSTRUCTION INSPECTOR’s and ENGINEER’s Interpretation and Decisions	G-42
8.8	Non-liability of CONSTRUCTION INSPECTOR and ENGINEER	G-43
8.9	Purposes of CONSTRUCTION INSPECTOR’s and ENGINEER’s Activities	G-43
8.10	Construction Methods	G-43
8.11	Acts of Omissions by Others	G-43
8.12	Communications	G-43
8.13	Replacement for CONSTRUCTION INSPECTOR or ENGINEER	G-43

## **ARTICLE 9 – CHANGES IN THE WORK**

9.1	OWNER’s Right to Initiate Changes	G-44
9.2	Inability to Agree on Price or Time Adjustments	G-44
9.3	Non-Required Work	G-44
9.4	Change Order and Amendments	G-44

## **ARTICLE 10 – CHANGE OF CONTRACT PRICE**

10.1	Items Included in Contract Price	G-45
10.2	Changes in Contract Price	G-45
10.3	Value of Affected Work	G-45
10.4	Cost of Work	G-46
10.5	Excluded Costs	G-48
10.6	Cash Allowances	G-48

## **ARTICLE 11 – CHANGE OF CONTRACT TIME, LIQUIDATED DAMAGES; DELAYS AND HINDRANCES**

11.1	Liquidated Damages – Assessment	G-49
11.2	Liquidated Damages – Reasonable Amount	G-49
11.3	Delay Following Termination	G-49

11.4	Extension of Contract Time	G-50	11.5	Notice of Delays or Hindrances	G-50
11.5	Notice of Delays or Hindrances	G-50			
11.6	Time Extension as Exclusive Remedy	G-50			
11.7	Limitations on Time Extensions	G-51			

## **ARTICLE 12 – WARRANTIES, TEST AND DEFECTIVE WORK**

12.1	Warranty	G-51
12.2	Access to Work	G-51
12.3	Test and Inspections	G-51
12.4	Uncovering Work	G-52
12.5	OWNER May Stop the Work	G-53
12.6	Pre-Completion Correction or Removal of Defective Work	G-53
12.7	Post-Completion Correction Period	G-53
12.8	Option to Accept Defective Work	G-54
12.9	OWNER May Correct Defective Work	G-54

## **ARTICLE 13 – PAYMENTS TO CONTRACTOR AND COMPLETION**

13.1	Schedule of Values	G-55
13.2	Basis for Payments	G-55
13.3	Stored Materials and Equipment	G-56
13.4	Specially Manufactured Items	G-56
13.5	Retainage	G-56
13.6	Applications for Progress Payment	G-57
13.7	Payment Reports	G-57
13.8	CONTRACTOR's Warranty of Title	G-57
13.9	Action upon Application for Payment	G-57
13.10	Substantial Completion	G-58
13.11	Site Access upon Substantial Completion	G-59
13.12	Partial Utilization and Occupancy	G-59
13.13	Final Inspection	G-60
13.14	Final Application for Payment	G-60
13.15	Final Payment and Acceptance	G-61
13.16	Delayed Final Completion	G-61
13.17	CONTRACTOR's Continuing Obligations	G-61
13.18	Waiver of Claims by Final Payments	G-61

## **ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION**

14.1	OWNER May Suspend Work	G-62
14.2	CONTRACTOR Default	G-62
14.3	Default Termination by OWNER	G-62
14.4	Termination for Convenience	G-64
14.5	CONTRACTOR Suspension of Work Right to Terminate	G-64

## **ARTICLE 15 – DISPUTE RESOLUTION**

15.1	Agreement to Mediate	G-65
15.2	Agreement to Arbitrate	G-65
15.3	Claims Referred to CONSTRUCTION INSPECTOR	G-65
15.4	Demand for Arbitration; Objection	G-65
15.5	Consolidation and Joinder	G-65
15.6	Enforcement of Award	G-66

## **ARTICLE 16 – MISCELLANEOUS**

16.1	Giving Notice	G-66
16.2	Computation of Time	G-66
16.3	Injury to Persons and Property	G-66
16.4	Cumulative Duties and Rights	G-67
16.5	Assignment	G-67
16.6	Governing Law	G-67
16.7	Salvage of Existing Equipment and Materials	G-67
16.8	English Language Requirement	G-67
16.9	Trade Practice	G-67
16.10	Cross-References	G-67
16.11	Accounting Records	G-67
16.12	U.S. Products/Supplies	G-67
16.13	Non-Discrimination	G-68
16.14	Operating Instructions	G-69
16.15	Operation and Maintenance Manual	G-70
16.16	Service of Manufacturer’s Representative	G-71
16.17	Water	G-71
16.18	Light and Power	G-71
16.19	Prevention, Control and Abatement of Erosion and Water Pollution	G-71
16.20	Air Borne Particulate	G-73
16.21	Professional Fees and Court Costs Included	G-73
16.22	Debarment and Suspension	G-73
16.23	Compliance with E-Verify Program	G-73

## **ATTACHMENT A – MEDIATION PROCESS**

A-1

**CITY OF INDIANAPOLIS  
STANDARD GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS  
JULY 2025**

**ARTICLE 1 - ABBREVIATIONS AND DEFINITIONS**

- 1.1 Abbreviations. The following abbreviations have the following meanings:
- AA - Aluminum Association
  - AAN - American Association of Nurserymen
  - AAR - Association of American Railroads
  - AASHTO - American Association of State Highway and Transportation Officials
  - ABF - air cooled blast furnace slag
  - ACI - American Concrete Institute
  - AE - asphalt emulsion
  - AFBMA - Anti Friction Bearing Manufacturers Association
  - AGA - American Gas Association
  - AGMA - American Gear Manufacturers Association
  - AHDGA - American Hot Dip Galvanizer Association
  - AIA - American Institute of Architects
  - AISC - American Institute for Steel Construction
  - AISI - American Iron and Steel Institute
  - AMRL - AASHTO Materials Reference Laboratory
  - ANSI - American National Standards Institute
  - AP - Class A aggregate for concrete slabs
  - ARA - American Railway Association
  - AREA - American Railway Engineering Association
  - ARI - American Refrigeration Institute
  - ARS - asphalt roofing shingles
  - ASCE - American Society of Civil Engineers
  - ASHRAE - American Society of Heating, Refrigeration and Air Conditioning Engineers
  - ASLA - American Society of Landscape Architects
  - ASME - American Society of Mechanical Engineers
  - ASNS - American Standards for Nursery Stock
  - ASTM - American Society for Testing and Materials
  - AWPA - American Wood Preservers' Association
  - AWPI - American Wood Preservers Institute
  - AWS - American Welding Society
  - AWWA - American Water Works Association
  - BBR - bending beam rheometer
  - BF - blast furnace slag
  - CBRI - Copper and Brass Research Institute
  - CCRL - Cement and Concrete Reference Laboratory of the National Institute of Standards and Technology
  - CFR - Code of Federal Regulations
  - CMA - cold mix asphalt

CS - Commercial Standard (U.S. Department of Commerce)  
DMF - design mix formula  
DSR - dynamic shear rheometer  
EPA - United States Environmental Protection Agency  
ESAL - equivalent single-axle loads FS - Federal Specification (U.S.)  
FSS - Federal Specifications and Standards, General Services Administration  
FTI - Facing Title Institute Fed. Spec.  
GBF - granulated blast furnace slag  
GGBFS - ground granulated blast furnace slag  
HDB - hydrostatic design basis  
HFRS - high float seal coat asphalt emulsion  
HMA - hot mix asphalt  
HRWR - high range water reducing  
HRWRR - high range water reducing and retarding  
IA - independent assurance  
IAC - Indiana Administrative Code  
IC - Indiana Code  
IDEM - Indiana Department of Environmental Management  
IDNR - Indiana Department of Natural Resources  
IEEE - Institute of Electrical and Electronic Engineers  
IMSA - International Municipal Signal Association  
INDOT - Indiana Department of Transportation  
IOSHA - Indiana Occupational Safety and Health Administration  
IPCEA - Insulated Power Cable Engineers Association  
ITM - Indiana Test Method or Procedure  
JMF - job mix formula  
MAC - multi-grade asphalt cement  
MC - medium curing asphalt  
MCA - medium curing asphalt with additive  
MSS - Manufacturers Standardization Society of the Valve and Fitting Industry  
MUTCD - Indiana Manual on Uniform Traffic Control Devices  
NCHRP - National Cooperative Highway Research Program  
NCMA - National Concrete Masonry Association  
NEC - National Electric Code (U.S.)  
NEMA - National Electrical Manufacturers Association  
NEPCOAT - Northeast Protective Coating Committee  
NFPA - National Fire Protection Association  
NIST - National Institute of Standards and Technology  
NPC - National Plumbing Code  
OSHA - U.S. Occupational Safety and Health Agency  
PAV - pressurized aging vessel  
PG - performance grade asphalt  
PS - United States Product Standards  
QC - quality control  
QC/QA - quality control/quality assurance  
QCP - quality control plan  
RAP - reclaimed asphalt pavement

RCRA - Resource and Conservation Recovery Act  
RS - seal coat asphalt emulsion  
RTFO - rolling thin film oven  
SAE - Society of Automotive Engineers  
SCPI - Structural Clay Products Institute  
SF - steel furnace slag  
SG - specific gravity  
SHRP - Strategic Highway Research Program  
SSPC - The Society for Protective Coatings  
TCLP - Toxicity Characteristic Leaching Procedure  
TSR - tensile strength ratio  
UL - Underwriters Laboratories  
UST - underground storage tank  
VFA - voids filled with asphalt  
VMA - voids in mineral aggregate  
VOC - volatile organic compounds

- 1.2 Definitions. Wherever used and not otherwise defined in these General Conditions or in other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Addenda - Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

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

Application for Payment - The form prescribed or approved by OWNER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include an approved schedule of values and/or such other supporting documentation as is required by the Contract Documents.

Architect or Architect/ENGINEER - The person or other entity designated as ENGINEER by the Contract Documents.

As-Built Drawing – A Contract Drawing revised to reflect the as-built conditions of the project because of modifications, changes and corrections to the project design required during construction, submittals, and extensions of the design.

Bid Documents - Documents required to be submitted with the Bid.

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

Bidder - The person, firm or corporation submitting a bid for the advertised work.

Bonds - Bid, Performance, Payment and Warranty Bonds and other instruments of suretyship. The term shall include letters of credit as applicable.

Bridge - A structure, including supports, erected over a depression or an obstruction such as water, highway, or a railway having a track or passageway for carrying traffic or other moving loads, and having a length measured along the center of the roadway of more than 20 feet between undercopings of abutments or extreme ends of openings for multiple boxes.

1. Length: The length of a bridge structure is the overall length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise end to end of the bridge floor, but in no case less than the total clear opening of the structure.
2. Roadway Width: The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or, in the case of multiple heights of curbs, between the bottoms of the lower risers.

Calendar Day - Every day shown on the calendar.

Change Order - A document issued on or after the Effective Date of the Agreement, signed by CONTRACTOR and OWNER and which authorizes an addition, deletion, or revision in the Work, or an adjustment in the Contract Price or the Contract Time.

City's Standards and Specifications – All documents described in the definition "City's Standards and Specifications" shall apply to these Contract Documents.

1. Indianapolis Department of Capital Asset Management Quality Control Sampling and Testing Frequency Manual - current edition at time of bid opening.
2. The City of Indianapolis Stormwater Design and Construction Specifications Manual - current edition at time of bid opening.
3. Indianapolis Department of Capital Asset Management Supplemental Specifications for Traffic Signal Materials, Equipment and Installation – current edition at time of bid opening.
4. Indianapolis Sanitary Sewer District Standards for the Design and Construction of Sanitary Sewers - current edition at time of bid opening.
5. Except as provided in this Section, all applicable portions of the Indiana Department of Transportation Standard Specifications, current edition at time of bid opening, Standard Drawings, and Supplemental Specifications shall apply to these Contract Documents to the extent not in conflict with the terms thereof. Where the word "Standard Specifications" along with the reference consisting of a number or number and letter are used, they shall be construed as referring to the Indiana Department of Transportation Standard Specifications, current edition at time of bidding, Standard Drawings, Recurring Special Provisions and/or Supplemental, as applicable.

The order of priority for resolving conflicts, errors, discrepancies, and disputes concerning said documents and the Contract Documents shall be as described in Section 1 of the Agreement.

Construction Limits - The line shown on the plans beyond which no Work is intended to be performed and no disturbance of existing terrain shall be permitted unless authorized by OWNER.

CONSTRUCTION INSPECTOR - The person, firm or corporation named, employed or designated as such by OWNER to observe the Work, acting directly or through duly authorized representatives.

Contract Documents - The Agreement and any exhibits thereto, Addenda (which pertain to the Contract Documents), Instructions to Bidders, Advertisement, Notice to Bidders, CONTRACTOR's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), Notice to Proceed, the Bonds, the General Conditions, the Additional Requirements Section, any supplemental conditions, the Specifications and the Contract Drawings as the same are more specifically identified in the Agreement, together with all Amendments, Modifications, and Supplements issued pursuant to Sections 3.4 and 3.5 on or after the Effective Date of the Agreement.

Contract Drawings – That part of the Contract Documents prepared by ENGINEER that graphically shows the scope, extent and character of the Work to be performed by CONTRACTOR. Working Documents are not Contract Documents as so defined.

Contract Price - The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.

Contract Time - The number of days (computed as provided in Section 16.2) or the date stated in the Agreement for the completion of the Work.

CONTRACTOR - The person, firm or corporation with whom OWNER has entered into the Agreement to perform the Work.

Culvert - A structure not classified as a bridge which provides an opening under the roadway.

Defective - An adjective which when modifying the word Work refers to Work that is (i) unsatisfactory, faulty or deficient, in that it does not strictly conform to the requirements of the Contract Documents, (ii) does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or (iii) has been damaged prior to CONSTRUCTION INSPECTOR's recommendation of final

payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with Sections 13.10 or 13.12).

Department - Agency or department designated in the Agreement or other documents issued in solicitation of Bids; and such term shall also include the Project Manager or other duly appointed representative of such agency or department, but shall not include ENGINEER.

Drawings - The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

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

ENGINEER - The person, firm or corporation that has signed and sealed the Drawings and Specifications. When used in the Technical Specifications, the term "ENGINEER" shall be interpreted to mean either ENGINEER or CONSTRUCTION INSPECTOR as defined in the General Conditions.

Equipment - All machinery and equipment together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

Field Order - A written order issued by CONSTRUCTION INSPECTOR or OWNER which orders minor changes in the Work in accordance with Section 8.5 but which does not involve a change in the Contract Price or the Contract Time.

Final Completion - The completion of all Work required by the Contract Documents, including all punch list items and the delivery of all closeout documents to OWNER.

Furnish - Purchase and deliver to the work site. When used in connection with the terms "Work" or services, the term shall also mean perform.

General Conditions - City of Indianapolis Standard General Conditions for Construction Contracts, July 2025.

Install - Incorporate into the Work equipment and materials furnished by others or CONTRACTOR.

Laws and/or Regulations - Laws, rules, regulations, ordinances, codes, administrative actions and/or orders of any court or governmental agency or unit.

Major and Minor Pay Items - All pay items having an original contract value in excess of 5% of the original contract amount shall be considered as major items. Minor contract items shall be all items shown in the Itemized Proposal and Declarations which constitute 5% or less of the original contract amount.

Materials - All substances specified for use in the construction of the Work.

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

Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligation under the Contract Documents.

Open to Unrestricted Traffic - The condition that exists when all pavement Work is completed, including surface courses and shoulder. All safety features including guardrail and signs are in place and pavement markings are in final marking pattern.

OWNER - The City of Indianapolis, Indiana, acting by and through the agency or Department designated in the Agreement or other documents issued in solicitation of Bids; and such term shall also include the Project Manager or other duly appointed representative of such agency or Department but shall not include ENGINEER.

Partial Utilization - The placement of a portion of the Work in service, or beneficial occupancy and use thereof, for the purpose for which it is intended (or a related purpose) before Substantial Completion of all the Work.

Pavement Structure - The combination of subbase, base course, and surface course placed on a subgrade to support the traffic load and distribute it to the roadbed.

Pay Item - A specifically described unit of work for which a price is provided in the Agreement.

Plans - The approved plans, profiles, typical cross sections, standard drawings, working drawings, and supplemental drawings or exact reproductions thereof which show the locations, character, dimensions, and details of the Work.

Professional Engineer - A person duly licensed by the Indiana Professional Licensing Agency to practice engineering in Indiana.

Profile Grade - The trace of a vertical plane intersecting the top surface of the proposed wearing surface, usually along the longitudinal centerline of the roadbed. Profile Grade means either elevation or gradient of such trace according to context.

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

Provide - Furnish and install.

Reasonably Close Conformance - Conformance with reasonable and customary manufacturing and construction tolerances where working tolerances are not specified. Where working tolerances are specified, reasonably close conformance means conformance with such working tolerances. Without detracting from the discretion of ENGINEER to insist on such tolerances as establishing reasonably close conformance, variations beyond such tolerances may be accepted as reasonably close conformance where they will not materially affect the value or utility of the Work and the interest of OWNER.

Resident Project Representative (RPR) - The authorized representative of CONSTRUCTION INSPECTOR who is assigned to the site or any part thereof.

Road - A general term denoting a public way for purpose of vehicular travel, including the entire area within the public right-of-way.

Roadbed - The graded portion of a highway within top and side slopes, prepared as a foundation for the pavement structure and shoulders.

Roadside - A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

Roadside Development - That work necessary to the complete highway which provides for the preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching, and the placing of other ground covers; and such suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the highway.

Roadway - The portion of a highway within limits of construction.

Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR, to illustrate some portion of the Work and all illustrations, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

Shoulder - The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

Special Conditions - Portions of the Contract Documents which specify changes to the General Conditions.

Specifications - Those portions of the Contract Documents consisting of written general or technical descriptions of materials, equipment, construction systems, standards, quality, quantity and workmanship as applied to the Work, including the performance thereof, and certain administrative details applicable thereto.

Street - A general term denoting a public right-of-way for the purposes of vehicular travel, including the entire area within the public right-of-way.

Structures - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, underdrains, foundation drains, and other features which may be encountered in the Work and not otherwise classed herein.

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

Subgrade - The top surface of a roadbed upon which the pavement structure and shoulders are constructed.

Substantial Completion - The stage of construction where, in the opinion of OWNER, all items of the Work (or specified portion thereof) necessary to enable the asset to be utilized without significant restrictions for the purpose for which the asset was constructed have been completed. All pay items shall be completely installed and all necessary testing as required by the Laws and Regulations and/or Contract Documents shall be completed. Substantial Completion may be evidenced by a certificate thereof issued by CONSTRUCTION INSPECTOR and signed by OWNER.

Substructure - All of that part of the structure below the bearings of simple and continuous spans, skewbacks or arches, and tops of footings of rigid frames together with backwalls, wingwalls, and wing protection railings.

Superintendent - The authorized on-site representative of CONTRACTOR responsible for the Work.

Supplier - A manufacturer, fabricator, supplier, distributor, material man or vendor who furnishes materials or equipment to the site of the Work pursuant to a contract with CONTRACTOR or a Subcontractor and who does not perform labor or services for installation thereof at the site of the Work.

Traveled Way - The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Technical Specifications - Portion of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, quality, quantity and workmanship as applied to the Work, including performance thereof, and certain administrative details applicable thereto, and which may specify changes to the

City's Standards and Specifications, the INDOT Standard Drawings, the INDOT Supplemental Specifications, the INDOT Standard Specifications, Series 200 through 900, and which may contain specifications particular to the project.

Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other manmade facilities or structures, and any encasements containing such facilities, which have been installed at or below the surface of the ground for the purpose of furnishing, storing, removing or transmitting electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, computer signals or data, sewage, drainage , traffic or other control systems, or water.

Unforeseeable Abnormal and Unusually Severe Weather- The following chart shows the estimated number of days in each month, excluding Saturdays, Sundays, and Holidays, when CONTRACTOR will be unable to work on the controlling activity as identified on OWNER-accepted schedule:

<u>Month</u>	<u>Estimated No. of Days</u>
Oct	6
Nov	12
Dec	15
Jan	18
Feb	18
Mar	18
Apr	18
May	8
Jun	5
Jul	5
Aug	4
Sep	5

Any days (per month) in excess of the days shown when CONTRACTOR is unable to work on the controlling activity due to weather conditions shall be deemed to be "unforeseeable abnormal and unusually severe weather conditions" as referenced in Section 11.4 of the General Conditions.

Unit Price Work - Work to be paid for on the basis of unit prices established by the Contract Documents or by Change Order.

Work - The entire construction, or the various separately identifiable parts thereof, and all other obligations, required to be furnished or performed under the Contract Documents. The Work is the result and product of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

Work Directive Change - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER, making any change in the Work within the general scope of the Contract Documents, including but not limited to changes (i) in the Specifications (including drawings and designs), (ii) in the time, method or manner of performance of Work, (iii) in facilities, equipment, materials, services or site, and (iv) directing acceleration in the performance of the Work. A Work Directive Change will not by itself change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order.

Working Drawings - Layout, detail and shop drawings developed to insure proper construction, assembly, and installation of the Work using those materials and equipment specified in the Technical Specifications.

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

## **ARTICLE 2 - PRELIMINARY MATTERS**

- 2.1 Delivery of Agreements. CONTRACTOR shall deliver executed Agreements to OWNER within five (5) business days of receipt of such Agreements from OWNER.
- 2.2 Delivery of Insurance and Bonds. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR also shall deliver to OWNER, with a copy to CONSTRUCTION INSPECTOR, certificates of insurance (and other evidence thereof as required by OWNER) and such performance and payment bonds as CONTRACTOR is required to purchase and maintain in accordance with Article 5, and OWNER shall deliver to CONTRACTOR certificates (and other evidence of insurance requested by CONTRACTOR) which OWNER is required to purchase and maintain in accordance with Article 5.
- 2.3 Copies of Documents. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, OWNER shall furnish to CONTRACTOR five (5) copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.
- 2.4 Commencement of Contract Time; Notice to Proceed. Subsequent to or concurrently with the execution of the Agreement OWNER shall give CONTRACTOR a written Notice to Proceed specifying the date on which CONTRACTOR shall commence Work. The date designated in the Notice to Proceed shall be the date on which the Contract Time shall commence to run. No extension of time will be granted due to CONTRACTOR delay in submission of the executed Agreements or documents, as required in Sections 2.1 and 2.2.

- 2.5 Starting the Project. CONTRACTOR shall start to perform the Work on the date designated in the Notice to Proceed, but no Work shall be done at the site prior to the date of the Notice to Proceed.
- 2.5.1 Unless otherwise provided, CONTRACTOR shall start active and continuous Work on the Contract within 15 calendar days after the date of the Notice to Proceed. Work shall not begin prior to the date of the Notice to Proceed.
- 2.5.2 If a delayed starting date is indicated in the proposal, the 15-calendar day limitation will be waived. Workday charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. If the Contract is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this Contract during that period.
- 2.5.3 If the Contract involves demolition Work, CONTRACTOR shall not enter the parcel or proceed with the demolition without written authority from OWNER or CONSTRUCTION INSPECTOR. CONTRACTOR will be compensated only for those dwellings and/or structures that are removed from within the project limits. Time of commencing demolition Work and time of completion shall be in accordance with the Contract Documents.
- 2.6 Before Starting Construction. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures, standards, quantities, materials, field measurements, access, and other requirements or conditions affecting the Work. CONTRACTOR shall promptly report in writing to CONSTRUCTION INSPECTOR any conflict, error, discrepancy or other adverse condition or circumstance which CONTRACTOR may discover and shall obtain a written interpretation or clarification from CONSTRUCTION INSPECTOR or ENGINEER before proceeding with any Work affected thereby. CONTRACTOR shall assume all risks and bear all costs associated with any conflicts, errors, ambiguities, discrepancies or conditions which are not discovered due to its failure to conduct such study and comparison or which are discovered but not reported as required by this Section.
- 2.7 Initial Schedule and Submissions. Unless otherwise specified in the Contract Documents, within ten (10) days after the Effective Date of the Agreement CONTRACTOR shall submit to CONSTRUCTION INSPECTOR for review:
- 2.7.1 A proposed progress schedule indicating the starting and completion dates of the various stages of Work to be performed under this Contract. This schedule shall be a bar graph type schedule and shall reflect the Contract completion date and the estimated times required to prosecute the major or critical items of Work. This schedule shall incorporate all Contract requirements regarding the order of the performance of Work and each activity that is scheduled for Work. CONSTRUCTION INSPECTOR will review the proposed progress schedule to determine conformity to Contract Documents. During the course of performing

the Work, CONTRACTOR shall, at least monthly, submit to CONSTRUCTION INSPECTOR a revised progress schedule indicating any anticipated change from the original or previously revised project schedule. Such schedule shall accompany all invoices. Invoices submitted without the latest approved, original or revised, schedule will not be processed. The revised progress schedule shall include provisions for performing the Work authorized under approved Work Directive Changes and Change Orders. CONSTRUCTION INSPECTOR will review the original and revised project schedules for general conformity with the Contract Documents and will make recommendations to OWNER concerning approval thereof; however the review, approval or other action taken by CONSTRUCTION INSPECTOR or OWNER in respect to such schedules shall not relieve CONTRACTOR of its obligations to perform Work within the Contract Time. If CONTRACTOR shall fail to adhere to the approved original or revised progress schedule, except when due to Excusable Delays for which a claim has been submitted by CONTRACTOR and approved by OWNER, CONTRACTOR shall promptly adopt such other or additional means and methods of construction and commit such additional manpower, equipment and other resources as necessary to make up for the time lost and to assure completion of Work in accordance with the Contract Documents.

2.7.2 A preliminary submittal schedule showing proposed dates for submission of required Shop Drawings, samples and product data. Such schedule shall also include such durations as prescribed by ENGINEER to account for anticipated time allotments for review, approval or other action upon submittals by ENGINEER and additional allowances for resubmittals by CONTRACTOR.

2.7.3 A preliminary schedule of values for all of the Work which shall include quantities and prices of items aggregating the Contract Price and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices shall include an appropriate amount of overhead and profit applicable to each item of Work which shall be confirmed in writing by CONTRACTOR at the time of submission.

2.7.4 CONTRACTOR shall submit a construction schedule to CONSTRUCTION INSPECTOR prior to starting Work on any street and/or sewer segment. The schedule shall show the anticipated order of Work, start date, duration, and final completion date for each street segment and/or sewer segment. Failure of CONTRACTOR to provide such notice shall entitle OWNER to disallow payment for materials placed and Work performed that day.

2.8 Preconstruction Conference. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, before CONTRACTOR starts the Work at the site, a conference attended by CONTRACTOR, OWNER, CONSTRUCTION INSPECTOR, ENGINEER, and others as appropriate will be held to discuss the schedules referred to in Section 2.7, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to

establish other procedures and understandings bearing upon coordination and performance of the Work.

- 2.9 Finalizing Schedules. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, at least ten (10) days before submission of the first Application for Payment, a conference attended by CONTRACTOR, CONSTRUCTION INSPECTOR, and others as appropriate, will be held to finalize the schedules submitted in accordance with Section 2.7. The finalized progress schedule will be acceptable to ENGINEER as providing an orderly progression of Work to attain completion within the Contract Time, but such acceptance shall neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility therefore. The finalized schedule of values will be acceptable to CONSTRUCTION INSPECTOR as to form and substance.

### **ARTICLE 3 - CONTRACT DOCUMENTS**

- 3.1 Integration of Contract Documents. The Contract Documents comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents shall be construed in accordance with the law of the State of Indiana and without regard to the party by or for whom they were prepared or drafted.
- 3.2 Intent and Meaning. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance therewith. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. Notations, details or other descriptions which apply to one of a number of situations, materials, processes or work items shall apply to all except as specifically stated otherwise. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be given that meaning unless a different meaning is reasonably apparent as determined by ENGINEER. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code or Laws or Regulations in effect at the time of opening of Bids. If said standard specification, manual or code or Laws or Regulations are promulgated, amended, revised or otherwise changed subsequent to the opening of Bids, CONTRACTOR shall notify OWNER who may direct compliance under Section 9.1. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR CONSTRUCTION INSPECTOR or ENGINEER, or any of their consultants, agents or employees, or to limit or impair any right or remedy of OWNER, as set forth in the Contract Documents, nor shall it be effective to assign to OWNER, CONSTRUCTION INSPECTOR, ENGINEER or any of their respective consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the

Work or any duty or authority to undertake responsibility, contrary to the provisions of Section 8.10 or 8.11.

- 3.3 Duty to Report Discrepancies. If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to CONSTRUCTION INSPECTOR in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from ENGINEER.
- 3.3.1 Subject to the obligations contained elsewhere in the Contract Documents, after the issuance of the Notice to Proceed, CONTRACTOR shall verify the elevations and measurements of all points where new construction is to match existing conditions prior to the commencement of any construction activities.
- 3.3.2 Where new Work is to be fitted to old Work, CONTRACTOR shall check all dimensions and conditions in the field and report any errors or discrepancies at once to CONSTRUCTION INSPECTOR or assume responsibility for their correctness and the fit of new parts to old. If such parts do not fit properly, CONTRACTOR shall make at CONTRACTOR's expense such alterations to new parts as may be necessary to assure proper fit and connections that meet the approval of ENGINEER. No direct payment shall be made for this Work but the cost thereof shall be included in the costs of the other items of the Contract.
- 3.4 Major Modifications. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by (i) a formal Written Amendment, or (ii) a Change Order (pursuant to Section 9.4) or (iii) a Work Directive Change (pursuant to Section 9.1). As indicated in Sections 10.2 and 11.5, the Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.
- 3.5 Minor Deviations. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized by (i) a Field Order (pursuant to Section 8.5), or (ii) an ENGINEER's approval of a Shop Drawing, Working Drawing, or samples (pursuant to Section 6.22) or an ENGINEER's written interpretation or clarification (pursuant to Section 8.4).
- 3.6 Reuse of Documents. Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.
- 3.7 CONTRACTOR Responsibility. Any Work, including the furnishing of materials, equipment, tools, labor, and incidentals required to carry out the terms of the Contract Documents shall be done by CONTRACTOR, its employees, or Subcontractors unless specifically set out

otherwise in the Contract Documents. The words "by CONTRACTOR" or "CONTRACTOR shall" will not necessarily be used to so indicate. All Work shall be carried out in a thorough, careful, effective and satisfactory manner without specifically using these words to describe the action.

#### **ARTICLE 4 - AVAILABILITY OF LANDS: PHYSICAL CONDITIONS**

- 4.1 Availability of Lands. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated to be made available by OWNER for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 11. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- 4.2 Subsurface and Physical Conditions (Excluding Underground Facilities). Reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) have been utilized and relied upon by ENGINEER in preparing the Contract Documents. CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings but such reports and drawings are not Contract Documents. Such "technical data" is identified in the specifications. Except for reliance on such "technical data", CONTRACTOR may not rely upon and may not make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to (i) the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or (ii) other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings.
- 4.3 Differing Subsurface or Physical Conditions. If CONTRACTOR uncovers, observes or otherwise becomes aware of any subsurface or physical condition (other than Underground Facilities) at or contiguous to the site and believes that such condition either (i) differs materially from that shown or indicated in the Contract Documents, (ii) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents , or (iii) is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.2 is materially inaccurate; then CONTRACTOR shall, immediately upon becoming aware thereof and before further disturbing or taking other action in respect thereof or performing any Work in connection therewith (except in an emergency as permitted by Section 6.21), notify OWNER and CONSTRUCTION INSPECTOR in writing about such condition, which notice shall state

CONTRACTOR's recommendations or proposals for taking action in connection with the conditions.

- 4.3.1 CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of a written directive from OWNER or ENGINEER to do so, but to the fullest extent possible CONTRACTOR shall continue to prosecute all other Work not affected by the conditions;
- 4.3.2 ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions;
- 4.3.3 If OWNER in consultation with ENGINEER concludes that a change in the Contract Documents or other action is required because of the conditions, a Work Directive Change or other instructions or interpretations may be issued as provided in Article 9 to reflect and document the consequences of the conditions;
- 4.3.4 In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, may be allowable, but only to the extent that (i) evidence of such conditions could not with the exercise of reasonable competence and diligence have been discovered or foreseen by CONTRACTOR prior to submission of CONTRACTOR's Bid, (ii) CONTRACTOR, by the terms of the Contract Documents, has not assumed the risk of such conditions and (iii) CONTRACTOR has explicitly fulfilled the written notice requirements provided by this Section 4.3. CONTRACTOR shall in no event be entitled to an increase in the Contract Price in excess of costs, overhead and profit as described in Article 10 to perform authorized additional or changed Work to address the conditions, without additional allowances for delays or suspension of Work. If OWNER and CONTRACTOR are unable to agree as to the amount or length of the adjustment to the Contract Price or Time, a claim may be made therefor as provided in Articles 10 and 11. However, OWNER and ENGINEER shall not be liable to CONTRACTOR for any costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

#### 4.4 Underground Facilities.

- 4.4.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data. CONTRACTOR shall have the sole responsibility for reviewing and checking all such information and data, for locating all Underground Facilities, shown or indicated in

the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in Section 6.20 and for repairing any damage thereto resulting from the Work or CONTRACTOR's operations, the cost of all of which having been included in the Contract Price.

4.4.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and of which CONTRACTOR could not reasonably have been expected to be aware, CONTRACTOR shall promptly after becoming aware thereof and before further disturbing conditions affected thereby (except in an emergency as permitted by Paragraph 6.21), notify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and CONSTRUCTION INSPECTOR. ENGINEER will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, provided such delay affects the critical path, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and of which CONTRACTOR could not reasonably have been expected to be aware. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefore as provided in Articles 10 and 11. However, OWNER, CONSTRUCTION INSPECTOR and ENGINEER shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project or for any claims, costs, losses or damages caused by or arising from any assessment, penalty or other liability imposed upon CONTRACTOR by utility companies or third parties.

4.5 Reference Points and Layout. OWNER or other parties will provide engineering surveys to establish reference points for construction as determined by ENGINEER to be necessary to enable CONTRACTOR to proceed with the Work. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall be responsible for laying out the Work, shall locate all mechanical and electrical services uncovered by excavation, shall establish all grades, lines, levels and bench-marks, and shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to CONSTRUCTION INSPECTOR when any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel. CONTRACTOR shall maintain a bound surveyor's field notebook to accurately record all *STANDARD GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS*

discrepancies, if any, discovered in OWNER's data. The field notebook shall be furnished to and become the property of OWNER upon completion of the Work.

#### 4.6 Lines and Grades.

- 4.6.1 All work under this Contract shall be constructed in accordance with the lines and grades shown on the Plans, or as given by ENGINEER. The full responsibility for keeping alignment and grade shall rest upon CONTRACTOR. CONTRACTOR shall establish base line controlling points. Reference marks for lines and grades shall be set by CONTRACTOR as the Work progresses and shall be located to cause as little inconvenience to the prosecution of the Work as possible. CONTRACTOR shall place excavation and other materials so as to cause no inconvenience in the use of the reference marks provided. CONTRACTOR shall remove any obstructions placed by CONTRACTOR contrary to this provision at no cost to OWNER.
- 4.6.2 CONTRACTOR shall furnish and maintain, at its own expense, stakes and other such materials, and give such assistance, including qualified helpers, as may be required by CONSTRUCTION INSPECTOR for setting and checking line and grade reference marks. CONTRACTOR shall check such reference marks by such means as it may deem necessary and, before using the reference marks, shall call CONSTRUCTION INSPECTOR's attention to any inaccuracies. CONTRACTOR shall, at its own expense, establish all working or construction lines and grades as required from the reference marks set by ENGINEER, and shall be solely responsible for the accuracy thereof. CONTRACTOR shall, however, be subject to the check and review of ENGINEER. CONTRACTOR shall keep CONSTRUCTION INSPECTOR informed a reasonable time in advance as to its need for line and grade reference marks, in order that they may be furnished and all necessary measurements made for record and payment with the minimum of inconvenience to CONSTRUCTION INSPECTOR or of delay to CONTRACTOR. When necessary, working operations shall be suspended for such reasonable time as ENGINEER may require for this purpose.
- 4.6.3 CONTRACTOR shall safeguard all points, stakes, grade marks, monuments and bench-marks made or established on the Work, bear the cost of reestablishing them if disturbed, and bear the entire expense of rectifying work improperly installed due to not maintaining or protecting or to removing without authorization such established points, stakes and marks. CONTRACTOR shall safeguard all existing and known property corners, monuments and marks adjacent to but not related to the Work and, if required, shall bear the cost of reestablishing them if disturbed or destroyed.
- 4.6.4 All elevations indicated or specified refer to the Mean Sea Level Datum Plane, 1929 General Adjustment, of the United States Coast and Geodetic Survey and are expressed in feet and decimal parts thereof, or in feet and inches.

## 4.7 Hazardous Materials

- 4.7.1 For the purpose of this Section, "Hazardous Material" means any hazardous, special, radioactive or toxic substance, material or waste which is or becomes regulated by any local government authority, the State of Indiana or the United States Government. The term "hazardous material" includes, without limitation, any material or substance which is (i) defined as a "hazardous substance" under I.C. 13-11-2-98 of the Indiana Hazardous Substance Response Trust Fund Act, (ii) petroleum, (iii) asbestos, (iv) designated as a hazardous substance pursuant to the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), (v) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), (vi) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), (vii) defined as a "regulated substance" pursuant to the Solid Waste Disposal Act (42 U.S.C. § 6991 et seq.), (viii) defined as a toxic "chemical substance" pursuant to the Toxic Substance Control Act (7 U.S.C. § 136 et seq.), (ix) defined as a "hazardous chemical" or "hazardous substance" pursuant to the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.) or (x) defined as a "radioactive waste" pursuant to the Atomic Energy Act (42 U.S.C. § 2011 et seq.).
- 4.7.2 OWNER shall be responsible for the existence of any Hazardous Materials uncovered or revealed at the site which were not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Supplier or anyone else for whom CONTRACTOR is responsible.
- 4.7.3 CONTRACTOR shall be the party responsible for reporting to the appropriate agencies and authorities any release or discharge of any Hazardous Materials.
- 4.7.4 Upon encountering any Hazardous Materials CONTRACTOR shall immediately (1) stop all Work in connection with such Hazardous Materials and in any area affected thereby (except in an emergency as required by Section 6.21), (ii) notify the appropriate agencies or authorities, (iii) notify OWNER and CONSTRUCTION INSPECTOR (and thereafter confirm such notice in writing), (iv) establish site security by excluding unnecessary traffic and personnel from the affected area, (v) conduct operations within the affected area to minimize exposure to personnel and the general public and to eliminate the potential for airborne dispersion, and (vi) as necessary to carry out the requirements of this Section, handle and/or store Hazardous Materials in a proper manner. If CONTRACTOR, without negligence on CONTRACTOR's part and as a result of complying with the provisions of this Section, is held liable for matters related to said Hazardous Materials, OWNER shall indemnify CONTRACTOR for all reasonable costs and expenses thereby incurred. CONTRACTOR shall provide OWNER written notice, within fifteen (15)

days of receipt, of any claim filed or made against CONTRACTOR for which CONTRACTOR may seek indemnity from OWNER.

- 4.7.5 CONTRACTOR shall remain responsible for the jobsite until OWNER has been notified of the uncovering or revealing of Hazardous Materials and OWNER has assumed formal control of the jobsite from CONTRACTOR.
- 4.7.6 After completing the above obligations, CONTRACTOR shall not be required to resume Work in connection with such Hazardous Materials.
- 4.7.7 OWNER shall obtain any required permits related to such Hazardous Materials and shall establish any special terms or conditions under which such Work shall be performed.
- 4.7.8 CONTRACTOR claims qualifying under this Section are intended to be treated as differing subsurface or physical conditions and therefore the provisions of Sections 4.2 and 4.3 apply. Notwithstanding the provisions of the preceding sentence, in the event that CONTRACTOR does not resume Work in connection with such Hazardous Materials, CONTRACTOR may only make a claim under Article 11 for a Change in Contract Time and may not make a claim under Article 10 for a Change in Contract Price related to any and all suspensions of, delays or interferences in or hindrances to the performance of the Work arising out of or related to the encountering of such Hazardous Materials.

#### 4.8 Rights in and Use of Materials found in the Project site.

- 4.8.1 Except for hazardous materials as defined in Section 4.7, all materials designated to be removed from the Project and not incorporated into the Work shall become the property of CONTRACTOR, unless otherwise set out in the Contract Documents. The value of the materials shall be taken in account when the bid is being prepared.
- 4.8.2 Construction materials such as gravel, stone, or sand found in excavations shall not be used for purposes other than indicated on the Plans without written approval of OWNER. When such approval is given, it shall state explicitly the provisions under which it is granted.
- 4.8.3 If specified in the Contract Documents, all items having a salvage value and which are to be removed, shall remain the property of OWNER.
- 4.8.4 If archaeological artifacts are encountered during excavation, CONTRACTOR immediately shall cease work in the immediate vicinity and shall notify CONSTRUCTION INSPECTOR. OWNER will obtain a determination of the significance of and the disposition of such artifacts.

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

- 5.1 Performance and Payments Bonds. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to one-hundred percent (100%) of 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 (1) year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. All Bonds shall be in the forms prescribed by Law, Regulation, and the Contract Documents and be executed by such Sureties as (i) are licensed to conduct business in the State of Indiana, and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the power of attorney or other instrument establishing the agent's authority.
- 5.2 Warranty Bond. CONTRACTOR shall, as a condition to OWNER's obligation to make final payment, supply a three (3) year Warranty Bond executed by a surety meeting the qualifications set forth in the preceding Section and in such form as prescribed by the Contract Documents, which bond shall secure the obligations contained in Section 12.7, beginning on the date of Substantial Completion in an amount equal to ten percent (10%) of the Contract amount as adjusted for Change Orders or such different percentage as may be specified by other Contract Documents.
- 5.3 Substitute Bonds. If the Surety on any Bond furnished by CONTRACTOR becomes a party to a supervision, liquidation, rehabilitation or other similar action, or if its right or lawful authority to do business in the State of Indiana is terminated, CONTRACTOR shall, within ten (10) days thereafter substitute another Bond and Surety, both of which must be acceptable to OWNER. Failure of CONTRACTOR to obtain a substitute Bond shall constitute a material breach of Contract and may at the option of OWNER result in the termination of the Contract upon the ground of CONTRACTOR's default.
- 5.4 CONTRACTOR's Liability Insurance. CONTRACTOR shall purchase and maintain such commercial general liability and other insurance as is appropriate for the Work being performed and furnished and shall protect CONTRACTOR, OWNER, CONSTRUCTION INSPECTOR and ENGINEER, their employees, officers, or agents from (i) claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts; (ii) claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees; (iii) claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees; (iv) claims for damages insured by personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or by any other person for any other reason; (v) claims for damages, other than to the Work itself, because of physical injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; (vi) claims

arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and (vii) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, which may arise out of or result from CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

5.4.1 The insurance required by this Section shall be written for not less than the limits of liability and coverages as provided herein or as required by Law, whichever is greater. The Commercial General Liability Insurance shall include coverage of (i) Premises and operations, (ii) Contractual liability as applicable to any indemnification hold harmless agreements in the Contract, (iii) Products and Completed Operations, with completed operations coverage being maintained for a period of one (1) year after final payment and CONTRACTOR shall continue to provide evidence of such coverage to OWNER during the aforementioned period, (iv) Broadform Property Damage - including completed operations, (v) Fellow Employee claims under Personal Injury; and (vi) Independent contractors. Such insurance shall specifically include coverage for property damage from explosion, collapse, and underground operations. Coverage for explosion, collapse, and underground operations shall include blasting or explosion, collapse of structures or structural injury due to grading of land, excavation, filling, back filling, tunneling, pile driving, caisson work, moving, shoring, underpinning, raising of or demolition of any structure, or removal or rebuilding of any structural support of a building or structure. Such insurance shall further include coverage for damage to wires, conduits, pipes, mains, sewers, or other similar apparatus encountered below the surface of the ground when such damage is caused by any occurrence arising out of the performance of the Work, performed by CONTRACTOR or by any Subcontractor or anyone directly or indirectly employed by either.

5.4.2 CONTRACTOR's insurance shall be written for not less than the following limits of liability:

- |  |                            |
|--|----------------------------|
| 1. Workers Compensation:   | Statutory Limits           |
| 2. Employer's Liability  |                            |
| (i) Bodily Injury by Accident:   | \$100,000<br>each accident |
| (ii) Bodily Injury by Disease:   | \$500,000<br>policy limit  |
| (iii) Bodily Injury by Disease:  | \$100,000<br>each employee |
| 3. Commercial General Liability (Occurrence Basis) Bodily injury, personal |                            |

injury, property damage, contractual liability, products-completed operations.

NOTE: GENERAL AGGREGATE TO APPLY PER LOCATION/PROJECT

(i) General Aggregate Limit (other than Products/Completed Operations):	\$2,000,000
(ii) Products/Completed Operations:	\$2,000,000
(iii) Personal & Advertising Injury Limit:	\$1,000,000
Each Occurrence Limit:	\$1,000,000
Damage to Rental Premises:	\$ 150,000
Medical Expense Limit (any one person):	\$ 5,000
4. Comprehensive Auto Liability (single limit) (owned, hired and non-owned) Bodily injury and property damage	\$1,000,000 each accident
5. Umbrella Excess Liability	\$5,000,000 each occurrence and aggregate
The Deductible on the Umbrella Liability shall not be more than	\$ 10,000

5.4.3 CONTRACTOR shall be responsible for paying all deductible amounts.

5.4.4 Before commencing work, CONTRACTOR shall submit a "Certificate of Insurance" indicating the above necessary coverages as well as naming OWNER, its employees and representatives, including but not limited to ENGINEER, and CONSTRUCTION INSPECTOR as "Additional Insureds" on all policies except Workers' Compensation to OWNER for review and approval. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of Indiana, have a general policyholder's rating of A or better, in the latest edition of Alfred M. Best's Insurance Reports and be satisfactory in form and coverage to OWNER. Such coverages shall be kept in force until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing Defective work in accordance with Section 12.7. CONTRACTOR's insurer(s) shall provide by Certified Mail OWNER and CONSTRUCTION INSPECTOR with sixty (60) days prior written notice in the event of cancellation, non-renewal or material change in the policies. If required by OWNER, CONTRACTOR shall also provide copies of all underlying insurance policies for certificates required above.

5.4.5 The Commercial General Liability insurance required by this Section shall include contractual liability insurance applicable to CONTRACTOR's indemnity and hold harmless obligations under Sections 6.12, 6.16, 6.24, and 7.3.

5.5 OWNER's Protective Insurance. CONTRACTOR shall procure and maintain OWNER's Protective Insurance as will, in OWNER's opinion, protect OWNER from any contingent liability to others or damages because of bodily injury, including death and property damage, which may arise from operations under this Contract. Said insurance shall be procured from the same insurance company as is providing insurance for CONTRACTOR's Commercial General Liability insurance. The limits of the insurance to be procured shall be \$5,000,000 per occurrence and \$5,000,000 aggregate. CONTRACTOR shall furnish OWNER the original policy.

5.6 Property Insurance. CONTRACTOR shall purchase and maintain a combination Installation/Builder's Risk Insurance to the full insurable value to the initial contract cost and any subsequent modifications thereto on an all risks policy form against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, false work, testing, temporary buildings and debris removal including demolition work occasioned by enforcement of any applicable legal requirements and shall cover reasonable OWNER, CONSTRUCTION INSPECTOR and ENGINEER services and expenses required as a result of such insured loss on a replacement cost basis without any deduction for depreciation or voluntary deductibles. This property insurance shall cover work stored off site as well as any work in transit. CONTRACTOR shall be responsible for the satisfaction of any deductible level it selects. OWNER is given the privilege to occupy and use the facilities as completed pending acceptance by OWNER of the entire Project. The insurance specified by this Section shall include as named insureds CONTRACTOR and its Subcontractors and all other parties named as insureds, as their interest may appear. This insurance is not intended to cover the tools, equipment and other such property of CONTRACTOR or its Subcontractors in performing the Work which is normally covered by such person's own property insurance and which are not incorporated in the Project. The risk of loss as to all such property shall be borne by those parties, and they shall carry such insurance on such property as they shall determine.

5.7 Waiver of Subrogation. OWNER and CONTRACTOR waive all rights against (i) each other and any of their Subcontractors, sub-subcontractors, agents and employees each of the other, and (ii) ENGINEER, ENGINEER's consultants for damages caused by fire and other perils to the extent covered by property insurance obtained pursuant to this Article, except such rights as they have to proceeds of such insurance held by CONTRACTOR as fiduciary. OWNER or CONTRACTOR, as appropriate, shall require of CONSTRUCTION INSPECTOR, ENGINEER, ENGINEER's consultants and the subcontractors, sub-subcontractors, agents or employees of them by appropriate agreement, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the operation. This provision shall not release CONTRACTOR from its obligation to complete the Project according to the Contract Documents and CONTRACTOR and its surety shall be obligated to full performance of CONTRACTOR's undertaking.

- 5.8 Acceptance of Insurance. If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with this Article, on the basis of it not complying with the Contract Documents, OWNER will notify CONTRACTOR in writing thereof within ten (10) days of the date of delivery of such certificates to OWNER in accordance with Section 2.2. CONTRACTOR shall provide to OWNER such additional information in respect to insurance provided by CONTRACTOR as OWNER may reasonably request. Failure by OWNER to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by CONTRACTOR as complying with the Contract Documents. With the prior approval of OWNER, CONTRACTOR may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.
- 5.9 Partial Utilization Property Insurance. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with Section 13.12; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the 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 lapse on account of any such partial use or occupancy.
- 5.10 No Limit to Liability. Nothing in this Article shall operate or be construed as limiting the amount of liability of CONTRACTOR to the above enumerated amounts.

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

- 6.1 Supervision. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies strictly with the Contract Documents.
- 6.2 Superintendent. CONTRACTOR shall keep on the worksite at all times during its progress a competent resident Superintendent, capable of communicating with CONSTRUCTION INSPECTOR, ENGINEER and OWNER effectively, who shall not be replaced without written notice to, and approval of OWNER. The Superintendent shall be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to or issued by the superintendent shall be as binding as if given to or issued by CONTRACTOR.
- 6.3 Personnel and Work Hours. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all work at the site shall be performed during regular working hours, as set out below, and CONTRACTOR shall not permit

overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to CONSTRUCTION INSPECTOR.

6.3.1 *CONTRACTOR shall not perform Work on the following legal holidays:*

- .1 New Year's Day
- .2 Martin Luther King Day
- .3 Memorial Day
- .4 Independence Day
- .5 Labor Day
- .6 Veterans Day
- .7 Thanksgiving Day and the day after Thanksgiving
- .8 Christmas Eve
- .9 Christmas Day

Any request by CONTRACTOR for a change in work hours other than the standard work hours listed in Section 6.3.2 shall be submitted in writing to the CONSTRUCTION INSPECTOR, at least forty-eight (48) hours in advance for approval.

6.3.2 CONTRACTOR shall not perform any portion of the Work that restricts traffic Monday thru Friday outside of the following:

**9:00am-3:00pm** within the Regional Center downtown Department of Business and Neighborhood Services (BNS) permit.

**9:00am-4:00pm** on any major or secondary thoroughfares.

**7:00am-6:00pm** on any local and residential streets.

Any work performed outside of these hours without prior written consent from the CONSTRUCTION INSPECTOR shall be subject to nonpayment of work performed.

*\*Note: The Contract Documents supersede BNS permit standard work hours.*

6.4 **Full Responsibility.** Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work. Unless otherwise indicated, the performance of all Work described in the Contract Documents shall be the responsibility of CONTRACTOR.

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

otherwise provided in the Contract Documents; but no provisions of any such instructions shall be effective to assign to OWNER, CONSTRUCTION INSPECTOR, ENGINEER, or any of CONSTRUCTION INSPECTOR's or ENGINEER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Sections 8.10 or 8.11.

- 6.6 Adjusting Progress Schedule. To the extent indicated in Section 2.9, CONTRACTOR shall submit to CONSTRUCTION INSPECTOR adjustments in the progress schedule to reflect the impact thereon of new developments. These shall conform generally to the progress schedule then in effect and additionally shall comply with any provisions of the General Conditions applicable thereto.
- 6.7 Substitute or "or Equal" Items. Whenever, in the Contract Documents, an article, material, apparatus, equipment, or process is called for by trade name or by the name of a patentee, manufacturer, or dealer or by reference to catalogs of a manufacturer or dealer, it shall be understood as intending to mean and specify the article, material, apparatus, equipment, or process designated, or any approved equal thereto in quality, finish, design, efficiency and durability and equally serviceable for the purposes for which it is intended. Whenever material or equipment is submitted by CONTRACTOR for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to all Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by OWNER in consultation with ENGINEER. Neither the approval of alternate material or equipment as being equivalent to that specified nor the furnishing of the material or equipment specified, shall in any way relieve CONTRACTOR of responsibility for failure of the material or equipment, due to faulty design, material, or workmanship, to perform the functions required by the Contract Documents.
- 6.8 Engagement of Subcontractors, Suppliers and Others. CONTRACTOR shall not employ any Subcontractor, supplier or other person or organization, whether initially or as a substitute, against whom OWNER, CONSTRUCTION INSPECTOR or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection. If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER prior to the Effective Date of the Agreement, for acceptance by OWNER, CONSTRUCTION INSPECTOR and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Contract Documents, OWNER's, CONSTRUCTION INSPECTOR's or ENGINEER's acceptance or acquiescence as to any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. CONTRACTOR may not substitute Subcontractors or Suppliers indicated on the Subcontractors List without consent of OWNER. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a

right of OWNER, CONSTRUCTION INSPECTOR or ENGINEER to reject Defective Work or to pursue other rights and remedies in respect thereof.

6.8.1 CONTRACTOR will be permitted to sublet a portion of the Work, but shall perform with its own organization Work amounting to not less than 30 percent of the original or revised Contract amount, whichever is less. All items designated in the Contract Documents as specialty items may be performed by subcontract. The cost of such specialty items so performed by subcontracts may be deducted from the total cost before computing the amount of Work required to be performed by CONTRACTOR with its own organization. No subcontracts or transfer of contracts shall release CONTRACTOR of liability under the Contract Documents and bonds. Approved Subcontractors shall not further subcontract their Work without prior approval of OWNER.

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

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

6.11 Subcontract Provisions. All Work performed by Subcontractors shall be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to these General Conditions and the applicable terms and conditions of all other Contract Documents and contains waiver provisions as required by Section 5.7. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued pursuant to Article 5.

6.12 Patent Fees and Royalties. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents.

CONTRACTOR shall indemnify and hold harmless OWNER and ENGINEER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees and court and arbitration costs) arising out of 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, and shall defend, if requested by OWNER or ENGINEER, all such claims in connection with any alleged infringement of such rights.

6.13 Permits. Unless otherwise provided elsewhere in the Contract Documents, CONTRACTOR shall obtain and pay for all construction permits, right-of-way permits, licenses and fees. 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. CONTRACTOR shall pay all charges received from utility owners for connections to the Work, and OWNER shall pay all charges from such utility owners for capital costs related thereto such as plant investment fees.

6.13.1 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, OWNER will be responsible for obtaining any necessary Drainage Permit, or Flora Permits CONTRACTOR shall obtain all other required permits. CONTRACTOR shall appropriately display permits in the manner required by the permitting agencies. Specific mention of the above stated permits does not exclude any other permit(s) that may be required by Law and/or Regulation. Should OWNER fail to acquire any permits specified herein prior to the Notice to Proceed date, and such failure affect activities on the controlling operation of CONTRACTOR's approved schedule, CONTRACTOR's sole remedy shall be for an extension of time, as provided in Article 11 of the General Conditions.

6.14 Laws and Regulations. CONTRACTOR shall give all notices and comply with all Laws and Regulations in effect during the furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER, CONSTRUCTION INSPECTOR nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with Laws or Regulations. If CONTRACTOR observes that the Specifications or Drawings are at variance with any such Laws or Regulations, CONTRACTOR shall give CONSTRUCTION INSPECTOR and OWNER prompt written notice thereof, and if OWNER in consultation with CONSTRUCTION INSPECTOR and ENGINEER determines any changes to be necessary such changes will be authorized by one of the methods indicated in Section 3.4. It shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, however, this shall not relieve CONTRACTOR of CONTRACTOR's obligations under this paragraph or under Section 2.6 or Section 3.3. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws and Regulations, and without such notice to CONSTRUCTION INSPECTOR, CONTRACTOR shall bear the risk of all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

- 6.15 Taxes. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations applicable to the place where the Project is located. OWNER is required by statute to withhold certain taxes, including Indiana State Gross Income tax, from all payments made to non-resident contractors who are corporations and to remit such tax quarterly to the Indiana Department of Revenue. A foreign corporation which is registered with the Indiana Secretary of State to do business in Indiana shall be exempt from this withholding requirement. Exemption certificates for the Indiana Gross Retail tax (sales tax) for property that becomes property of OWNER and all Federal Excise tax can be furnished by OWNER and therefore such taxes shall not be included in the Contract Price. CONTRACTOR may request exemption certificate forms directly from OWNER.
- 6.16 Use of Premises. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents, as determined in the preconstruction meeting, and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER, CONSTRUCTION INSPECTOR or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER, CONSTRUCTION INSPECTOR and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER, CONSTRUCTION INSPECTOR or ENGINEER to the extent based on a claim arising out of CONTRACTOR's performance of the Work.
- 6.17 Control of Waste. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents. CONTRACTOR shall remove from traveled roadways all dirt and other materials that have been deposited thereon by operations concerned with the Project whenever the accumulation is sufficient to cause the formation of dust or mud, interfere with the drainage, damage pavements, or create a traffic hazard.

6.18 Loads on Structures. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it. Legal load restrictions shall be complied with on public roads beyond the limits of the Project. A special permit shall not relieve CONTRACTOR of liability for damage that may result from the moving of equipment. The operation of equipment of such weight or so loaded as to cause damage to structures or the roadway or to any other type of construction is not permitted. Nor shall loads or construction vehicles be permitted on new construction where damage or contamination may be caused from premature loading or tracking, unless otherwise approved by ENGINEER and/or OWNER. Special consideration shall be given to concrete pavement, concrete bases, and/or structures prior to loading and or utilizing due to required curing period(s). CONTRACTOR shall be responsible for all damage done by CONTRACTOR, its employees, agents, or subcontractors. This requirement shall serve as written notice that hauling or handling of materials on complete or partially completed structure, pavement structures, or paved shoulders in excess of legal weight limits is not permitted unless approved in writing in advance of the operation. Approval shall be obtained from the authority having jurisdiction over the structures, pavement structures, or paved shoulders.

6.19 As-Built Documents.

- 6.19.1 CONTRACTOR shall maintain in a safe place at the site one copy of all Specifications, Drawings, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to Section 8.4) in good order and annotated to show all changes made during construction. These documents together with all approved samples and a counterpart of all approved Shop Drawings shall be available to OWNER and OWNER's representatives for reference. Upon completion of the Work, these documents, samples, and Shop Drawings shall be delivered to CONSTRUCTION INSPECTOR as a condition to CONTRACTOR's right to receive final payment.
- 6.19.2 CONTRACTOR shall, during the progress of the work, keep a master set of prints on the job site, on which is kept a careful and neat record of all deviations from the Contract Drawings made during the course of the work.
- 6.19.3 CONTRACTOR shall provide OWNER with the master set of prints annotated as per Section 6.19.2, and specifications incorporating the revisions and changes made during construction up to acceptance of the project. These updated documents shall reflect all changes to the original construction documents to indicate the "As-Built" conditions, including revisions in site and building area tabulations. These drawings and specifications shall be certified as to their correctness by the signature of CONTRACTOR.

6.19.4 OWNER, and/or OWNER's representatives, reserves the right to review "As-Built" documents at any time during the life of the Project. CONTRACTOR shall present to CONSTRUCTION INSPECTOR for review updated "As-Built" on a monthly basis as a condition precedent for submitting a Payment request.

6.20 Safety and Protection.

6.20.1 CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and shall take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to (i) all employees on the Work and other persons and organizations who may be affected thereby, (ii) all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and (iii) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

6.20.2 CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in Sections 6.20.1 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or Supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with Section 13.11 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.20.3 Pursuant to I.C. 36-1-12-20, all Work which requires the creation of a trench or hole of at least five (5) feet in depth, shall be provided with a trench safety system. Trench safety systems shall meet all of the requirements of IOSHA Regulations 29 C.F.R. 1926, Subpart P or other applicable safety standards and regulations. The cost of compliance with any and all such regulations shall be borne by CONTRACTOR without any increase in the Contract Price. OWNER shall pay for the trench safety system as a separate pay item if one is provided

on unit cost work; or if a separate pay item is not provided, OWNER shall pay for the safety system as part of the pay item or schedule of values item for the principal Work with which the safety system is associated, as determined by ENGINEER.

6.20.4 CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's Superintendent unless otherwise specified in the Contract Documents or designated in writing by CONTRACTOR to OWNER.

6.20.5 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.

## 6.21 Emergencies.

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

6.21.2 In the event that CONSTRUCTION INSPECTOR or OWNER notifies CONTRACTOR that an imminently dangerous condition exists at the Project site which may result in serious bodily injury ("unsafe condition"), CONTRACTOR shall immediately stop work in the area of the unsafe condition. CONTRACTOR shall notify OWNER of the steps taken to remedy the unsafe condition, and shall not commence or recommence work in the area of the unsafe condition until such condition is remedied by CONTRACTOR to the satisfaction of OWNER. No extensions of time or additional compensation will be authorized as a result of or in any way related to such work stoppage if such stoppage is the result of CONTRACTOR'S action or failure to act.

## 6.22 Shop Drawings and Working Drawings.

6.22.1 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall promptly prepare and submit Working Drawings. A schedule of Working Drawings submissions shall be submitted for CONSTRUCTION INSPECTOR's approval on a form

acceptable to CONSTRUCTION INSPECTOR within ten (10) days of the effective date after the signing of the Agreement by OWNER.

- 6.22.2 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, Working Drawings shall be numbered consecutively and shall accurately and distinctly present (i) all working and erection dimensions, (ii) arrangements and sectional views, (iii) necessary details, including complete information for making connections between Work under this Contract and work under other contracts, (iv) electrical wiring connections between all equipment furnished under the Contract, including all internal wiring between internal components of equipment, (v) kinds of materials and finishes, and (vi) parts lists and description thereof.
- 6.22.3 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, Shop Drawings shall present, where applicable, such data as dimensions, weight and performance characteristics. This data shall show conformance with the performance characteristics and other criteria incorporated in the Contract Documents. Each drawing or page shall include (i) submittal date and revision dates, (ii) project name, division number and descriptions, (iii) Detailed Specifications Section number and page number, (iv) identification of equipment, product or material, (v) name of CONTRACTOR and Subcontractor, (vi) name of Supplier and manufacturer, (vii) relation to adjacent structure or material, (viii) field dimensions, clearly identified, (ix) ASTM, Federal and other Specification references, (x) space for ENGINEER's stamp, (xi) identification of deviations from the Contract Documents, (xii) CONTRACTOR's stamp, initialed or signed, dated and certifying to review of submittal, certification of field measurements and compliance with Contract, and (xiii) location at which the equipment or materials are to be installed (both physical location and location relative to other connected or attached material). ENGINEER will return unreviewed any submittal which does not contain complete data on the Work and full information on related matters. Stock or standard drawings will not be accepted for review unless full identification and supplementary information is shown thereon in ink or typewritten form.
- 6.22.4 CONTRACTOR shall check and approve all Working Drawings and Shop Drawings before transmitting them to CONSTRUCTION INSPECTOR to determine that they comply with requirements of the Contract Documents. Drawings which are incomplete or are not in compliance with the Contract Documents shall not be submitted for processing. CONTRACTOR shall place its signature or initials on its stamp of approval on all Working Drawings and Shop Drawings submitted to CONSTRUCTION INSPECTOR to indicate compliance with this requirement. CONTRACTOR's approval shall constitute a representation that all quantities, dimensions, field construction criteria, materials, catalog numbers, performance criteria and similar data have been verified and that, in its opinion, the submittal fully meets the requirements of the Contract Documents. CONTRACTOR shall schedule, prepare and submit all Working Drawings and Shop Drawings in accordance with a timetable that shall

allow its Suppliers and Manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the Work. The time-table so developed shall be in conformance with the completion dates specified in the Agreement.

- 6.22.5 If the Working Drawings or Shop Drawings show departures from the Contract requirements, CONTRACTOR shall make specific mention thereof in its letter of transmittal, otherwise approval of such submittals by ENGINEER shall not constitute approval of the departure. Approval of the drawings shall constitute approval of the subject matter thereof only and not of any structure, material, equipment or apparatus shown or indicated.
- 6.22.6 The approval of Working Drawings shall be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or work required by the Contract and not indicated on the Drawings. No Work called for by Working Drawings or Shop Drawings shall be done until such drawings have been approved by ENGINEER.
- 6.22.7 The procedure in seeking approval of the Working Drawings or Shop Drawings shall be as follows:
- .1 CONTRACTOR shall submit six (6) complete sets of drawings and other descriptive data together with six (6) copies of a letter of transmittal to ENGINEER for approval and one (1) copy of the letter of transmittal to CONSTRUCTION INSPECTOR. The letter of transmittal shall contain the name of the Project, Workmanship and Materials Section number, the name of CONTRACTOR, the list of drawings submitted including numbers and titles, requests for any approval of departures from the Contract requirements and any other pertinent information.
  - .2 Drawings or descriptive data will be stamped "Approved", "Approved as Noted", or "Not Approved" by ENGINEER, and one (1) copy with a letter of transmittal will be returned to CONTRACTOR.
  - .3 If a drawing or other data is stamped "Approved", CONTRACTOR shall insert the date of approval on six (6) additional copies of the document and transmit the six (6) copies to CONSTRUCTION INSPECTOR together with one copy of a letter of transmittal containing substantially the same information required in Sub-Section 1.
  - .4 If a drawing or other data is stamped "Approved as Noted", CONTRACTOR shall make the corrections indicated and proceed as in Sub-Section 3.

- .5 If a drawing or data is stamped "Not Approved", CONTRACTOR shall make the necessary corrections and resubmit the documents as required in Sub-Section 1. The letter transmitting corrected documents shall indicate that the documents comprise a resubmittal.
- .6 If any corrections, other than those noted by ENGINEER, are made on Working Drawings or Shop Drawings prior to resubmittal, such changes must be pointed out by CONTRACTOR upon resubmittal.
- .7 CONTRACTOR shall revise and resubmit the Working Drawings or Shop Drawings as required, until approval thereof is obtained. Costs associated with ENGINEER's review of any third and subsequent submittals shall be borne by CONTRACTOR. CONTRACTOR shall be billed for these costs by OWNER or OWNER may deduct such costs from subsequent payments.

6.23 Continuing the Work. CONTRACTOR shall diligently and uninterruptedly 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 Section 14.5 or as CONTRACTOR and OWNER may otherwise specifically agree in writing. Any work stoppage, delay, suspension or significant reduction in manpower, or removal of equipment from the site, determined by CONSTRUCTION INSPECTOR, ENGINEER or OWNER to have occurred by reason of any such unresolved dispute or disagreement shall constitute an event of default thereby subjecting CONTRACTOR to termination of the Contract.

6.24 Allocation of Risk and Indemnification.

6.24.1 To the fullest extent permitted by Laws and Regulations CONTRACTOR shall indemnify and hold harmless OWNER, CONSTRUCTION INSPECTOR and ENGINEER, and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Work or from the installation, existence, use, maintenance, condition, repairs, alteration, or removal of any equipment or material, provided that any such claim, damage, loss or expense is caused in whole or in part by a negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law or Regulation regardless of the negligence of any such party. Such indemnification shall also apply to any warranty work required by the Contract Documents.

- 6.24.2 In any and all claims against OWNER, CONSTRUCTION INSPECTOR or ENGINEER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 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 Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 6.24.3 The obligations of CONTRACTOR under this Section shall not extend to the liability of ENGINEER, ENGINEER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, design or specifications.
- 6.25 Subcontractor and other Liens. CONTRACTOR agrees and warrants to OWNER that no claim or lien shall attach to or be filed on the Project by virtue of CONTRACTOR's default in paying any employee, Subcontractor or Supplier. Should such claim or lien be filed, payment otherwise due CONTRACTOR will not be due until CONTRACTOR delivers to OWNER a complete release of such claim or lien, or, at OWNER's option, a bond satisfactory to OWNER indemnifying OWNER against such claim or lien.
- 6.26 Installation of Utility Service. CONTRACTOR shall assume all responsibility for proper installation of utility services to meet all rules and regulations of all utility companies or government agencies involved. It is the responsibility of CONTRACTOR to provide a complete service and provide all work necessary to coordinate the Work with the work of the utility companies.
- 6.27 Damage Survey and Correction. CONTRACTOR, accompanied by a representative of OWNER and/or ENGINEER, and/or CONSTRUCTION INSPECTOR, shall make a damage survey of the worksite and adjacent properties prior to commencing the Work and before making application for final payment for the Work. CONTRACTOR shall provide CONSTRUCTION INSPECTOR a written inventory of damage observed during each survey. CONTRACTOR shall replace or repair all existing construction and facilities (both surface and subsurface) including, but not limited to, sidewalks, fences, yards, plantings, mechanical services and electrical services which may be damaged in the performance of the Work. All damage shall be corrected and such facilities shall be restored to their original condition. Materials and construction shall be new and equal in quality, design, workmanship, and installation to the existing material and construction.
- 6.28 Damage Notification. CONTRACTOR shall notify CONSTRUCTION INSPECTOR immediately upon observing damage to the site regardless of whether or not the damage is the result of CONTRACTOR's operations.
- 6.29 Apprentices. Except as otherwise provided by law, the number of apprentices in each trade or occupation, employed by CONTRACTOR or any subcontractor, shall not exceed the number permitted by the applicable standards of the U.S. Department of Labor.

- 6.29.1 The specified wage rates are minimum rates only, and OWNER will not consider any claims for additional compensation made by CONTRACTOR because of payment by CONTRACTOR of any wage rate in excess of the applicable rate contained in this Agreement. All disputes in regard to the payment of wages in excess of those specified in this Agreement shall be adjusted by CONTRACTOR.
- 6.29.2 Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Agreement shall be decided by OWNER'S governing body or other duly designated officials.
- 6.29.3 The minimum wage rates, if any, herein specified for apprentices shall apply only to persons working with the tools of the trade they are learning under the direct supervision of journeyman mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation, employed by CONTRACTOR or any subcontractor, shall not exceed the number permitted by the applicable standards of the U. S. Department of Labor, or in the absence of such standards, the number permitted under the usual practice prevailing between the unions and the employer's associations in the respective trades or occupations.
- 6.29.4 CONTRACTOR shall post, at appropriate conspicuous points at the site of the project, a schedule showing all determined wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this Agreement and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

6.30 Conformance with Plans and Specifications.

- 6.30.1 All Work performed, and all materials furnished, shall be in reasonably close conformance with the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans or indicated in the specifications.
- 6.30.2 Plan dimensions and specifications values are to be considered as the target value to be complied with as the design value from which any deviations are allowed. It is the intent of the specifications that the materials and workmanship shall be uniform in character and shall conform as nearly as realistically possible to the prescribed target value or to the middle portion of the tolerance range. The purpose of the tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When a maximum or minimum value is specified, the production and processing of the material and the performance of the Work shall not be preponderantly of borderline quality or dimension.

- 6.31 Documentation. CONTRACTOR shall furnish upon request all documentation related to its performing as a CONTRACTOR or Subcontractor on the Project. The requested information may be, but is not limited to payroll records, material invoices, subcontract agreements with pertinent attachments, lease agreements, and Equal Employment Opportunity documentation. In addition to the items listed in the preceding sentence, OWNER may, in order to investigate, examine, respond to or make a claim under Article 10 or Article 11, request bid preparation documents from CONTRACTOR. Upon receipt of said request for bid preparation documents CONTRACTOR shall provide said documents within a reasonable period of time.

## **ARTICLE 7 - WORK BY THIRD PARTIES**

- 7.1 Separate Work By Others. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or their contractors or let other direct contracts which shall contain General Conditions similar to these. If the performance of such work is not reasonably indicated by the Contract Documents or is not reasonably inferable therefrom or otherwise inherent in connection with the Work as described by the Contract Documents as such work relates to the overall Project, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 10 and 11. CONTRACTOR shall afford each utility owner or its contractors and any other contractor who is a party to such a direct contract, or OWNER'S employees if OWNER is performing work with its own forces, proper and safe access to the site and reasonable opportunity for the proper, efficient and timely performance of such work and for introduction and storage of materials and equipment, and shall properly connect and coordinate the Work with the work and activities of such other parties. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and shall only cut or alter their work with the written consent of CONSTRUCTION INSPECTOR and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this Section are for the benefit of and may be directly enforced by such utility owners and other separate 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.
- 7.2 Inspecting Other Work. If any part of CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor or utility owner or OWNER's forces, CONTRACTOR shall inspect and promptly report to CONSTRUCTION INSPECTOR in writing any delays, defects or deficiencies in such work that render it unavailable or

unsuitable for such proper execution and results or that hinder or otherwise impact the Work to be performed by CONTRACTOR. CONTRACTOR's failure to report shall constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in the other work.

- 7.3 Coordination. CONTRACTOR shall schedule the Work such that it shall cause no delay to the work of the other contractors. CONSTRUCTION INSPECTOR will monitor CONTRACTOR's coordination of its Work with the work of other contractors. Where coordination and scheduling conflicts arise between the Work and the work of other contractors on the site CONSTRUCTION INSPECTOR or ENGINEER will provide input to resolve the conflict, but such input or monitoring by CONSTRUCTION INSPECTOR or ENGINEER shall not relieve CONTRACTOR of its obligations in respect of coordination with other contractors. Except as provided in Section 11.4, CONTRACTOR shall have no claim against OWNER for delays, disruptions or hindrances caused by other contractors who may be operating at the site, including without limitation delays resulting from lack of coordination. Should CONTRACTOR cause damage to another contractor or subcontractor employed on the Project, CONTRACTOR agrees to settle with such other contractor or subcontractor by agreement, if the other party will so settle. If such other contractor or subcontractor sues OWNER, CONSTRUCTION INSPECTOR or ENGINEER on account of damage alleged to have been sustained, OWNER, CONSTRUCTION INSPECTOR or ENGINEER as applicable, shall notify CONTRACTOR and CONTRACTOR shall bear the cost of defending such proceedings, and if a judgment or award in arbitration against OWNER, CONSTRUCTION INSPECTOR or ENGINEER arises therefrom, CONTRACTOR shall pay or satisfy said judgment, and pay all cost incurred by OWNER, CONSTRUCTION INSPECTOR or ENGINEER, including attorney fees.

## **ARTICLE 8 - OWNER'S, CONSTRUCTION INSPECTOR'S AND ENGINEER'S STATUS DURING CONSTRUCTION**

- 8.1 OWNER's Representative. CONSTRUCTION INSPECTOR will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of CONSTRUCTION INSPECTOR as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and CONSTRUCTION INSPECTOR.
- 8.2 Visits to Site. ENGINEER will make visits to the site at intervals appropriate to various stages of construction to observe and become cognizant with the progress quality and quantity of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will also, as it deems necessary, make on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be undertaken solely for the purpose of providing OWNER a greater degree of confidence that all Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

- 8.3 Project Representation. OWNER may at its sole option assign one or more full or part time engineers, inspectors or other representatives to observe the performance of the Work. The duties, responsibilities and limitations of authority of any such representatives will be as provided in the General Conditions or as otherwise stated to CONTRACTOR in writing by the Director or other duly appointed official of the department or agency of OWNER for whose use and/or benefit the Project is to be constructed.
- 8.4 Clarifications and Interpretations. ENGINEER may issue written clarifications or interpretations of the requirements of Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. Such clarifications and interpretations shall become binding upon CONTRACTOR upon ratification thereof by OWNER. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Article 10 or Article 11.
- 8.5 Authorized Variations in Work. OWNER, CONSTRUCTION INSPECTOR or ENGINEER following consultation with and approval by OWNER , 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 Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order or other form of written directive and will be binding on OWNER, and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order or other written directive issued pursuant to this Section justifies an increase in the Contract Price or an extension of the contract time, CONTRACTOR shall make a claim therefore as provided in Article 10 or 11.
- 8.6 Rejecting Defective Work. OWNER, CONSTRUCTION INSPECTOR or ENGINEER will have authority to disapprove or reject Work which is believed or determined to be Defective, and will also have authority to require special inspection or testing of the Work as provided in Article 12, whether or not the Work is fabricated, installed or completed.
- 8.7 CONSTRUCTION INSPECTOR's and ENGINEER's Interpretations and Decisions. CONSTRUCTION INSPECTOR will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder to the extent that such requirements and issues respecting acceptability of the Work involve decisions or interpretations dealing with technical, engineering, design, or other subject matters, arising out of the Technical Specifications and within the expertise of CONSTRUCTION INSPECTOR. Written notice of each such claim, dispute and other matter shall be delivered by the claimant to CONSTRUCTION INSPECTOR and the other party to the Agreement promptly, but in no event later than seven (7) calendar days after occurrence of the event giving rise thereto, and written supporting data shall be submitted to CONSTRUCTION INSPECTOR and the other party within thirty (30) days of such occurrence unless CONSTRUCTION INSPECTOR allows an additional period of time to ascertain more accurate data in support of the claim. CONSTRUCTION INSPECTOR may, at any time, refer an issue to ENGINEER for a formal decision. In the event of such referral, ENGINEER

will render a formal decision in writing within a reasonable time. OWNER shall resolve all other disagreements arising from the Technical Specifications or other Sections of the Contract Documents and CONTRACTOR shall comply with the time limitations contained herein.

- 8.8 Non-liability of CONSTRUCTION INSPECTOR and ENGINEER. Neither CONSTRUCTION INSPECTOR nor ENGINEER's authority to act under this Article or elsewhere in the Contract Documents nor any decision made by CONSTRUCTION INSPECTOR or ENGINEER in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of CONSTRUCTION INSPECTOR or ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, to any other person or organization performing any of the Work, or to any surety for any of them.
- 8.9 Purposes of CONSTRUCTION INSPECTOR's and ENGINEER's Activities. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of CONSTRUCTION INSPECTOR or ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with 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 CONSTRUCTION INSPECTOR or ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.
- 8.10 Construction Methods. OWNER, CONSTRUCTION INSPECTOR and ENGINEER shall have no responsibility for CONTRACTOR's selection or implementation of means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and OWNER, CONSTRUCTION INSPECTOR and ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work or to fulfill other duties in accordance with the Contract Documents.
- 8.11 Acts or Omissions by Others. OWNER, CONSTRUCTION INSPECTOR and ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractors, any Supplier, or of any separate contractor or other person or organization furnishing any work, labor, materials or services for or in furtherance of the Project.
- 8.12 Communications. OWNER may issue all communication to CONTRACTOR through CONSTRUCTION INSPECTOR or at its option may communicate with CONTRACTOR directly, with a copy to CONSTRUCTION INSPECTOR and/or ENGINEER.
- 8.13 Replacement for CONSTRUCTION INSPECTOR or ENGINEER. In case of termination of the employment of CONSTRUCTION INSPECTOR or ENGINEER, OWNER shall appoint an entity whose status under the Contract Documents shall be that of the former CONSTRUCTION INSPECTOR or ENGINEER; provided, that OWNER may, at its sole

option and with notice to CONTRACTOR, elect to exercise all or part of the function and authority of CONSTRUCTION INSPECTOR or ENGINEER following such termination, either permanently or on an interim basis.

## **ARTICLE 9 - CHANGES IN THE WORK**

- 9.1 OWNER's Right to Initiate Changes. Without invalidating the Agreement and without notice to any surety, OWNER may at any time order additions, deletions or revisions in the Work; these will be authorized by Written Amendment, a Change Order or a Work Directive Change. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which shall be performed under the applicable provisions of the Contract Documents except as otherwise specifically provided.
- 9.1.1 In the event the additions, deletions or revisions of the Work significantly change the character of the Work, CONTRACTOR and/or OWNER may be entitled to an adjustment in the Contract Unit Price. The basis for such adjustment shall be agreed upon prior to the performance of the changed Work and shall not include anticipated profit. If such basis and/or amount of the adjustment cannot be agreed upon, a claim may be made therefore as provided in Article 10 or Article 11.
- 9.1.2 For unit price contracts, the term “significantly changed” shall be construed to apply only to the following circumstance: When a major pay item of Work is increased in excess of 125% or decreased below 75% of the original contract quantity. Any such allowance shall apply only to that portion in excess of 125% of the original pay item quantity, or in case of decrease, below 75% of the actual amount of Work performed.
- 9.2 Inability to Agree on Price or Time Adjustments. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of an OWNER-initiated change, a claim may be made therefore as provided in Article 10 or Article 11.
- 9.3 Non-required Work. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in Sections 3.4 and 3.5, except in the case of an emergency as provided in Section 6.21 and except in the case of uncovering Work as provided in Section 12.4.
- 9.4 Change Orders and Amendments. OWNER and CONTRACTOR shall execute appropriate Change Orders or Written Amendments covering (i) Changes in the Work which are ordered by OWNER pursuant to Section 9.1, are required because of acceptance of Defective Work under Section 12.8 or correcting Defective Work under Section 12.9; (ii) Changes in the Contract Price or Contract Time which are agreed to by the parties; and (iii) Changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to Section 8.7, provided that, in lieu of executing any such

Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in Section 6.23.

## **ARTICLE 10 - CHANGE OF CONTRACT PRICE**

- 10.1 Items Included in Contract Price. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work and assuming all obligations and risks as provided by the Contract Documents. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at its expense without change in the Contract Price.
- 10.2 Changes in Contract Price. The Contract Price may only be changed by a Change Order or by a Written Agreement. Any claim by CONTRACTOR for an increase or decrease in the Contract Price shall be based on written notice delivered to CONSTRUCTION INSPECTOR promptly, but in no event later than seven (7) calendar days after the occurrence of the event or the commencement of a series of events giving rise to the claim, which notice shall particularly state the factual basis of the claim and the nature and extent of additional costs or damages to be sustained therefrom. Notice of the specific amount of the claim, with supporting data shall be delivered to CONSTRUCTION INSPECTOR within thirty (30) days after such notice, unless CONSTRUCTION INSPECTOR, for good cause shown, allows an additional period of time for claimant to ascertain and present accurate supporting data. A written statement of the amount claimed by CONTRACTOR shall be conclusively presumed to include all direct, indirect and consequential amounts claimed or to be claimed by CONTRACTOR as a result of all facts, occurrences and events giving rise thereto. Nothing provided in this Section shall be construed to afford CONTRACTOR any rights or claims otherwise precluded by any other provisions of these General Conditions or other Contract Documents. The burden of proof for such claim shall be on CONTRACTOR.
- 10.3 Value of Affected Work. The value of any Work affected by a Change Order, or any Written Agreement, or of any increase or decrease in the Contract Price in respect of OWNER-initiated changes or CONTRACTOR claims as provided by this Section shall be determined in one of the following ways:
- 10.3.1 For Work covered in whole or in part by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the contract items involved, unless otherwise provided in the Contract Documents;
- 10.3.2 For items or elements of Work not covered by unit prices, by mutual acceptance of a lump sum or unit price; or, if no such agreement is reached, on the basis of the Cost of the Work (determined as provided in Sections 10.4 and 10.5) plus a reasonable allowance for CONTRACTOR's profit and overhead based on a percentage of the Cost of Work not to exceed ten percent (10%), or such different percentage as may be specified by other Contract Documents.

- 10.4 Cost of the Work. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper and efficient performance of the particular Work for which costs thereof are to be determined. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project. Such costs shall not include any of the costs itemized in Section 10.5 and may include only the following items:
- 10.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the affected Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on such Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall not include superintendents or other management and supervisory personnel whose costs are included in the Contract Price. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included only if authorized by OWNER in writing.
- 10.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and field services by suppliers or manufacturers required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to OWNER and CONTRACTOR shall make provisions so that they may be obtained.
- 10.4.3 Payments made by CONTRACTOR to the Subcontractors for affected Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the affected work, the Subcontractor's cost of such work shall be determined in the same manner as CONTRACTOR'S cost of the work. Any amount for overhead and profit shall be included in and limited to CONTRACTOR'S overhead and profit as set out in Section 10.3.2. All subcontracts shall be subject to the other provisions of the Contract Documents as applicable.
- 10.4.4 Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the affected Work.

10.4.5 Supplemental costs including the following:

- .1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the affected Work.
- .2 Costs, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the affected Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
- .3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of CONSTRUCTION INSPECTOR, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the affected Work. When construction equipment is owned by CONTRACTOR, the cost of such equipment shall be in accordance with the "Rental Rate Blue Book".
- .4 Sales, consumer, use or similar taxes related to the affected Work, and for which CONTRACTOR is liable, imposed by Laws or Regulations.
- .5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- .6 Losses, damages, and related expenses not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the affected Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with Article 5, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and written consent and approval of OWNER. No such losses, damages and expenses shall be included in the cost of the work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in Section 10.3.

- .7 The cost of utilities, fuel and sanitary facilities at the site.
- .8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- .9 Cost of premiums for additional Bonds and Insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER in accordance with Article 5.

10.5 Excluded Costs. The term Cost of the Work shall not include (i) expenses of CONTRACTOR's branch offices other than CONTRACTOR's office at the site, (ii) any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments (iii) cost of premiums for all Bonds and for all insurance not required by the Contract Documents (except for cost of premiums covered by Subparagraph 10.4.5.9 above), (iv) costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials and equipment wrongly supplied and making good any damage to property, or (v) other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 10.4.

10.6 Cash Allowances. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents, if any, and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to OWNER. CONTRACTOR further agrees that:

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

10.6.2 CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account thereof shall be valid.

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

**ARTICLE 11 - CHANGE OF CONTRACT TIME; LIQUIDATED DAMAGES; DELAYS AND HINDRANCES**

- 11.1 Liquidated Damages - Assessment. If CONTRACTOR does not achieve Substantial Completion or Final Completion of all elements of the Work within the time required by the Contract Documents, and liquidated damages are established by the Agreement or other Contract Documents to be assessed and recovered by OWNER to compensate OWNER for such delay in completion, it is understood and agreed that OWNER will incur substantial damages and losses which are and will hereafter be difficult or impossible to quantify, ascertain and prove as actual damages for such delay. Such damages are foreseen to include, without limitation, extended or additional costs for observation, inspection, engineering, utilities, insurance, administration, and also indeterminate damages, hindrance, or inconvenience to members of the public, deprivation of use and operation, and impairment of financing. Accordingly, and in lieu of actual damages, CONTRACTOR and its Surety shall be liable to OWNER, and OWNER shall be entitled to collect and recover such liquidated damages from CONTRACTOR and its Surety, in lieu of actual damages and not as a penalty, in the respective amounts per day for each calendar day that Substantial Completion or Final Completion of the entire Work, as appropriate, is delayed beyond the date(s) or time limitation(s) provided by the Contract Documents. Neither partial acceptance nor partial Beneficial Occupancy or use of portions of the Work by OWNER prior to achievement of Substantial Completion of all elements of the Work shall defeat or impair OWNER's rights in respect to liquidated damages as provided by this Article.
- 11.2 Liquidated Damages - Reasonable Amount. The original Contract Price provided in the Contract Documents shall be deemed to include adequate consideration and payment to compensate CONTRACTOR for the risk of liability imposed upon CONTRACTOR under this Section in respect to liquidated damages and CONTRACTOR acknowledges and agrees that the respective amounts of such liquidated damages are reasonable with due consideration for the type, nature and extent of the Work and the Contract Price and that such liquidated damages fairly approximate the nature and amount of actual damages which OWNER may incur as a result of delayed completion, and that such liquidated damages may be assessed and recovered by OWNER without proof or evidence concerning the types or amounts of such actual damages.
- 11.3 Delay Following Termination. The liquidated damages provided by this Article shall apply equally to delay in the achievement of Substantial Completion following abandonment of the Work by CONTRACTOR or termination by OWNER because of CONTRACTOR's default, to the extent that such delays are caused in whole or in part by such abandonment, termination, default or other acts or omissions for which CONTRACTOR is responsible. No delay or forbearance by OWNER in enforcing any rights or remedies under the Contract Documents, including without limitation, the right to termination of CONTRACTOR's right to proceed and the right to engage other contractors to complete the Work, shall constitute a waiver by OWNER or deprive OWNER of its right to retain, receive and recover such liquidated damages from CONTRACTOR and its surety or diminish the period of delayed completion from which such liquidated damages are to be determined.

- 11.4 Extension of Contract Time. If CONTRACTOR is delayed or hindered at any time in the progress of the Work by any act or neglect of OWNER, CONSTRUCTION INSPECTOR or ENGINEER, or by any employee of these parties, or by changes ordered in the Work, or by unavoidable labor disputes, fire, unusual delay in transportation, unavoidable casualties, unforeseeable abnormal and unusually severe weather conditions, or any other causes beyond CONTRACTOR's control and the risks of which are not otherwise assumed by CONTRACTOR under the Contract Documents (collectively referred to as Excusable Delays), or by delay authorized by OWNER pending arbitration, or by any other cause which OWNER, in consultation with CONSTRUCTION INSPECTOR or ENGINEER, determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as OWNER may determine. CONTRACTOR shall not be entitled to an extension of time for delays or hindrances caused by weather conditions or other natural phenomena of normal intensity for the locality and season during which Work is performed, unsuitable ground conditions except as may be provided in Article 4, inadequate construction forces, financial difficulties of CONTRACTOR or its Subcontractors or the failure of CONTRACTOR or its subcontractors or material suppliers to provide shop drawings or other required submittals on a timely basis and as scheduled or to place orders for equipment or materials sufficiently in advance to insure timely and proper delivery.
- 11.5 Notice of Delays or Hindrances. The Contract Time may only be extended by a Change Order or by a Written Agreement. CONTRACTOR's entitlement to an increase in the Contract Time shall be conditioned upon CONTRACTOR furnishing a written notice to OWNER and CONSTRUCTION INSPECTOR no later than seven (7) days) after the occurrence of the event or the commencement of a series of events giving rise to the request for extension, which notice shall particularly state the factual basis and grounds for the request and the duration of time sought as an extension of the Contract Time. Additional supporting data as required by OWNER, CONSTRUCTION INSPECTOR or ENGINEER, shall be delivered to OWNER or CONSTRUCTION INSPECTOR within thirty (30) days after such notice, unless OWNER, for good cause shown, allows an additional period of time for CONTRACTOR to ascertain and present accurate supporting data. A notice of time extension request by CONTRACTOR under this Section shall be conclusively presumed to include all direct, indirect and cumulative impact upon the time required by CONTRACTOR to perform and complete the Work as a result of all facts, occurrences and events giving rise thereto. Nothing provided in this Section shall be construed to afford CONTRACTOR any rights or claims otherwise precluded by any other provisions of these General Conditions or other Contract Documents. The burden of proof for such a claim shall be on CONTRACTOR.
- 11.6 Time Extension as Exclusive Remedy. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall assume the risk of any and all suspensions of, delays or interferences in or hindrances to the performance of the Work, regardless of the length thereof or the party responsible therefore and arising from any and all causes whatsoever, including without limitation, those due to any acts or omissions of or interference by OWNER, CONSTRUCTION INSPECTOR, ENGINEER, other contractors or Subcontractors, except only to the extent that an extension of time may be due to CONTRACTOR as

expressly provided for in this Article for such suspension, delay, interference or hindrance. CONTRACTOR shall bear all direct or indirect costs, expenses and liabilities which it may incur in connection with such suspensions, delays, hindrances or interferences and all such suspensions, delays, interferences or hindrances, costs, expenses and liabilities of any nature whatsoever, whether or not specifically described or referred to in the Contract Documents, shall conclusively be deemed to have been within the contemplation of the parties.

- 11.7 Limitations on Time Extensions. Contract Time extensions will be granted only to the extent that Excusable Delays occur without concurrent non-excusable delays and actually extend the time required by CONTRACTOR to perform and complete critical Work elements and activities and which thereby cause an actual delay to achievement of Project completion. Extensions of Contract Time shall be based solely upon the effect of delays to the Work as a whole. The Contract Time shall not be extended for delays to parts of the Work, whether or not changed by any Change Order, that are not on the critical path of the progress schedule. Concurrent Work activities which are not critical to Project completion shall not be the subject of additional time extensions or compensation if those work activities are performed, or could be performed, within a moveable time frame concurrent with a critical item.

## **ARTICLE 12 - WARRANTIES, TESTS AND DEFECTIVE WORK**

- 12.1 Warranty. CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work shall be performed, supplied, furnished and installed, and that the Work shall perform in strict accordance with the Contract Documents and shall not be Defective. Notice of all Work determined or suspected to be Defective or not in conformity with the Contract Documents shall be given to CONTRACTOR within a reasonable time after observance thereof.
- 12.2 Access to Work. OWNER, CONSTRUCTION INSPECTOR and ENGINEER and their respective representatives, and all governmental agencies with jurisdictional interests in respect of the Work or the activities of CONTRACTOR or its subcontractors shall be afforded complete and unhindered access to the Work for their observation, inspecting and testing. CONTRACTOR shall provide 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.
- 12.3 Tests and Inspections. CONTRACTOR shall give CONSTRUCTION INSPECTOR timely notice of readiness of the Work for all required inspections, tests or approvals. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish CONSTRUCTION INSPECTOR the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with OWNER's or ENGINEER's acceptance of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to

CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals which are required by Contract Documents shall be paid by OWNER except as otherwise specified. All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR or by ENGINEER if so specified. Neither observations by CONSTRUCTION INSPECTOR, ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

12.3.1 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, Quality control sampling and testing shall be the sole responsibility of CONTRACTOR and shall not be paid for directly, but the cost thereof shall be included in CONTRACTOR'S cost of other items within the Contract Documents.

12.3.2 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall perform testing as outlined in OWNER'S Standards and Specifications. Alterations to the Standards and Specifications shall not be allowed without recommendation of ENGINEER and written approval of OWNER.

12.3.3 Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall provide copies of each sampling and testing report to CONSTRUCTION INSPECTOR as soon as said sampling and testing reports are available. Failure to provide these reports in a timely manner shall permit CONSTRUCTION INSPECTOR to withhold progress estimates until such time as CONSTRUCTION INSPECTOR receives the reports.

12.4 Uncovering Work. If any Work is covered contrary to written request of CONSTRUCTION INSPECTOR, it shall, if requested by OWNER, CONSTRUCTION INSPECTOR or ENGINEER, be uncovered for observation and replaced at CONTRACTOR's expense. If any Work (including the work of others) that is to be inspected, tested or approved is covered or reasonable access thereto for such inspection and testing is impaired without written concurrence of ENGINEER, it must, if requested by OWNER or ENGINEER, be uncovered or access thereto open for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given CONSTRUCTION INSPECTOR timely notice of CONTRACTOR's intention to cover such Work and CONSTRUCTION INSPECTOR has not acted with reasonable promptness in response to such notice. If CONSTRUCTION INSPECTOR considers it necessary or reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) and OWNER shall be entitled to an appropriate decrease in the Contract Price by Change Order or Written Agreement. If, however, such Work is not found to be Defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the

Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 10 and 11.

- 12.5 OWNER May Stop the Work. If the Work is determined by OWNER, CONSTRUCTION INSPECTOR or ENGINEER to be Defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.
- 12.6 Pre-Completion Correction or Removal of Defective Work. If required by OWNER, CONSTRUCTION INSPECTOR or ENGINEER prior to Substantial Completion, CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by OWNER, CONSTRUCTION INSPECTOR or ENGINEER, remove it from the site and replace it with non-Defective Work. CONTRACTOR shall bear all direct and consequential costs of such correction or removal, made necessary thereby, including but not limited to fees and charges of engineers, architects, attorneys and other professionals.
- 12.7 Post-Completion Correction Period. Except as otherwise required by the Contract Documents or provided by any special warranties furnished thereunder, CONTRACTOR shall promptly and properly repair, replace, restore, or rebuild, as OWNER determines, any finished Work in which defects of materials or workmanship may appear or damage may occur because of such defects for a period of three (3) calendar years commencing on the Date of Substantial Completion.
- 12.7.1 In circumstances where OWNER determines that a defect does not involve an imminent threat to persons, property or OWNER's ability to comply with governmental orders, laws or regulations, OWNER shall give CONTRACTOR written notice of such defect. CONTRACTOR shall, at its sole cost and within seven (7) calendar days after receipt of OWNER's written notice, commence the repair, replacement, restoration or rebuilding of the damaged or Defective Work using its own personnel or those of a third party, and shall diligently and without interruption complete all such required corrective action within a reasonable time.

- 12.7.2 In circumstances where OWNER determines that a defect does involve an imminent threat to persons, property or OWNER's ability to comply with governmental orders, laws or regulations, OWNER may, without notice to CONTRACTOR, immediately take such action as OWNER deems necessary to effectuate the repair, replacement, restoration or rebuilding of any damaged or Defective Work or the protection and preservation of other Work or property threatened thereby. As soon as practicable thereafter, OWNER shall notify or otherwise afford CONTRACTOR a reasonable opportunity to investigate and continue or complete corrective action as required, if any. If CONTRACTOR fails to commence and continue required corrective action in a prompt and timely manner, OWNER may complete the repair, replacement, restoration or rebuilding of the damaged or Defective Work using its own personnel or those of a third party.
- 12.7.3 In all circumstances, CONTRACTOR and its surety shall be liable for any and all costs and damages sustained by OWNER in respect of any such defect.
- 12.7.4 Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations of CONTRACTOR under the Contract Documents, including without limitation CONTRACTOR's obligations under Warranties. Establishment of time periods in this Section relates only to the specific obligation of CONTRACTOR to correct the Work, and has no relationship to the time within which proceedings may be commenced to establish or enforce CONTRACTOR's liability with respect to obligations other than specifically to correct defects in the Work as prescribed by this Section.
- 12.8 Option to Accept Defective Work. Instead of requiring correction or removal and replacement of Defective Work, OWNER may elect to accept such Work in the condition as provided. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER's evaluation of and determination to accept such Defective Work, to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals. If any such acceptance occurs prior to CONSTRUCTION INSPECTOR'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 to account for such costs and damages. If the acceptance occurs after such recommendation of final payment, such costs and damages shall be paid by CONTRACTOR and its surety to OWNER.
- 12.9 OWNER May Correct Defective Work. If CONTRACTOR fails within a reasonable time to proceed to correct Defective Work or to remove and replace rejected Work as provided by Section 12.6, or if CONTRACTOR fails in any respect 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 (7) days written notice to CONTRACTOR, correct and remedy any such deficiency, and may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, suspend CONTRACTOR's services related

thereto, and take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, CONSTRUCTION INSPECTOR, ENGINEER, their respective representatives and other contractors full and unhindered access to the site to enable OWNER to exercise the rights and remedies under this Section. All claims costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and its surety and OWNER shall be entitled to a corresponding decrease in the Contract Price and a Change Order or Written Agreement will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. Such direct, indirect and consequential costs shall include, but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work or property of OWNER or others destroyed or damaged by correction, removal or replacement of CONTRACTOR's Defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay or hindrance in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

### **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION**

- 13.1 Schedule of Values. CONTRACTOR shall provide CONSTRUCTION INSPECTOR with a Schedule of Values as required by Section 2.7 or elsewhere in the Contract Documents. The Schedule of Values will serve as a basis of progress payments during construction.
- 13.2 Basis for Payments. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, payment for the Work is based upon a lump sum and/or unit prices as established by the Agreement. Subject to the limitations and conditions provided elsewhere in these General Conditions or in other Contract Documents, progress payments for lump sum items shall be based upon percentage of completion at the time of request for such payments as determined or approved by CONSTRUCTION INSPECTOR, while progress payments for unit price Contract Items shall be determined by CONSTRUCTION INSPECTOR based upon approved estimated quantities of such items completed and in place. The method for calculating estimated quantities shall be based upon reasonable engineering methods for such estimates. If a unit price for a Contract Item includes compensation for successful testing of Work or for finish grading, cleanup or other surface or site restoration as part of such Item, OWNER may at its sole option deduct from payments and withhold (i) up to Fifteen Percent (15%) of the unit price for Work installed but not successfully tested, and (ii) up to Ten Percent (10%) of the unit price for Work installed but as to which finish grading, cleanup or other surface or site restoration has not been completed which sums shall be in addition to retainage and other amounts withheld by OWNER as permitted by the Contract Documents. Such sums shall be released to CONTRACTOR upon satisfactory completion of testing or restoration, as applicable.

- 13.3 Stored Materials and Equipment. Payments for materials or equipment not incorporated into the Work, but delivered and suitably stored at the site, or, if provided by the Contract Documents or agreed upon in writing, at some other location off of the site, shall be conditioned upon compliance by CONTRACTOR with procedures satisfactory to OWNER to establish OWNER's title to such materials and equipment or otherwise protect OWNER's interest and shall include applicable insurance, storage and transportation to the site. Payments for stored materials or equipment may not exceed one hundred percent (100%) less retainage of the net value of such stored material or equipment.
- 13.4 Specially Manufactured Items. If payment for work on undelivered specifically manufactured items is permitted by the Contract Documents or by OWNER's written approval, such payment shall be conditioned upon submission by CONTRACTOR of bills of sale, invoices and other documentation establishing in favor of OWNER a valid security interest in the items and establishing or certifying that the items are covered by appropriate insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. OWNER may further condition such payment upon CONSTRUCTION INSPECTOR's or ENGINEER's observation of the progress of such items, and in such case CONTRACTOR shall provide transportation and reasonable lodging and other appropriate expenses for a representative of OWNER, CONSTRUCTION INSPECTOR or ENGINEER to travel to the place of manufacture of such equipment or material to conduct such observation.
- 13.5 Retainage. OWNER shall withhold retainage in the amount of six percent (6%) of each Progress Payment until the Work or designated portion thereof is fifty percent (50%) complete. Thereafter, no further retention under this Section shall be made, provided that CONTRACTOR is making satisfactory progress and there is no specific cause for greater withholding. If required by governing statutes, such retainage shall be deposited into an interest bearing escrow account pursuant to the terms of a written Escrow Agreement executed in accordance with such statutes, and upon such form as approved by OWNER. Upon issuance and OWNER's execution of a Certificate of Substantial Completion, OWNER may reduce the retained amount to not less than two hundred percent (200%) of the cost of the Work remaining to be completed, corrected or accepted. Retainage may not be reduced until CONTRACTOR provides OWNER with complete and legally effective releases or waivers of all claims or liens arising out of or filed in connection with the Work, which instruments shall be upon such forms as approved by OWNER. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material, and equipment for which a claim or lien could be filed, and that all payrolls, material work equipment bills, and other indebtedness connected with the Work for which OWNER or its property might in any way be responsible have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, Supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any claim or lien.

- 13.6 Applications for Progress Payment. At least five (5) days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to CONSTRUCTION INSPECTOR for review a properly completed and signed Application for Payment upon such form as OWNER may prescribe, together with such supporting documentation as OWNER may prescribe under the Contract Documents. The submission of any request for progress payment shall be deemed a waiver and release by CONTRACTOR of all Liens and claims with respect to the Work and period to which such progress payment request pertains except as specifically reserved and noted on such request. The second and each subsequent Application for Progress Payment shall include an affidavit from CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR's obligations in respect of Work covered by prior Applications. OWNER or CONSTRUCTION INSPECTOR may reject CONTRACTOR's Application for Progress Payment if CONTRACTOR fails to submit updated progress schedules as provided in Section 2.7 or as specified elsewhere in the Contract Documents.
- 13.7 Payroll Reports. CONTRACTOR's Application for Payment shall be accompanied by a payroll report by CONTRACTOR and each of its Subcontractors for the pay period covered by the application. The report shall state as to each employee his/her name, address and social security number, work classification, hours worked, rate of pay, itemized deductions, gross amount earned, net pay and fringe benefit information. This report shall be provided either on Federal Form WH-347 for reporting prevailing wages under the Davis Bacon Act, or otherwise by submitting the payroll information in CONTRACTOR's format along with Federal Form WH-348 Statement of Compliance under the Davis Bacon Act.
- 13.7.1 Weekly certified payrolls and specified EEO forms shall be submitted to CONSTRUCTION INSPECTOR prior to the processing of the progress estimates. CONTRACTOR and required Subcontractors shall submit subcontractor utilization payment reports with each monthly application for payment using the Subcontractor/Supplier Payment Report, form SSPR-1 (see Additional Requirements Section). Should the specified forms and/or reports not be provided, CONSTRUCTION INSPECTOR may withhold progress payments until such time as the specified materials are submitted.
- 13.8 CONTRACTOR's Warranty of Title. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the project or not, shall pass to OWNER no later than the time of payment free and clear of all claims and liens.
- 13.9 Action upon Applications for Payment. CONSTRUCTION INSPECTOR will, within five (5) days after receipt of each Application for Payment, either (i) indicate in writing a recommendation of payment and present the Application to OWNER, or (ii) return the Application to CONTRACTOR indicating in writing CONSTRUCTION INSPECTOR's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application to OWNER, with notice that the deficiencies noted by CONSTRUCTION INSPECTOR have been corrected.

Payments to CONTRACTOR shall not be due until the expiration of thirty-five (35) days from the date of OWNER's approval of CONSTRUCTION INSPECTOR's recommendation of payment. CONSTRUCTION INSPECTOR may refuse to recommend the whole or any part of any payment if, in CONSTRUCTION INSPECTOR's opinion, it would be incorrect to make such representations to OWNER. CONSTRUCTION INSPECTOR may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CONSTRUCTION INSPECTOR's opinion to protect OWNER from loss because (i) the Work is Defective, or completed Work has been damaged requiring correction or replacement, (ii) the Contract Price has been reduced by Written Amendment or Change Order, (iii) OWNER has suffered a loss as provided in Section 6.24 or has been required to correct Defective Work or complete Work in accordance with Section 12.9, or (iv) of CONSTRUCTION INSPECTOR's actual knowledge of the occurrence of any of the events enumerated in Sections 14.2. OWNER may refuse to make payment of the full amount recommended by CONSTRUCTION INSPECTOR because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work, or claims have been filed in connection with the Work, or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR immediate written notice (with a copy to CONSTRUCTION INSPECTOR) stating the reasons for such action.

- 13.10 Substantial Completion. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall, in writing to OWNER and CONSTRUCTION INSPECTOR, request the issuance of a certificate of Substantial Completion. The written request shall include a list of all items of Work remaining to be completed. Within a reasonable time thereafter, CONSTRUCTION INSPECTOR shall respond to CONTRACTOR by either (a) scheduling an inspection of the Work by OWNER, CONSTRUCTION INSPECTOR, ENGINEER and CONTRACTOR to determine the status of completion or (b) notifying CONTRACTOR in writing that the Work has been determined by OWNER, CONSTRUCTION INSPECTOR or ENGINEER not to be substantially complete and explaining the basis therefore. If, after such inspection, OWNER, CONSTRUCTION INSPECTOR and ENGINEER conclude that the Work is not substantially complete, CONSTRUCTION INSPECTOR will within fourteen (14) days after such inspection notify CONTRACTOR in writing, stating basis therefore. If, after the inspection OWNER, CONSTRUCTION INSPECTOR and ENGINEER consider the Work substantially complete, CONSTRUCTION INSPECTOR shall prepare and deliver to OWNER a recommended certificate of Substantial Completion, which shall fix the date of Substantial Completion, and address the respective responsibilities of OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. The certificate, as recommended by CONSTRUCTION INSPECTOR or as approved by OWNER may have attached a list of items to be completed or corrected prior to final payment and may state any additional issues or reservations to remain unaffected by substantial completion. The certificate of Substantial Completion, as accepted and approved by OWNER, will be submitted to CONTRACTOR for acceptance, which acceptance shall be deemed effective, and CONTRACTOR shall become unconditionally bound to the terms thereof, upon

(i) CONTRACTOR's execution of the certificate, or (ii) CONTRACTOR's failure to provide written notice objecting to the terms of such certificate within five (5) days after receipt thereof.

13.11 Site Access upon Substantial Completion. OWNER shall have the right, but not the obligation, to exclude CONTRACTOR from the site of the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to the site to complete or correct items of Work or to fulfill other obligations as provided by the certificate of Substantial Completion.

13.12 Partial Utilization and Occupancy. Use or occupancy by OWNER of portions of the Work may be accomplished prior to Substantial Completion of all the Work upon determination by OWNER in consultation with CONSTRUCTION INSPECTOR and ENGINEER that any such portion constitutes a separately functioning and usable part of the Work that can be used by OWNER without causing substantial interference with CONTRACTOR's performance of the remainder of the Work, subject to the following:

13.12.1 OWNER at any time may give written notice to CONTRACTOR of OWNER's intent to use or occupy any part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR shall certify to OWNER and CONSTRUCTION INSPECTOR that said part of the Work is substantially complete and request CONSTRUCTION INSPECTOR to issue a certificate of partial Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and CONSTRUCTION INSPECTOR in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request CONSTRUCTION INSPECTOR to issue a Certificate of Partial Substantial Completion for that part of the Work. The provisions and procedures set forth in Sections 13.10 and 13.11 shall govern inspections and recommendations concerning partial substantial completion and certification thereof.

13.12.2 OWNER may at any time give written notice to CONTRACTOR of OWNER's intent to use or occupy any part of the Work which is not substantially complete. Within a reasonable time thereafter OWNER, CONTRACTOR, CONSTRUCTION INSPECTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion and shall prepare a list of the items remaining to be completed or corrected thereon before final payment. Upon failure of the parties to agree upon such list, CONSTRUCTION INSPECTOR will promptly finalize the list and deliver same to OWNER and CONTRACTOR together with a written determination as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operations, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work. Such list and determination shall become binding upon OWNER and CONTRACTOR except as otherwise agreed in writing between them. During the period of OWNER's use or occupancy of such part of the Work, OWNER shall afford CONTRACTOR

reasonable access and opportunity to complete or correct items on said list and to complete other related Work.

13.12.3 No occupancy or separate operation of part of the Work shall be accomplished prior to compliance with the requirements of Section 5.9 with respect to property insurance.

13.13 Final Inspection. Upon written notice from CONTRACTOR that the entire Work or an agreed upon portion thereof is complete, CONSTRUCTION INSPECTOR and ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. CONTRACTOR shall immediately take such measures as are necessary to complete and remedy such Work to the satisfaction of OWNER, CONSTRUCTION INSPECTOR and ENGINEER. Upon written notice from CONTRACTOR that all Work which was incomplete or Defective has been completed or remedied, CONSTRUCTION INSPECTOR, ENGINEER and OWNER will make an additional inspection to verify the work performed. If it is determined that the Work is still incomplete or Defective, CONTRACTOR shall bear all direct, indirect and consequential costs of re-inspecting said Work (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) and OWNER shall be entitled to an appropriate decrease in the Contract Price by Change Order or written agreement.

13.14 Final Application for Payment. After CONTRACTOR has completed the Work and all corrections as provided elsewhere in this Article and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up As-Built documents (as provided in Section 6.19) and all other documents as required by the Contract Documents, and after CONSTRUCTION INSPECTOR has indicated that the Work is acceptable (subject to the provisions of Section 13.16), CONTRACTOR may make application for Final Payment which, except as otherwise provided in this Article, shall be subject to the procedures and requirements in respect of progress payments. The Final Application for Payment shall be accompanied by complete and legally effective releases or waivers by all subcontractors and material suppliers from all claims or liens arising out of or filed or which could otherwise be filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish: receipts or releases in full; an affidavit from CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a claim or lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER, contract funds or OWNER's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may at OWNER's option furnish a Bond or other collateral satisfactory to indemnify OWNER against any Claim or Lien. CONTRACTOR's Application for Final Payment shall be accompanied by a list of all Subcontractors involved in the project, and the amount in dollars paid to each Subcontractor. The list shall identify Minority Business Enterprises, (MBEs), Women's Business Enterprises,(WBEs), and Veteran Business Enterprises (VBEs), and shall include the final Contract Price for each.

- 13.15 Final Payment and Acceptance. If, on the basis of CONSTRUCTION INSPECTOR's observation of the Work during construction and final inspection, and CONSTRUCTION INSPECTOR's review of the Final Application for Payment and accompanying documentation, all 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, CONSTRUCTION INSPECTOR will, within ten (10) days after receipt of the Final Application of Payment, indicate in writing CONSTRUCTION INSPECTOR's recommendation of payment and present the Application to OWNER for payment. Otherwise, CONSTRUCTION INSPECTOR will return the Application 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. If the Application and accompanying documentation are approved by OWNER as to form and substance, OWNER shall pay CONTRACTOR the amount recommended by CONSTRUCTION INSPECTOR.
- 13.16 Delayed Final Completion. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if CONSTRUCTION INSPECTOR so confirms, OWNER will upon receipt of CONTRACTOR's Final Application for Payment and recommendation of CONSTRUCTION INSPECTOR, 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 stipulated in the Agreement, and if Bonds have been furnished as required in Section 5.1, the written consent of the Surety to the payment of the balance due for the portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CONSTRUCTION INSPECTOR with the Application for such payment. Such payment will be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims.
- 13.17 CONTRACTOR's Continuing Obligations. Except as otherwise expressly provided to the contrary by the Contract Documents, CONTRACTOR's duty to perform and complete the Work and to fulfill other obligations in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or Final Payment by CONSTRUCTION INSPECTOR, nor approval or acceptance thereof by OWNER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing, Working Drawing or sample submission, nor any activities by CONTRACTOR or OWNER in correction of Defective Work will constitute an acceptance of Work not in accordance with the Contract Documents or a release or waiver of CONTRACTOR's obligations under the Contract Documents or of OWNER's rights and remedies thereunder.
- 13.18 Waiver of Claims by Final Payment. The making and acceptance of Final Payment shall constitute a waiver of all claims by OWNER against CONTRACTOR and by CONTRACTOR against OWNER except (i) claims previously made in writing by either party and remaining unsettled as of the date of final payment, (ii) claims by OWNER attributable to Defective Work or prior corrective work, appearing after final inspection or

from failure to comply with the Contract Documents, (iii) OWNER claims and other rights arising under the terms of any general or special warranties or guarantees specified by the Contract Documents or arising thereunder, and (iv) OWNER claims and other rights in respect of CONTRACTOR's and its surety's continuing obligations under Laws and Regulations or the Contract Documents;

#### **ARTICLE 14 - SUSPENSION OF WORK AND TERMINATION**

- 14.1 OWNER May Suspend Work. OWNER may, at any time and without cause, suspend the Work or any portion thereof by notice in writing to CONTRACTOR and CONSTRUCTION INSPECTOR which will fix either the date or requisite events for resumption of the Work. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR may make a claim for an extension of the Contract Time on account of such suspension, as provided by and subject to the limitations of Article 11.
- 14.2 CONTRACTOR Default. OWNER may declare CONTRACTOR to be in default under the Agreement and may terminate CONTRACTOR's right to proceed thereunder if CONTRACTOR (i) is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or CONTRACTOR or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws, or a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR's property on account of CONTRACTOR's insolvency, and CONTRACTOR or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a written request by OWNER for such assurance; or (ii) admits in writing an inability to pay its debts generally as they become due; or (iii) fails or refuses to perform or prosecute the Work or any separate part or element thereof in accordance with the Contract Documents and with such diligence as shall insure its completion within the Contract time, or CONTRACTOR fails to complete the Work within such Contract Time; or (iv) performs any Work which is rejected as Defective and fails or neglects to correct any such Work; or (v) fails to supply sufficient skilled workers or suitable materials or equipment; or (vi) fails to adhere to the original and any revised progress schedules established under the Contract Documents; or (vii) fails to make prompt payment to laborers, subcontractors and material suppliers; or (viii) abandons or suspends performance of any of the Work, or removes from the site materials or equipment reasonably required to perform and complete the Work, without OWNER's written consent, directive or approval; or (ix) disregards Laws or Regulations or similar requirements and orders of any public body having jurisdiction; or (x) disregards the authority of OWNER, CONSTRUCTION INSPECTOR or ENGINEER; or (xi) otherwise violates in any material way any provisions or requirements of the Contract Documents.
- 14.3 Default Termination by OWNER. Upon occurrence of any of the events of default provided by Section 14.2, OWNER may, after giving CONTRACTOR and the Surety seven (7) days written notice terminate the Agreement and CONTRACTOR's right to proceed thereunder, which termination shall become effective without further notice upon the expiration of such

seven (7) day period, unless otherwise rescinded or modified by OWNER in writing. The following shall govern in the event of a default termination by OWNER as provided by this Section:

- 14.3.1 OWNER may exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use or authorize third party contractors to use the same for completing or correcting the Work, and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. OWNER and completion contractors shall not be liable to CONTRACTOR for the cost or value of any such property used or incorporated in the course of such completion or correction;
- 14.3.2 OWNER may, by any means it may deem expedient and appropriate under the circumstances, complete and correct or contract with one or more separate contractors for completion and correction of the Work. OWNER shall not be required to accept the lowest price or the shortest duration proposed for such completion or corrective Work. In the event that OWNER takes bids for completion or corrective Work, CONTRACTOR shall not be eligible for the award of any contracts resulting therefrom.
- 14.3.3 CONTRACTOR shall not be entitled to receive any further payment until all Work is completed and corrected and the total costs incurred by OWNER in respect of such completion and correction have been ascertained.
- 14.3.4 CONTRACTOR and its surety shall be liable for liquidated damages for delayed completion of the Work as provided in the Contract Documents, based upon (i) the agreed dates for substantial and final completion as established by the contract(s) between OWNER and the completion contractor(s) or (ii) the actual dates of substantial and final completion, whichever occurs first;
- 14.3.5 If the unpaid balance of the Contract Price exceeds the sum of (i) liquidated damages (ii) the Completion Costs as hereinafter defined, (iii) such other damages to which OWNER is entitled by reason of CONTRACTOR's breach or default under the Agreement or the termination thereof and (iv) attorney fees incurred by OWNER incidental to the enforcement of any rights and remedies against CONTRACTOR and its Surety afforded by the Contract Documents, such excess will be paid to CONTRACTOR or Surety as appropriate. If such sum exceeds such unpaid balance, CONTRACTOR and its surety shall pay the difference to OWNER.
- 14.3.6 As used in this Section, the term "Completion Costs" shall mean any and all direct, indirect and consequential costs and expenses paid or incurred by OWNER for or incidental to completion of the Work or correction of previous Work performed by CONTRACTOR, whether by OWNER's own forces or by one or more separate contractors engaged by OWNER for such purposes, and shall include but not be limited to all fees and charges of engineers, architects,

consultants, attorneys and other professionals, plus court costs, arbitration and arbitrator fees and charges.

14.3.7 Termination shall 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 shall not release CONTRACTOR from liability.

14.3.8 If it is determined for any reason that CONTRACTOR was not in default, the termination shall be deemed a termination for convenience of OWNER, whereupon the rights and obligations of the parties shall be determined and governed in accordance with Section 14.4.

14.4 Termination for Convenience. Upon seven (7) days' written notice to CONTRACTOR and CONSTRUCTION INSPECTOR, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement in whole or in part for its convenience. CONTRACTOR shall immediately discontinue Work and follow all other instructions of OWNER as stated in such notice, and shall take all other action as may be required or appropriate to minimize costs, damages and expenses in consequence of the termination. Furthermore, CONTRACTOR shall deliver to OWNER all survey notes, drawings, specifications and estimates completed or partially completed and these shall become the property of OWNER. CONTRACTOR shall not be entitled to payment on account of loss of anticipated profits or revenue or other economic loss associated with any terminated Work. Amounts payable to CONTRACTOR shall be limited to the following:

14.4.1 A portion of the Contract Price as fairly allocated to Work executed by CONTRACTOR in accordance with the Contract Documents prior to the effective date of termination;

14.4.2 Reasonable expenses sustained by CONTRACTOR 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, which shall not exceed the percentages established in Article 10;

14.4.3 Reasonable costs, losses and damages paid by CONTRACTOR in settlement of just claims under terminated contracts with Subcontractors, Suppliers and others.

14.5 CONTRACTOR Suspension of Work and Right to Terminate. If, through no act or fault of CONTRACTOR or its subcontractors or suppliers, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or OWNER substantially fails to perform or make payment to CONTRACTOR as prescribed by the Contract Documents, CONTRACTOR may, upon thirty (30) days written notice to OWNER and CONSTRUCTION INSPECTOR, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses.

## **ARTICLE 15 - DISPUTE RESOLUTION**

- 15.1 Agreement to Mediate. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to mediation according to the provisions of Attachment A.
- 15.2 Agreement to Arbitrate. If agreed by OWNER and CONTRACTOR, any claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of, or relating to the Contract Documents or the breach thereof, except those exempted claims and disputes described elsewhere in the Contract Documents, will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect subject to the limitations otherwise set forth in this Article. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article will be specifically enforceable under the prevailing law of any court having jurisdiction.
- 15.3 Claims Referred To CONSTRUCTION INSPECTOR. No demand for arbitration of any claim, dispute or other matter properly referred to CONSTRUCTION INSPECTOR initially for decision in accordance with Article 8 shall be made until the earlier of (a) the date on which CONSTRUCTION INSPECTOR has rendered a decision or (b) the tenth (10th) day after the parties have presented their evidence to CONSTRUCTION INSPECTOR if a written decision has not been rendered by CONSTRUCTION INSPECTOR before that date. No demand for arbitration of any such claim, dispute or other matter shall be made later than thirty (30) days after the date on which CONSTRUCTION INSPECTOR has rendered a written decision in respect thereof; and the failure to demand arbitration within said thirty (30) days period shall result in CONSTRUCTION INSPECTOR's decision being final and binding upon OWNER and CONTRACTOR. If CONSTRUCTION INSPECTOR renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned.
- 15.4 Demand for Arbitration; Objection. Notice of demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy shall be sent to CONSTRUCTION INSPECTOR for information. The demand for arbitration shall be made within the thirty (30) day or ten (10) day period specified in Section 15.3 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 15.5 Consolidation and Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any other person or entity (including CONSTRUCTION INSPECTOR, ENGINEER, or their agents, employees or consultants) who is not a party to this Agreement unless:

- 15.5.1 The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration;
  - 15.5.2 Such other person or entity is substantially involved in a question of law or fact that is common to those who are already parties to the arbitration and that will arise in such proceedings, and;
  - 15.5.3 The written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this Section; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.
- 15.6 Enforcement of Award. The award rendered by the arbitrators shall be final, and shall be binding upon CONTRACTOR's surety, whether or not such surety is joined therein, judgment may be entered upon it in any court having jurisdiction thereof, and shall not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. & 10, 11).

## **ARTICLE 16 - MISCELLANEOUS**

- 16.1 Giving Notice. Whenever any provision of the Contract Documents requires the giving of written notice, it shall be deemed to have been validly given if delivered in person or by facsimile telephone transmission (FAX) to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- 16.2 Computation of Time. When any period of time is referred to in the Contract Documents by days, it shall 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 shall be omitted from the computation. A "day" and a "calendar day" are defined as twenty-four hours measured from midnight to the next midnight.
- 16.3 Injury to Persons and Property. Should OWNER or CONTRACTOR suffer injury or damage to its person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this Section shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

- 16.4 Cumulative Duties and Rights. 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 not to be construed in any way as a limitation of any rights and remedies available by Laws and Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Section shall 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.
- 16.5 Assignment. Except as provided for in Section 6.8, CONTRACTOR may not delegate its duty of performance or assign all or part of its obligations or rights under the Contract Documents without OWNER's prior written consent. Subject to the restrictions of the preceding sentence, the Contract Documents are binding upon OWNER and CONTRACTOR, their successors or assigns.
- 16.6 Governing Law. The Contract Documents shall be interpreted in accord with and governed by the laws of the State of Indiana. If any provision of the Contract Documents is found to be in conflict with those laws, the remaining provisions of the Contract Documents shall remain in effect. OWNER and CONTRACTOR agree that any litigation associated with or arising from this Agreement shall be filed with a court of competent jurisdiction within the State of Indiana.
- 16.7 Salvage of Existing Equipment and Materials. Unless otherwise provided all existing equipment and materials as listed in the Technical Specifications, removed from existing facilities shall remain the property of OWNER. Such equipment and materials shall be stored on-site at locations identified by CONSTRUCTION INSPECTOR. All other existing equipment and materials removed from existing facilities shall be the property of CONTRACTOR and shall be removed from the site.
- 16.8 English Language Requirement. All submittals, including, but not limited to, all Working Drawings, Shop Drawings, catalog cuts, manufacturers' recommendations, and assembly and maintenance instructions shall only be written in the English language.
- 16.9 Trade Practice. In the event of any inconsistencies between the requirements of the Contract Documents and normal practice in the trade, the requirements of the Contract Documents shall control.
- 16.10 Cross-References. Cross-references in the Contract Documents are not intended as complete lists of related requirements specified elsewhere. The absence of a cross-reference to another Section of the Contract Documents should not be deemed or construed to indicate that such other Section does not specify related requirements where the two Sections, read together, indicate otherwise.
- 16.11 Accounting Records. CONTRACTOR shall maintain proper accounting records for the work to be performed under this Agreement and shall provide an accounting for all charges and expenditures as may be necessary for auditing purposes. All such records shall be subject to examination and inspection by OWNER representatives at reasonable hours.
- 16.12 U.S. Products/Supplies.
- 16.12.1 Steel or Foundry Products. In accordance with Indiana Code 5-16-8, if steel or foundry

products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Reference is hereby made to such statute for definitions applicable to this Section. OWNER may not authorize or make any payment to CONTRACTOR unless OWNER is satisfied that CONTRACTOR has fully complied with this provision.

16.12.2 Supplies Manufactured in the United States. Unless otherwise specified herein and in accordance with Indiana Code 5-22-15-21 and Municipal Code Section 202-204, CONTRACTOR shall use U.S. supplies in the performance of the Work. "Supplies" shall include equipment, goods and materials.

16.13 Non-Discrimination.

16.13.1 CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this Section shall be regarded as a material breach of this Agreement.

16.13.2 CONTRACTOR certifies for itself and all its Subcontractors compliance with existing laws of the State of Indiana and the United States regarding (i) prohibition of discrimination in employment practices on the basis of race, sex, creed, color, religion, national origin, ancestry, age, handicap, disabled veteran status and Vietnam era veteran status; and (ii) the utilization of Minority and Women Business Enterprises. CONTRACTOR further certifies that it has formulated its own Affirmative Action Plan for recruitment, training and employment of minorities and women, including goals and timetable and (ii) strongly encourages the use of small businesses, minority-owned businesses and women-owned businesses in its operations.

16.13.3 CONTRACTOR further agrees (i) That in the hiring of employees for the performance of work under this Agreement or any sub-agreement hereunder, no CONTRACTOR, or Subcontractor, nor any person acting on behalf of such CONTRACTOR or Subcontractor, shall by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates; (ii) That no CONTRACTOR, Subcontractor, or any person on its behalf, shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, color, sex, national origin or ancestry; (iii) That there may be deducted from the amount payable to CONTRACTOR, by OWNER, under this Agreement, a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and (iv) That this Agreement may be canceled or terminated by OWNER and all money due or to become due hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this Section of the Agreement.

16.13.4 CONTRACTOR shall advise OWNER, not less frequently than monthly, of the status of its compliance with the applicable MBE, WBE, and VBE requirements and goal achievement. At a minimum, the latter shall identify the completion date and actual final dollar value of Work completed pursuant to each MBE, WBE and VBE subcontract. Any and all changes in previously reported anticipated MBE, WBE and VBE utilization shall be reported to OWNER promptly, in writing, with appropriate documentation and reasons. If OWNER determines that CONTRACTOR has failed to comply with the terms of the Mayor's Executive Order #1, 1987; President's Executive Order #11246; Code of Indianapolis and Marion County, Chapter 581, I.C. 5-16-7, Contract Documents, or has been adjudged in violation of any applicable State or Federal law, OWNER shall serve written notice of such non-compliance on CONTRACTOR. CONTRACTOR shall be responsible for notifying any subcontractor or supplier who is not in compliance.

16.13.5 Upon request by OWNER, CONTRACTOR shall meet with OWNER within five (5) working days of the written notice in order to determine a method of correcting the deficiencies and the time period within which such remedy shall be affected. If the remedy is not agreed upon within five (5) working days of the required notice, OWNER shall prescribe the remedy by which deficiencies shall be corrected and notify CONTRACTOR in writing of such determination. If CONTRACTOR does not correct the deficiencies in the manner prescribed by OWNER within thirty (30) calendar days, OWNER may impose one or more of the following sanctions:

- .1 Cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, including but not limited to withholding any progress payment or any other monies payable or due under the contract, for failure of CONTRACTOR or its subcontractor to comply with the provisions of this Section 16.13.
- .2 Reserve the right to review further contracts, or extensions or other modifications of existing contracts, with CONTRACTOR to ascertain whether or not CONTRACTOR has satisfied the standards and procedures as established by OWNER, and that CONTRACTOR has established and will implement personnel and employment policies that comply with the provisions of this Section 16.13.
- .3 Deem CONTRACTOR to be a non-responsible bidder in the award of any contracts by the City of Indianapolis for which bids are required or solicited, until such a time CONTRACTOR can demonstrate the ability to become compliant pursuant to this Section 16.13.

16.14 Operating Instructions. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR, through qualified individuals, shall adequately instruct designated employees of OWNER in the operation and care of all equipment installed hereunder, except for equipment that may be furnished by

OWNER. CONTRACTOR shall also furnish and deliver to CONSTRUCTION INSPECTOR within forty-five (45) days of the Shop Drawing approval date, five (5) complete sets for permanent files, identified in accordance with Section 6.22, of instructions, technical bulletins and any other printed matter, such as diagrams, prints or drawings, containing full information required for the proper operation, maintenance and repair of the equipment installed and the ordering of spare parts, except for equipment that may be furnished by OWNER.

16.15 Operation and Maintenance Manual. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall prepare and submit to CONSTRUCTION INSPECTOR five (5) copies of an Operation and Maintenance (O&M) Manual for all equipment and associated control systems furnished and installed under this Contract. When the work reaches sixty-five (65) to seventy (70) percent completion CONTRACTOR shall submit to CONSTRUCTION INSPECTOR for approval by ENGINEER two (2) copies of the manual with all specified material that is available at that time. The submittal shall accompany CONTRACTOR's partial payment request for the specified completion. Within thirty (30) days after ENGINEER's approval of the two-copy submittal, CONTRACTOR shall furnish to CONSTRUCTION INSPECTOR the five (5) copies of the manual. Appropriate space shall be left in the manual for material not available at the time of submittal. All missing material for the manual shall be submitted prior to the request for final payment.

16.15.1 Each copy of the manual shall be prepared and arranged as follows:

- .1 One copy of each manufacturer's operation, lubrication and maintenance instructions and spare parts list for all equipment and controls furnished. All equipment operating, lubrication and maintenance instructions and procedures and parts lists shall be furnished on 8 1/2 x 11 inch commercially printed or typed forms. Such forms shall include equipment name, serial number and other identifying references.
- .2 List of electrical relay settings and control and alarm contact settings.
- .3 Electrical interconnection wiring diagram for equipment furnished including all control and lighting systems.

16.15.2 Each copy of the manual shall be assembled in one or more binders, each with the title page, typed table of contents, and heavy section dividers with copper reinforced holes and numbered plastic index tabs. Each manual shall be divided into sections paralleling the "Workmanship and Materials" equipment specifications. Binders shall be 3-ring, hard-back Type No. S43772 as manufactured by Marshall-Jackson Co., Chicago, Illinois, or equal. All loose data shall be punched for binding and composition and printing shall be arranged so that punching does not obliterate any data. The cover and binding edge of each manual shall have the project title, and manual title printed thereon, all as furnished and approved by ENGINEER.

- 16.15.3 All operating and maintenance material that comes bound by the equipment manufacturer shall be left that way. The appropriate Sections of CONTRACTOR's O&M Manual shall cross-reference the manufacturer's bound manuals.
- 16.15.4 Where more than one (1) binder is required they shall be labeled Vol. 1, Vol. 2, and so on. The table of contents for the entire set, identified by volume number, shall appear in each binder.
- 16.15.5 The five (5) copies of the manuals and data included therein shall be provided in conformance with the subsection headed "Working Drawings" and, in addition, to the requirements of the Technical Specifications Workmanship and Materials Section. The costs of the Operation and Maintenance Manual shall be included in the lump sum Contract Price and no separate payment shall be made therefore. The Operation and Maintenance Manual shall be included as a separate item in CONTRACTOR's schedule of values.
- 16.16 Service of Manufacturer's Representatives. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, the Contract Price shall include the costs of furnishing competent and experienced engineers, superintendents or other technically qualified representatives who shall represent equipment manufacturers and shall assist CONTRACTOR, when required, to install, adjust, test and place in operation equipment in conformity with the Contract Documents. When equipment is ready for permanent operation, such engineers, superintendents or representatives shall make all adjustments and tests required by ENGINEER to prove that such equipment is in proper and satisfactory operating condition, and shall instruct such personnel as may be designated by OWNER in the proper operation and maintenance of such equipment.
- 16.17 Water. Unless otherwise specified in the Special Conditions, Technical Specifications or noted on the Contract Drawings, CONTRACTOR shall provide, at its expense, the necessary water supply for CONTRACTOR's activities, and shall, if necessary, provide and lay necessary water lines from existing mains to the place where such water service is required, and shall secure all necessary permits and pay for all hookups, meters, and taps to water mains or hydrants and for all water used at the established rates.
- 16.18 Light and Power. CONTRACTOR shall provide, at its own expense, temporary lighting and power facilities required for the proper prosecution and inspection of the Work, unless specified otherwise in the Special Conditions, Technical Specifications or noted on the Contract Drawings. CONTRACTOR shall meter and pay for CONTRACTOR's share of all power utilized.
- 16.19 Prevention, Control and Abatement of Erosion and Water Pollution. CONTRACTOR shall be responsible for prevention, control and abatement of erosion, siltation and water pollution resulting from construction of the project until Final Acceptance of the project.

- 16.19.1 CONTRACTOR shall provide, install, construct, and maintain coverings, mulching, sodding, sand bagging, berms, slope drains, sedimentation structures, or other devices necessary to meet OWNER, State and Federal regulatory agency codes, rules and laws.
- 16.19.2 CONTRACTOR shall take sufficient precautions to prevent pollution of adjacent rivers and streams with fuels, oils, bitumens, or other harmful materials. Also, it shall conduct and schedule its operations so as to avoid or otherwise minimize pollution or siltation of the waters.
- 16.19.3 Storm drainage facilities, both open and closed conduit, serving the construction area shall be protected by CONTRACTOR from pollutants and contaminants. If it is determined that siltation of drainage facilities has resulted due to the project, CONSTRUCTION INSPECTOR will advise CONTRACTOR to remove and properly dispose of the deposited material. Should CONTRACTOR fail to or elect not to remove the deposits, OWNER will provide maintenance cleaning as needed and will charge all costs of such service against the amount of money due or to become due CONTRACTOR.
- 16.19.4 Excavated material shall not be deposited in streams, ditches or impoundments, or in a position close enough thereto to be washed away by high water or runoff.
- 16.19.5 CONTRACTOR shall not disturb lands or waters outside the limits of construction and public rights of way. The location of and methods of operation in all detention areas, borrow pits, material supply pits and disposal areas furnished by CONTRACTOR shall meet the approval of CONSTRUCTION INSPECTOR as being such that erosion during and after completion of the Work will not likely result in detrimental siltation or water pollution.
- 16.19.6 CONTRACTOR shall schedule operations such that the area of unprotected erodible earth exposed at any one time is not larger than the minimum area necessary for efficient construction operations; and the duration of exposed, uncompleted construction to the elements shall be as short as practicable.
- 16.19.7 Clearing and grubbing shall be so scheduled and performed that grading operations can follow immediately thereafter; and grading operations shall be so scheduled and performed that permanent erosion control features can follow immediately thereafter if conditions on the project permit.
- 16.19.8 The surface areas of unprotected erodible earth exposed by clearing and grubbing, excavation or filling operations shall be kept to a minimum. Immediate erosion or pollution control measures to prevent siltation or contamination of any stream, ditch or other impoundment or to prevent damage to the project or property outside the project limits shall be provided when necessary.

- 16.20 Air Borne Particulate. CONTRACTOR shall comply with Indianapolis Air Pollution Regulation 6-4 which is hereby incorporated into this Section by reference. A copy of such regulation will be furnished to CONTRACTOR upon request.
- 16.21 Professional Fees and Court Costs Included. Whenever reference is made to claims, costs, losses or damages recoverable by OWNER against CONTRACTOR or its surety, such recovery shall include, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.
- 16.22 Debarment and Suspension.
- 16.22.1 CONTRACTOR certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of CONTRACTOR.
- 16.22.2 CONTRACTOR shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
- 16.22.3 CONTRACTOR shall provide immediate written notice to OWNER if, at any time after entering into this Agreement, CONTRACTOR learns that its certification was erroneous when submitted, or CONTRACTOR is debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from or becomes ineligible for participation in any federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.
- 16.23 Compliance with E-Verify Program. Pursuant to IC 22-5-1.7, CONTRACTOR shall enroll in and verify the work eligibility status of all newly hired employees of CONTRACTOR through the E-Verify Program ("Program"). CONTRACTOR is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.
- 16.23.1 CONTRACTOR and its Subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that CONTRACTOR or its Subcontractor subsequently learns is an unauthorized alien. If CONTRACTOR violates this Section 16.23, OWNER shall require CONTRACTOR to remedy the violation not later than thirty (30) days after OWNER notifies CONTRACTOR. If CONTRACTOR fails to remedy the violation within the thirty (30) day period, OWNER shall terminate the contract for breach

of contract. If OWNER terminates the contract, CONTRACTOR shall, in addition to any other contractual remedies, be liable to OWNER for actual damages. There is a rebuttable presumption that CONTRACTOR did not knowingly employ an unauthorized alien if CONTRACTOR verified the work eligibility status of the employee through the Program.

- 16.23.2 If CONTRACTOR employs or contracts with an unauthorized alien but OWNER determines that terminating the contract would be detrimental to the public interest or public property, OWNER may allow the contract to remain in effect until OWNER procures a new contractor.
- 16.23.3 CONTRACTOR shall, prior to performing any work, require each Subcontractor to certify to CONTRACTOR that the Subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. CONTRACTOR shall maintain on file a certification from each Subcontractor throughout the duration of the Project. If CONTRACTOR determines that a Subcontractor is in violation of this Section 16.23, CONTRACTOR may terminate its contract with the Subcontractor for such violation. Such termination may not be considered a breach of contract by CONTRACTOR or the Subcontractor.

**END OF THIS SECTION**

## **ATTACHMENT A - MEDIATION PROCESS**

1. Purpose of Mediation. This clause provides for the use of Mediation as an alternative means of resolving disputes which may arise under this Agreement. The Mediation allows parties to make an educated assessment of their respective cases, and then engage in a negotiated settlement discussion. Such a procedure can save both parties valuable time, resources, and legal costs. Should a Mediation be utilized, a Mediation Agreement shall be drafted and adopted which will set forth the governing procedures and terms.
  
2. When to Invoke Mediation. If a dispute arises under the Agreement, either party may invoke this Mediation clause which will compel participation in Mediation for the purpose of resolving the dispute, provided all of the following conditions have been fulfilled:
  - a. The amount in controversy exceeds twenty thousand dollars (\$20,000.00), such amount having been determined by both parties as being the minimum disputed claim to justify use of the Mediation procedure;
  - b. Personnel from each party who were directly involved in the dispute at the operational level met and discussed the claim in good faith, but were unable to resolve the matter. The personnel of each party shall prepare and forward to the persons identified in the subparagraph 2(c) memorandum detailing the areas of dispute, why impasse was reached and that it is beyond their ability to resolve the dispute.
  - c. After complying with the subparagraph above, personnel from each party at a higher management level who were not directly involved in the dispute met and discussed the claim in good faith, but were unable to resolve the matter. The personnel of each party shall prepare and forward to the persons identified in paragraph 3 a memorandum detailing the areas of dispute, why impasse was reached and that it is beyond their ability to resolve the dispute; and
  - d. Written notice was given to the other party stating that the above three subparagraphs were complied with, and that the Mediation procedure is being invoked for the purpose of resolving the dispute.
  
3. Notice of Mediation. Notice of Mediation shall identify the dispute at issue and designate an executive officer or other management official who will represent the party at the proceeding. The designated official must possess the authority to settle the matter and have not been involved in the underlying facts in dispute.
  
4. Response to Notice of Mediation. Within 10 business days, the other party shall designate an appropriate official with authority to settle the dispute who will be its representative at the Mediation.

5. Scheduling. No later than 30 days from the date of the notice of the Mediation, the parties' designated representatives and/or their attorneys shall meet to discuss the following:
  - a. Settlement status of the dispute;
  - b. Schedule by which drafts of a Mediation Agreement are to be submitted, and a date by which the Mediation Agreement will be finalized;
  - c. Schedule for Mediation discovery and other preparatory matters the parties deem necessary;
  - d. Whether a neutral advisor shall be employed in the Mediation and, if so, by what means he/she shall be selected; and
  - e. Time, place, and schedule of the Mediation hearing.

The Mediation Agreement will be finalized and executed by both parties no later than 60 days after the notice of the Mediation. The Mediation hearing will be held within 120 days after the notice of the Mediation unless extended by mutual consent of the parties.
6. Mediation as Condition Precedent to Arbitration or Litigation. Submission of a dispute under this Agreement to a Mediation procedure shall be a condition precedent to filing arbitration or litigation on any dispute exceeding the amount specified above. Failure to comply with this condition precedent shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and constitute a breach of this clause.
7. Refusal to Participate In Mediation. Refusal of a party to participate in mediation in good faith shall not be established unless:
  - a. All of the specified conditions set forth in paragraph 2 herein have been fulfilled.
  - b. 30 days have lapsed since initial written notice of the Mediation was given without an affirmative response.
  - c. Refusal to participate in the Mediation shall be in contravention of the parties' express intention to implement this alternative means of dispute resolution and constitutes a breach of this clause.
8. Filing Arbitration or Litigation. No litigation or arbitration or any other binding action shall be initiated by either party unless:
  - a. The amount in controversy is less than or equal to the amount specified paragraph 2 above; or

- b. Despite compliance with this Mediation clause, one party is deemed to have refused (paragraph 7 above) to participate in the Mediation; or
  - c. Both parties agree in writing that they intend not to implement the Mediation for the particular dispute in question; or
  - d. The Mediation procedure has been completed and 30 days have elapsed since the actual Mediation hearing; or
  - e. Litigation must be filed before the Mediation to comply with the Statute of Limitations on a disputed issue.
9. Dismissal/Stay of Litigation. If one party has filed litigation on a dispute which is otherwise covered by this Mediation clause and which does not meet the exceptions set forth in paragraph 8 herein, the other party may properly seek to dismiss the litigation at its discretion for the purpose of conducting the Mediation as a condition precedent to litigation. If litigation was filed for the purpose set forth in subparagraph 8(e) herein, the filing party shall seek a stay for the purpose of conducting a Mediation. The stay provided for in this Paragraph shall continue for a period of 30 days after completion of the Mediation hearing. The purpose of this 30-day period is to permit the parties full opportunity to discuss settlement.