

GENERAL CONDITIONS

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1. DEFINITIONS

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA - Written or graphic instruments issued prior to the time of opening the bids which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarification or corrections.
- 1.3 AGREEMENT - Contract between the OWNER and CONTRACTOR regarding the PROJECT.
- 1.4 BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.5 BIDDER - Any person, firm or corporation submitting a BID for the WORK.

- 1.6 BONDS - Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.
- 1.7 CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion or revision of the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- 1.8 CONTRACT DOCUMENTS - The contract, consisting of the documents listed in Article 7 of the AGREEMENT.
- 1.9 CONTRACT PRICE - The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.10 CONTRACT TIME - the number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.11 CONTRACTOR - The person, firm or corporation with whom the OWNER has executed the Agreement.
- 1.12 DRAWINGS - The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ARCHTECT.
- 1.13 ARCHITECT- The person, firm or corporation named as such in the CONTRACT DOCUMENTS.
- 1.14 FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE, or an extension of the CONTRACT TIME, issued by the OWNER to the CONTRACTOR during construction.
- 1.15 NOTICE OF AWARD - The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.
- 1.16 NOTICE TO PROCEED - Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK. This may be issued in conjunction with a WORK ORDER.
- 1.17 OWNER - A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

- 1.18 PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
- 1.19 PROJECT COORDINATOR - The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.
- 1.20 SHOP DRAWINGS - All drawings, diagrams, illustration, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, MANUFACTURER, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
- 1.21 SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship.
- 1.22 SUBCONTRACTOR - An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.
- 1.23 SUBSTANTIAL COMPLETION - That date, when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
- 1.24 SUPPLEMENTARY GENERAL CONDITIONS - Modifications to adapt the General Conditions to the specific requirements of the Project and that may be imposed by applicable federal, state, and local laws.
- 1.25 SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
- 1.26 WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.
- 1.27 WRITTEN NOTICE - Any notice to any party of the AGREEMENT relative to any part of this AGREEMENT shall be in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party or his authorized representative on the WORK.

2. ADDITIONAL INSTRUCTION AND DETAIL DRAWINGS

2.1 The CONTRACTOR may be furnished additional instruction and detail drawings, by the ARCHITECT, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required, and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 It is understood and agreed that the CONTRACTOR had, by careful examination, satisfied itself as to the nature and location of the WORK, the conformation of the ground, the character of equipment and facilities needed

preliminary to and during the execution of the WORK, the character, quality and quantity of the materials to be encountered, the general and local conditions, and all other matters which can, in any way, affect the WORK under this CONTRACT.

- 4.3 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.
- 4.4 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ARCHITECT, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.
- 4.5 Moreover, CONTRACTOR acknowledges that, based upon the CONTRACTOR'S examination of the DRAWINGS and SPECIFICATIONS which comprise a part of the CONTRACT DOCUMENTS, the CONTRACTOR has not observed anything in the CONTRACT DOCUMENTS indicating that same are incomplete or inconsistent or otherwise contain any error or omission that would cause the CONTRACTOR to be entitled to make any claim for increases in the Contract Sum or the Contract Time.
- 4.6 The intent of the CONTRACT DOCUMENTS is to include all items necessary for the proper execution and completion of the WORK by the CONTRACTOR. The CONTRACT DOCUMENTS are complimentary, and what is required by one shall be as binding as if required by all; performance by the CONTRACTOR shall be required to the extent inferable from the Contract Documents as being necessary to produce the intended results given the CONTRACTOR'S experience in general construction. The SPECIFICATIONS are written in the imperative and abbreviated form. The imperative language is directed to the CONTRACTOR, unless specifically noted otherwise. Any incomplete sentences shall be completed by inserting "shall", "the CONTRACTOR shall", "shall be" and similar mandatory phrases by inference in the same manner as they are applied to notes on the DRAWINGS. The words "shall be" shall be supplied by inference where a colon (:) is used within sentences or phrases. Except as worded to the contrary, all indicated requirements shall be performed whether stated imperatively or otherwise. Further, whenever the term "WORK Includes" or "Section Includes" is used as an article or paragraph heading in a SPECIFICATIONS section, it is merely a

listing of the significant items described within the section and is not intended to limit the scope of the section or to imply a trade responsibility.

4.7 Conflicts or discrepancies among the CONTRACT DOCUMENTS shall be resolved in the following order of priority:

1. The AGREEMENT;
2. AMENDMENT and revisions of later date take precedence over those of earlier date;
3. The SUPPLEMENTARY and Other Conditions;
4. The GENERAL CONDITIONS;
5. The Project Manual;
6. DRAWINGS and SPECIFICATIONS: DRAWINGS govern SPECIFICATIONS for quantity and location, and SPECIFICATIONS govern for quality and performance and in the event of an ambiguity in quantity or quality, the greater quantity and the better quality shall govern;
7. Figure dimensions govern scale dimensions and large scale DRAWINGS govern small scale DRAWINGS; and,
8. SUBMITTALS; if and only if OWNER concludes, in its sole discretion, that a conflict or discrepancy cannot be otherwise resolved.

5. SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prompt prosecution of the WORK as required by the CONTRACT DOCUMENTS. The OWNER shall promptly review all SHOP DRAWINGS.

5.2 When submitted for the OWNER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked, and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been reviewed by the OWNER. A copy of each processed SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER.

6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision,

temporary construction of any nature, and all other services and facilities of any nature, whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

- 6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the OWNER.
- 6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. INSPECTION AND TESTING

- 7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.
- 7.3 The CONTRACTOR shall provide, at the CONTRACTOR'S expense, the testing and inspection services required by the CONTRACT DOCUMENTS, unless otherwise noted.
- 7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR shall give the OWNER timely notice of readiness. The CONTRACTOR will then furnish the OWNER the required certificates of inspection, testing or approval.
- 7.5 Inspections, tests, or approvals by the OWNER or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The OWNER and his representatives will, at all times, have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR shall provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the OWNER, it shall, if requested by the OWNER, be uncovered for the OWNER'S observation and replaced by the CONTRACTOR at no increase in the CONTRACT PRICE.

8. SUBSTITUTIONS

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the OWNER, such material, article, or piece of equipment is of equal substance and function to that specified, the OWNER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deducted from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute shall be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. The CONTRACTOR shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof; however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the OWNER.

10. SURVEYS, PERMITS, AND REGULATIONS

- 10.1 The OWNER will furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.
- 10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- 10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall immediately notify the OWNER, in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

- 11.1 The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 11.2 The CONTRACTOR shall comply with all applicable laws, ordinances, rules regulations and orders of any public body having jurisdiction. The CONTRACTOR shall erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. The CONTRACTOR will notify owners of adjacent utilities when prosecution of the

WORK may affect them. The CONTRACTOR shall remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or anyone employed by 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 the CONTRACTOR.

- 11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the OWNER, shall act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the OWNER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER may thereupon be issued covering the changes and deviations involved.
- 11.4 The CONTRACTOR shall confine operations at the PROJECT site to areas permitted by law, ordinances, permits and this AGREEMENT and shall not unreasonably encumber the PROJECT site with materials or equipment.
- 11.5 The CONTRACTOR shall at all times keep the Property free from accumulation of waste materials or rubbish.

12. SUPERVISION BY CONTRACTOR

- 12.1 The CONTRACTOR shall supervise and direct the WORK. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR shall employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to, perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

- 13.1 The OWNER may, at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time

required for performance of the WORK, an equitable adjustment may be authorized by a CHANGE ORDER.

- 13.2 The OWNER may, at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the OWNER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or CONTRACT TIME, or both, in which event he shall give the OWNER WRITTEN NOTICE thereof within seven (7) calendar days after the receipt of the ordered change. Thereafter, the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or CONTRACT TIME within thirty (30) calendar days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

- 14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- (A) Unit Prices previously approved.
- (B) An agreed lump sum.
- (C) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the written NOTICE TO PROCEED.
- 15.2 The CONTRACTOR shall proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.
- 15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR shall pay, to the OWNER, the amount for liquidated damages as specified in

Section 4.2 of the AGREEMENT for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER:

15.4.1 To any preference, priority or allocation order duly issued by the OWNER;

15.4.2 To unforeseeable causes beyond the control and without the fault of negligence of the CONTRACTOR, restricted to acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in Sections 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the OWNER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) calendar days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

- 17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or
 - 17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.
- 17.2 The OWNER will promptly investigate the conditions, and if OWNER finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment may be made and the CONTRACT DOCUMENTS may be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder will not be allowed unless the CONTRACTOR has given the required WRITTEN NOTICE, provided that the OWNER may, if the OWNER determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

- 18.1 The OWNER may suspend the WORK, or any portion thereof, for a period of not more than ninety (90) calendar days or such further time, as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR, which notice will fix the date on which WORK shall be resumed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.
- 18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if the CONTRACTOR makes a general assignment for the benefit of CONTRACTOR'S creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of CONTRACTOR'S property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if the CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if the CONTRACTOR repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK, or if the CONTRACTOR otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and CONTRACTOR'S surety a minimum of ten (10) calendar days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and

machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method the OWNER may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess WILL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. Such costs incurred by the OWNER will be incorporated in a CHANGE ORDER.

- 18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 18.4 After ten (10) calendar days from delivery of a WRITTEN NOTICE to the CONTRACTOR, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the AGREEMENT. In such case, the CONTRACTOR will be paid for all WORK executed up to the date of termination.
- 18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) calendar days by the OWNER, or the WORK is suspended under an order of a court of competent jurisdiction for more than ninety (90) calendar days, or the OWNER fails to pay the CONTRACTOR substantially the sum requested within sixty (60) calendar days of approval and receipt of a request for payment by the OWNER, then the CONTRACTOR may, after thirty (30) calendar days from delivery of a WRITTEN NOTICE to the OWNER, such thirty (30) calendar day WRITTEN NOTICE also giving the OWNER an opportunity to cure any default, terminate the CONTRACT and recover from the OWNER payment for all WORK executed up to the date of termination. In addition and in lieu of terminating the CONTRACT, if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may, upon twenty (20) business days WRITTEN NOTICE to the OWNER, stop the WORK until the CONTRACTOR has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME, or both, to compensate for the costs and delays attributable to the stoppage of the WORK.
- 18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER to act within the time specified in the CONTRACT DOCUMENTS, including default cure time periods, or if no

time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, will be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays directly caused by the failure of the OWNER.

19. PAYMENTS TO CONTRACTOR

- 19.1 At least ten (10) calendar days before each progress payment falls due, but not more often than once a month, the CONTRACTOR shall submit to the OWNER a Partial Payment Estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the Partial Payment Estimate and supported by such data as the OWNER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect the OWNER'S interest therein, including applicable insurance. The OWNER will, within ten (10) business days after receipt of each partial payment estimate, either indicate in writing the OWNER'S approval of payment, or return the partial payment estimate to the CONTRACTOR indicating, in writing, the reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within thirty (30) calendar days of presentation to the OWNER of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. In accordance with Ark. Code Ann. § 22-9-604, the OWNER will retain five percent (5%) of the earned amount of the WORK progress shown on the partial payment estimate, excluding materials and equipment on hand but not installed, and upon certification by the OWNER that the WORK progress is fifty percent (50%) complete, based on the adjusted contract price, there will be no additional retainage on account of WORK completed, in which case the remaining progress payments prior to SUBSTANTIAL COMPLETION will be in an amount equal to one hundred percent (100%) of the WORK completed. Further, upon certification of SUBSTANTIAL COMPLETION of the WORK, the retained amount may be reduced to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.
- 19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably stored either at or near the site.

- 19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.
- 19.4 The OWNER will have the right to enter the Property for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.
- 19.5 Only upon completion of the WORK by the CONTRACTOR and acceptance of the WORK by the OWNER, and after the receipt of all lien waivers and other proper documentation from the CONTRACTOR, the OWNER will sign the final payment request as the OWNER'S certification that the WORK has been accepted by the OWNER under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, will be paid to the CONTRACTOR within thirty (30) calendar days of completion and final acceptance of the WORK by the OWNER.
- 19.6 The CONTRACTOR shall indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, where upon payment to the CONTRACTOR shall be resumed, in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment, so made by the OWNER, shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER will not be liable to the CONTRACTOR for any such payments made in good faith.
- 19.7 The CONTRACTOR warrants that upon submittal of a request for payment, all work for which payment has been received by the CONTRACTOR shall be free

and clear of liens, claims, security interests or encumbrances in favor of the CONTRACTOR, SUBCONTRACTORS, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the work or project.

19.8 Any payment to the CONTRACTOR by the OWNER, final or otherwise, shall not constitute an acceptance of any WORK not in accordance with the CONTRACT DOCUMENTS.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance, by the CONTRACTOR, of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to, or arising out of, this WORK. Any payment, however, final or otherwise, will not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BOND.

21. INSURANCE

21.1 Contractor's Liability Insurance: CONTRACTOR shall purchase and maintain, in a company or companies licensed to do business in the State of Arkansas, such commercial general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance and furnishing of the Work and 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:

21.1.1 Claims under workers or workmen's compensation, disability benefits, and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR'S employees;

- 21.1.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;
 - 21.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
 - 21.1.6 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;
 - 21.1.7 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; and
 - 21.1.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 24.
- 21.2 The insurance required by Section 21.1 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in Article 9 of the AGREEMENT, or required by law, whichever is greater. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing, defective Work in accordance with Section 28.1. In addition, CONTRACTOR shall maintain completed operations insurance for at least one year after date of final completion and furnish OWNER with evidence of continuation of such insurance at final completion.
- 21.3 The Contractor shall purchase and maintain in the name of the OWNER an Owner's and Contractor's Protective Liability Policy as will protect the OWNER against claims which may arise from operations under the contract. Coverage shall not exceed coverage of CONTRACTOR'S Commercial General Liability policy.
- 21.4 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

- 21.5 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workers' Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workers' Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.
- 21.6 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates and the insurance policies required by Section 21.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) calendar days' prior WRITTEN NOTICE has been given to the OWNER.

22. CONTRACT SECURITY

- 22.1 The CONTRACTOR shall, within ten (10) calendar days after the receipt of the NOTICE OF AWARD, furnish the OWNER with a Performance BOND and a Payment BOND, each in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If, at any time, a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of "Surety Companies Acceptable on Federal Bonds", CONTRACTOR shall, within ten (10) calendar days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made

until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

- 23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the AGREEMENT and the CONTRACT DOCUMENTS, or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

- 24.1 The CONTRACTOR shall indemnify and hold harmless the OWNER and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction.. of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- 24.2 In any and all claims against the OWNER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation of benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

25. SEPARATE CONTRACTS

- 25.1 The OWNER reserves the right to let separate contracts for this PROJECT. Each CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the OWNER any defects in such WORK that render it unsuitable for such proper execution and results.
- 25.2 The OWNER may perform additional WORK related to the PROJECT by itself, or the OWNER may let other contracts containing provisions similar to these. The

CONTRACTOR will afford the other CONTRACTORS, who are parties to such Contracts, or the OWNER, if the OWNER is performing the additional WORK itself, reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate the CONTRACTOR'S WORK with theirs.

- 25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, WRITTEN NOTICE thereof shall be given to the CONTRACTOR. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves the CONTRACTOR in additional expense or entitles the CONTRACTOR to an extension of the CONTRACT TIME, the CONTRACTOR may make a claim therefor as provided in Sections 13 and 14.

26. SUBCONTRACTING

- 26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.
- 26.2 All SUBCONTRACTORS and material suppliers utilized on this Project shall be experienced in the type of work required by the Project, reputable, qualified and shall be acceptable to the OWNER. The CONTRACTOR shall not award WORK to SUBCONTRACTOR(S) without prior written approval of the OWNER.
- 26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of the CONTRACTOR'S SUBCONTRACTORS and material suppliers on the Project, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by the CONTRACTOR.
- 26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.
- 26.5 Nothing contained in this CONTRACT will create any contractual relationship between any SUBCONTRACTOR, material supplier and the OWNER.

27. LAND AND RIGHTS-OF-WAY

- 27.1 Prior to issuance of NOTICE TO PROCEED, the OWNER will obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.
- 27.2 The OWNER will provide to the CONTRACTOR information which delineates and describes the lands owned by the OWNER and rights-of-way acquired by the OWNER.
- 27.3 The CONTRACTOR shall provide at the CONTRACTOR'S own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

28. GUARANTY

- 28.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of five (5) years from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees, for a period of five (5) years from the date of SUBSTANTIAL COMPLETION of the system, that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects, including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full effect throughout the guarantee period.

29. TAXES

- 29.1 The CONTRACTOR shall pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

END OF SECTION