

City of Portage

Contract
Conditions
and
Specifications

Part One

GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 -- DEFINITIONS

- 1.1 Addenda -- Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2 Agreement -- The written contract between the CITY and the CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3 Application for Payment -- The form accepted by the ENGINEER which is to be used by the CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4 Asbestos -- Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 Bid -- The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 Bidding Documents -- The advertisement or invitation to Bid, Instruction to Bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.7 Bidding Requirements -- The advertisement or invitation to Bid, Instructions to Bidders, and the Bid form.
- 1.8 Bonds -- Performance and payment bonds and other instruments of security.
- 1.9 Change Order -- A document recommended by the ENGINEER, which is signed by the CONTRACTOR and the CITY and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract times, issued on or after the Effective Date of the Agreement.
- 1.10 CITY -- The City of Portage, Michigan with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.
- 1.11 Contract Documents -- The Agreement, Addenda (which pertain to the Contract Documents) the bid submitted by the CONTRACTOR (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice

of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications by the ENGINEER issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

- 1.12 Contract Price -- The moneys payable by the CITY to the CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.13 Contract Times -- The numbers of days or the dates stated in the Agreement; (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by the written recommendation of final payment by the ENGINEER in accordance with paragraph 14.13.
- 1.14 Contractor -- The person, firm or corporation with whom the CITY has entered into the Agreement.
- 1.15 Defective -- An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the recommendation of final payment of the ENGINEER (unless responsibility for the protection thereof has been assumed by the CITY at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.16 Drawings -- The drawings which show the scope, extent and character of the Work to be furnished and performed by the CONTRACTOR and which have been prepared or approved by the ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
- 1.17 Effective Date of the Agreement -- The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.18 ENGINEER -- The person, firm or corporation named as such in the Agreement.
- 1.19 Consultant of the Engineer -- A person, firm or corporation having a contract with the ENGINEER to furnish services as independent professional associate or consultant of the ENGINEER with respect to the Project

- 1.20 Facility -- Any building, structure, utility or land that is built, constructed, installed or used in conjunction with municipal/governmental services.
- 1.21 Field Order -- A written order issued by the ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.
- 1.22 General Requirements -- Sections of Division 1 of the Specifications.
- 1.23 Hazardous Waste -- The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.24 Laws and Regulations; Laws or Regulations -- Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.25 Liens -- Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.26 Milestone -- A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.27 Notice of Award -- The written notice by the CITY to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, the CITY will sign and deliver the Agreement.
- 1.28 Notice to Proceed -- A written notice given by the CITY to the CONTRACTOR (with a copy to the ENGINEER) fixing the date on which the Contract Times will commence to run and on which the CONTRACTOR shall start to perform the obligations of the CONTRACTOR under the Contract Documents.
- 1.29 Partial Utilization -- Use by the CITY of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.30 PCB's - Polychlorinated biphenyls
- 1.31 Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous wastes and crude oils.
- 1.32 Project -- The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

- 1.33 Radioactive Material -- Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 USC Section 2001 et seq.) as amended from time to time.
- 1.34 Resident Project Representative -- The authorized representative of the ENGINEER who may be assigned to the site or any part thereof.
- 1.35 Samples -- Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.36 Shop Drawings -- All drawings, diagrams illustrations, schedules and other data or information which are specifically prepared or assembled by or for the CONTRACTOR and submitted by the CONTRACTOR to illustrate some portion of the Work.
- 1.37 Specifications -- Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.38 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.
- 1.39 Substantial Completion -- The Work (or a specified part thereof) has progressed to the point where, in the opinion of the ENGINEER as evidenced by a definitive certificate of Substantial Completion by the ENGINEER, it is sufficiently complete, in accordance with the Contract Documents, so that the Work, (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by a recommendation by the ENGINEER for final payment in accordance with paragraph 14.13. The terms "substantially complete" and substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 1.40 Supplementary Conditions -- The part of the Contract Documents which amends or supplements these General Conditions.
- 1.41 Supplier -- A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with the CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the CONTRACTOR or any Subcontractor.
- 1.42 Underground Facilities -- All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials; electricity, gases, steam, liquid petroleum products, telephone or

other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

- 1.43 Unit Price Work -- Work to be paid for on the basis of unit prices.
- 1.44 Work -- The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction and performing or furnishing services and furnishing documents, all as required by the Contract Documents.
- 1.45 Work Change Directive -- A written directive to the CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by the CITY and recommended by the ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in Paragraph 10.2.
- 1.46 Written Amendment -- A written amendment of the Contract Documents, signed by the CITY and the CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 -- PRELIMINARY MATTERS

Delivery of Bonds:

- 2.1 When the CONTRACTOR delivers the executed Agreements to the CITY, the CONTRACTOR shall also deliver to the CITY such Bonds as the CONTRACTOR may be required to furnish in accordance with paragraph 5.1

Copies of Documents

- 2.2 The CITY shall furnish to the CONTRACTOR one copy (unless otherwise specified in the Supplementary Conditions) of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.

Commence of Contract Times; Notice to Proceed

- 2.3 The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day of the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Work

- 2.4 The CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction

- 2.5 Before undertaking each part of the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the ENGINEER any conflict, error, ambiguity or discrepancy which the CONTRACTOR may discover and shall obtain a written interpretation of clarification from the ENGINEER before proceeding with any Work affected thereby; however, the CONTRACTOR shall not be liable to the CITY or the ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless the CONTRACTOR knew or reasonably should have known thereof.

- 2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), the CONTRACTOR shall submit to the ENGINEER for review:
- 2.6.1 a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2.6.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittals;
 - 2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 2.7 Before any Work at the site is started, the CONTRACTOR and the CITY shall deliver to the City certificates of insurance which the CONTRACTOR is required to purchase and maintain in accordance with paragraphs 5.4, 5.6, and 5.7.

Preconstruction Conference:

- 2.8 Within twenty days after the Contract Time starts to run, but before any Work at the site is started, a conference attended by the CONTRACTOR, the ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

- 2.9 Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by the CONTRACTOR, the ENGINEER and others as appropriate will be held to review for acceptability to the ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. The CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to the CONTRACTOR until the schedules are submitted to and acceptable to the ENGINEER as provided below. The progress schedule will be acceptable to the ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on the ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with the relieve the CONTRACTOR from the full responsibility of the CONTRACTOR therefor. The schedule of the Shop Drawing and Sample submissions by the CONTRACTOR will be

acceptable to the ENGINEER as providing a workable arrangement for reviewing and processing the required submittals, the schedule of values of the CONTRACTOR will be acceptable to the ENGINEER as to form and substance.

ARTICLE 3 -- CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

Intent

- 3.1 The Contract Documents comprise the entire agreement between the CITY and the 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 will be construed in accordance with the law of the State of Michigan.
- 3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by the ENGINEER as provided in paragraph 9.4.
- 3.3 Reference to Standards and Specifications of Technical Societies: Reporting and Resolving Discrepancies.
- 3.3.1 Reference to standards, 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, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 3.3.2 If, during the performance of the Work, the CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, the CONTRACTOR shall report it to the ENGINEER in writing at once, and the CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that the CONTRACTOR shall not be liable to the CITY or the ENGINEER for failure to report any such conflict, error,

ambiguity or discrepancy unless the CONTRACTOR knew or reasonably should have known thereof.

3.3.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the contract Documents and:

3.3.3.1 the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the contract documents); or

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

No provision of any such standards, specification, manual, code or instruction shall be effective to change the duties and responsibilities of the CITY, the CONTRACTOR, or the ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract documents, nor shall it be effective to assign the CITY, the ENGINEER, or any of the Consultants, agents, or employees of the ENGINEER of any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4 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 a requirement, direction, review of judgment of the ENGINEER as to the Work, it is intended that such requirement, direction, review of judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of an d information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the 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 paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

- 3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- 3.5.1 a formal Written Amendment,
 - 3.5.2 a Change Order (pursuant to paragraph 10.4), or
 - 3.5.3 a Work Change Directive (pursuant to paragraph 10.1).
- 3.6 In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, on one or more of the following ways.
- 3.6.1 a Field order (pursuant to paragraph 9.5),
 - 3.6.2 the approval of the ENGINEER of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
 - 3.6.3 the written interpretation or clarification of the ENGINEER (pursuant to paragraph 9.4).

Reuse of Documents:

- 3.7 The CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the CITY (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the ENGINEER or the Consultant of the ENGINEER, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of the CITY and the ENGINEER and specific written verification or adoption by the ENGINEER.

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

4.1 The CITY 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 for the use of the CONTRACTOR. Upon reasonable written request, the CITY shall furnish the CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and the interest of the CITY therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. The CITY shall identify any encumbrances of restrictions not of general application but specifically related to use of lands so furnished with which the CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the CITY unless otherwise provided in the Contract Documents. If the CONTRACTOR and the CITY are unable to agree on entitlement or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in furnishing these lands, rights-of-way or easements of the CITY, the CONTRACTOR may make claim therefor as provided in Articles 11 and 12. The 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:

4.2.1 Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

4.2.1.1 Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by the ENGINEER in preparing the Contract Documents; and

4.2.1.2 Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by the ENGINEER in preparing the Contract Documents.

4.2.2 Limited Reliance by the CONTRACTOR Authorized; Technical data. The CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data,

the CONTRACTOR may not rely upon or make any claim against the CITY, the ENGINEER, or any of the Consultants of the ENGINEER with respect to:

- 4.2.2.1 the completeness of such reports and drawings for the purposes of the CONTRACTOR, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by the CONTRACTOR and safety precautions and programs incident thereto, or
- 4.2.2.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3 any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3 Notice of Differing Subsurface of Physical Conditions: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

- 4.2.3.1 is of such a nature as to establish that any "technical data" on which the CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate or
- 4.2.3.2 is of such a nature as to require a change in the Contract Documents, or
- 4.2.3.3 differs materially from that shown or indicated in the Contract Documents, or
- 4.2.3.4 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; then

The CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing contains affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify the CITY and the ENGINEER in writing about such condition. The CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4 The Review of the ENGINEER: The ENGINEER will promptly review the pertinent conditions, determine the necessity of the CITY in obtaining additional exploration or tests with respect thereto and advise the CITY in

writing (with a copy to the CONTRACTOR) of the finding and conclusions of the ENGINEER.

4.2.5 Possible Contract Documents Change: If the ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6 Possible Price and Times Adjustments: An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in the cost of the CONTRACTOR, or time required for performance of the Work; subject, however to the following:

4.2.6.1 such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2 a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3 with respect to Work that is paid for on a Unit Price Basis, any adjustment on Contract Price will be subject to the provisions of paragraphs 9.2 and 11.9; and

4.2.6.4 the CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Time if:

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

4.2.6.4.2 the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for the CONTRACTOR prior to the making of such final commitment by the CONTRACTOR; or

4.2.6.4.3 The CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If the CITY and the CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, the CITY, the ENGINEER, and the Consultants of the ENGINEER shall not be liable to the CONTRACTOR for any claims, cost, losses or damages sustained by the CONTRACTOR on or in connection with any other project or anticipated project.

4.3 Physical Conditions--Underground Facilities:

4.3.1 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 the CITY or the ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1 The CITY and the ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2 The cost of all of the following will be included in the Contract Price and the CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2 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, the CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing contains affected thereby of performing any Work in connection therewith (excepting an emergency as required by paragraph 6.23), identify the Owner of such Underground Facility and give written notice to that Owner and to the CITY and the ENGINEER. The ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If the ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. The CONTRACTOR shall be allowed an increase in the Contract Price or an

extension of the Contract Times, 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 that the CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If the CITY and the CONTRACTOR are unable to agree on entitlement or the amount or length of any such adjustment in the Contract Price or Contract Times, the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, the CITY, the ENGINEER, and the Consultants of the ENGINEER shall not be liable to the CONTRACTOR for any claims, costs, losses or damages incurred or sustained by the CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

- 4.4 The CITY shall provide engineering surveys to establish reference points for construction which in the judgment of the ENGINEER are necessary to enable the CONTRACTOR to proceed with the Work. The CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocation without the prior written approval of the CITY. The CONTRACTOR shall report to the ENGINEER whenever 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.
- 4.5 Asbestos, PCB's, Petroleum, Hazardous Waste or Radioactive Material:
- 4.5.1 The CITY shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. The CITY shall not be responsible for any such materials brought to the site by the CONTRACTOR, Subcontractor, Suppliers or anyone else for whom the CONTRACTOR is responsible.
- 4.5.2 The CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify the CITY and the ENGINEER (and thereafter confirm such notice in writing). The CITY shall promptly consult with the ENGINEER concerning the necessity for the CITY to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. The CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after the CITY has obtained any required permits related thereto

and delivered to the CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If the CITY and the CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by the CONTRACTOR to be resumed, either party may make claim therefor as provided in Articles 11 and 12.

- 4.3.5 If after receipt of such special written notice the CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the CITY may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If the CITY and the CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. The CITY may have such deleted portion of the Work performed by own forces of the CITY or others in accordance with Article 7.
- 4.5.4 To the fullest extent permitted by Laws and Regulations, the CITY shall indemnify and hold harmless the CONTRACTOR, Subcontractors, the ENGINEER, the Consultants of the ENGINEER and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate the CITY to indemnify any person or entity from and against the consequences of the negligence of that person or entity.
- 4.5.5 The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 -- BONDS AND INSURANCE

Performance, Payment and Other Bonds:

- 5.1 The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all the obligations of the CONTRACTOR under the Contract Documents. The CONTRACTOR shall also furnish a maintenance bond in an amount equal to twenty-five (25%) percent of the contract price. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, US Treasury department. All Bonds signed by an agent must be accompanied by a certified copy of sure authority of the agent to act.
- 5.2 If the surety on any Bond furnished by the CONTRACTOR is declared as bankrupt or becomes insolvent or its right to do business is terminated in the State of Michigan or it ceases to meet the requirements of paragraph 5.1, the CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to the City.
- 5.3 LICENSED SURETIES AND INSURERS; CERTIFICATES OF INSURANCE:
- 5.3.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by the CITY or the CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Michigan to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.
- 5.3.2 The CONTRACTOR shall deliver to the CITY, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by the CITY or any other additional insured) which the CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4.

Liability Insurance of the CONTRACTOR

- 5.4 The CONTRACTOR shall purchase and maintain such liability and other insurance

as is appropriate for the Work being performed and furnished and as well provide protection from claims set forth below which may arise out of or result from the performance and furnishing of the Work of the CONTRACTOR, and other obligations under the Contract Documents of the CONTRACTOR, whether it is to be performed or furnished by the CONTRACTOR, any Subcontractor or Supplier, or 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 claims under workers' compensation, disability benefits and other similar employee benefit acts;
- 5.4.2 claims for damages because of bodily injury, occupational sickness or disease, or death of employees of the CONTRACTOR;
- 5.4.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the employees of the CONTRACTOR;
- 5.4.4 claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (ii) by any other person for any other reason;
- 5.4.5 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; and
- 5.4.6 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.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

- 5.4.7 with respect to insurance required by paragraphs 5.4.3 through 5.4.7 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) the CITY, the ENGINEER, the Consultants of the ENGINEER and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insured;
- 5.4.8 include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

- 5.4.9 include completed operations insurance;
- 5.4.10 include contractual liability insurance covering the indemnity obligations of the CONTRACTOR under paragraphs 6.12, 6.16 and 6.31 through 6.33;
- 5.4.11 contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to the CITY and the CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);
- 5.4.12 remain in effect at least until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and
- 5.4.13 with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and the CONTRACTOR shall furnish the CITY and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to the CITY and any such additional insured of continuation of such insurance at final payment and one year thereafter).

Liability Insurance of the CITY

- 5.5 In addition to the insurance required to be provided by the CONTRACTOR under paragraph 5.4, the CITY, at the option of the CITY, may purchase and maintain at the expense of the CITY, liability insurance of the CITY as will protect the CITY against claims which may arise from operations under the Contract Documents.

Property Insurance (Builders Risk):

- 5.6 Unless otherwise excluded in the Supplementary Conditions, the CONTRACTOR shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 5.6.1 include the interests of the City, the CONTRACTOR, Subcontractors, the ENGINEER, Consultants of the ENGINEER and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

- 5.6.2 be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris, removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions.
 - 5.6.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 - 5.6.4 cover materials and equipment stored at the site or at another location that was agreed to in writing by the CITY prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by the ENGINEER; and
 - 5.6.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by the CITY, the CONTRACTOR, and the ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.
- 5.7 The CONTRACTOR shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of the CITY, the CONTRACTOR, Subcontractors, the ENGINEER, the Consultants of the ENGINEER, and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.
- 5.8 All of the policies of insurance (and the certificates or other evidence thereof required to be purchased and maintained by the CONTRACTOR in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days prior written notice has been given to the CITY and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.
- 5.9 The CITY shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by the CONTRACTOR Subcontractor or others suffering any such loss

and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the expense of the purchaser.

- 5.10 If the CITY requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, the CONTRACTOR shall, if possible, include such insurance, and the cost thereof will be charged to the CITY by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, the CONTRACTOR shall in writing advise the CITY whether or not such other insurance has been procured by the CONTRACTOR.

5.11 Waiver of Rights

- 5.11.1 The CITY and the CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect the CITY, the CONTRACTOR, Subcontractors, ENGINEER, Consultants of the ENGINEER and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. The CONTRACTOR waive all rights against the CITY, its officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, the ENGINEER, the Consultants of the ENGINEER and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damage so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by the CITY as trustee or otherwise payable under any policy so issued.

Receipt and Application of Insurance Proceeds

- 5.12 Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with the City and made payable to the CITY as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. The CITY shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13 The City as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to exercise of this power to the CITY. If such objection be made, the CITY as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, the CITY, as fiduciary, shall adjust and settle the loss with the insurers and if required in writing by any party in interest, the CITY as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace

5.14 If the CITY has any objection to the coverage afforded by the provisions of the Bonds or insurance required to be purchased and maintained under this Contract, the City shall notify the CONTRACTOR in writing as soon as possible after receipt of the certificates (or other evidence requested) required by paragraph 2.7. The CONTRACTOR shall provide to the CITY such additional information with respect of insurance provided as the CITY may reasonably request. If the CONTRACTOR does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, the CITY shall notify the CONTRACTOR in writing of such failure to purchase and maintain, and if not corrected, the CITY may elect to obtain equivalent bonds or other insurance to protect such interests of the CITY at the expense of the CONTRACTOR and a Change Order shall be issued to adjust the contract price accordingly. As an alternative, the CITY may treat failure of the CONTRACTOR to provide or maintain such bonds or insurance as a termination pursuant to paragraph 15.2 of this contract.

Partial Utilization--Property Insurance

5.15 If the CITY 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 paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6--RESPONSIBILITY OF THE CONTRACTOR

Supervision and Superintendence

- 6.1 The CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. The CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.2 The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice of the CITY and the ENGINEER except under the extraordinary circumstances. The superintendent will have the representative of the CONTRACTOR at the site and shall have authority to act on behalf of the CONTRACTOR. All communications to the superintendent shall be as binding as if given to the CONTRACTOR.

Labor, Materials and Equipment

- 6.3 The CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours.
- 6.4 Unless otherwise specified in the General Requirements, the 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, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.5 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 Specifications shall expressly run to the benefit of the CITY. If required by the ENGINEER, the 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 instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

6.6 The CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1 The CONTRACTOR shall submit to the ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.6.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7 Substitutes and "Or-Equal" Items:

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

6.7.1.1 "Or-Equal": If in the sole discretion of the ENGINEER an item of material or equipment proposed by the CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by the ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in the sole discretion of the ENGINEER be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2 Substitute Items: If in the sole discretion of the ENGINEER an item of material or equipment proposed by the CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. The

CONTRACTOR shall submit sufficient information as provided below to allow the ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as the ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by the ENGINEER from anyone other than the CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall first make written application to the ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice the achievement of Substantial Completion of the CONTRACTOR on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the CITY for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by the ENGINEER in evaluating the proposed substitute. The ENGINEER may require the CONTRACTOR to furnish additional data about the proposed substitute.

6.3.1.3 Expense of the CONTRACTOR: All data to be provided by the CONTRACTOR in support of any proposed "or-equal" or substitute item will be at the expense of the CONTRACTOR.

6.7.2 Substitute Construction Methods or procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the ENGINEER. The

CONTRACTOR shall submit sufficient information to allow the ENGINEER, in the sole discretion of the ENGINEER, to determine that the substitute proposed is equivalent to that expressly called for by the CONTRACT Documents. The procedure for review by the ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3 Evaluation of the ENGINEER The ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. The ENGINEER will be the sole judge of acceptability. No “or-equal” or substitute will be ordered, installed or utilized without the prior written acceptance of the ENGINEER which will be evidenced by either a Change Order or an approved Shop Drawing. The CITY may require the CONTRACTOR to furnish at the expense of the CONTRACTOR a special performance guarantee or other surety with respect to any “or-equal” or substitute. The ENGINEER will record time required by the ENGINEER and the Consultants of the ENGINEER in evaluating substitutes proposed or submitted by the CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with the CITY for work on the Project) occasioned thereby. Whether or not the ENGINEER accepts a substitute item so proposed or submitted by the CONTRACTOR, the CONTRACTOR shall reimburse the CITY for the charges of the ENGINEER and the Consultants of the ENGINEER for evaluating each such proposed substitute item.

6.8 Concerning Subcontractors, Suppliers and Others:

6.8.1 The CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to the CITY and the ENGINEER as indicated in paragraph 6.8.1), whether initially or as a substitute, against whom the CITY or the ENGINEER may have reasonable objection. The 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.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to the CITY in advance of the specified date prior to the Effective Date of the Agreement for acceptance by the CITY and the ENGINEER, and if the CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, the acceptance of the CITY or the ENGINEER (either in writing or by failing to make written objection thereto by the date indicated for acceptance of objection in the bidding documents or the Contract Documents) of 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 the CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by CITY or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the CITY or the ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the CITY or ENGINEER to reject defective Work.

6.9.1 The CONTRACTOR shall be fully responsible for the CITY and the ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the CONTRACTOR just as the CONTRACTOR is responsible for acts and omissions of the CONTRACTOR. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other person or organization any contractual relationship between the CITY or the ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the CITY or the 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.

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

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

6.11 All Work performed by the CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between the CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of the CITY and the ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the

Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against the CITY, the CONTRACTOR, the ENGINEER, the Consultants of the ENGINEER and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, the CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12 The 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 the CITY or the 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 the CITY in the Contract Documents. To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify and hold harmless the CITY, the ENGINEER, the Consultants of the ENGINEER and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from 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.

Permits:

6.13 Unless otherwise provided in the Supplementary Conditions, the CONTRACTOR shall obtain and pay for all construction permits and licenses. The CITY shall assist the CONTRACTOR, when necessary, in obtaining such permits and licenses. The 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, or, if there are no Bids, on the Effective Date of the Agreement. The CONTRACTOR shall pay all charges of utility owners for connections to the Work, and the CITY shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.14 Laws and Regulations:

6.14.1 The CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations,

neither the CITY nor the ENGINEER shall be responsible for monitoring the compliance of the CONTRACTOR with any Laws or Regulations.

- 6.14.2 If the CONTRACTOR performs any Work knowing or having reason to know that is contrary to Laws or Regulations, the CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be the primary responsibility of the CONTRACTOR to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve the CONTRACTOR of the obligation of the CONTRACTOR under paragraph 3.2.2.

Taxes:

- 6.15 The CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by the CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

- 6.16 The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. The CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless the CITY, the ENGINEER, the Consultant of the ENGINEER and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, illegal or equitable, brought by any such owner or occupant against the CITY, the ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon the performance of the Work of the CONTRACTOR.
- 6.17 During the progress of the Work, the CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work the CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. The

CONTRACTOR shall leave the site clean and ready for occupancy by the CITY at Substantial Completion of the Work. The CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

Record Documents

6.19 The CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to the ENGINEER for reference. Upon completion of the Work, those record documents, Samples and Shop Drawings will be delivered to the ENGINEER for the CITY.

Safety and Protection:

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

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

The CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor, 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 to any of them may be liable, shall be remedied by the CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the CITY or the ENGINEER or the

Consultant of the ENGINEER or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). The Duties and responsibilities of the CONTRACTOR for safety and for protection of the Work shall continue until such time as all the Work is completed and the ENGINEER has issued a notice to the CITY and the CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

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

Hazard Communication Programs:

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

Emergencies:

6.23 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the CITY or the ENGINEER is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the ENGINEER prompt written notice if the CONTRACTOR believes that any significant changes in the WORK or variations from the CONTRACT DOCUMENTS have been caused thereby. If the ENGINEER determines that a change in the Contract Documents is required because of the action taken by the CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24 Shop Drawings and Samples

6.24.1 The CONTRACTOR shall submit Shop Drawings to the ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as the ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be completed with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show the ENGINEER the materials and equipment the CONTRACTOR proposes to provide and to enable the ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2 The CONTRACTOR shall also submit Samples to the ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as the ENGINEER may require to enable the ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25 Submittal Procedures:

6.25.1 Before submitting each Shop Drawing or Sample, the CONTRACTOR shall have determined and verified:

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

6.25.1.2 all materials with respect to intended use, fabrication, shipping,

handling, storage, assembly and installation pertaining to the performance of the Work, and the CONTRACTOR shall also have reviewed and coordinated each shop drawing for Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

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

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

6.26 The ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by the ENGINEER as required by paragraph 2.9. Review and approval of the Engineer will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The review and approval of the ENGINEER will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the ENGINEER on previous submittals.

6.27 ENGINEER'S REVIEW AND APPROVAL OF Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such

variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

- 6.28 Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER'S review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the work:

- 6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as CITY and CONTRACTOR may otherwise agree in writing.
- 6.30 CONTRACTOR'S General Warranty and Guarantee:
- 6.30.1 CONTRACTOR warrants and guarantees to CITY, ENGINEER and ENGINEER'S Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR'S warranty and guarantee hereunder excludes defects or damage caused by:
- 6.30.1.1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or suppliers;
or
- 6.30.1.2 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.
- 6.30.2 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents:
- 6.30.2.1 Observations by ENGINEER;

- 6.30.2.2 recommendation of any progress of or final payment by ENGINEER;
- 6.30.2.3 the issuance of a certificate of Substantial Completion or any payment by the CITY to the CONTRACTOR under the Contract Documents;
- 6.30.2.4 use or occupancy of the Work or any part thereof by the CITY;
- 6.30.2.5 any acceptance by the CITY or any failure to do so;
- 6.30.2.6 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by the ENGINEER pursuant to paragraph 14.13;
- 6.30.2.6 any inspection, test or approval by others; or
- 6.30.2.8 any correction of defective Work by the CITY.

Indemnification:

- 6.31 To the fullest extent permitted by Laws and Regulations, the CONTRACTOR shall indemnify and hold harmless the CITY, the ENGINEER, the Consultants of the ENGINEER and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom and (ii) is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.
- 6.32 In any and all claims against the CITY or the ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of the CONTRACTOR, any

Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR of any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

- 6.33 The indemnification obligations of the CONTRACTOR under paragraph 6.31 shall not extend to the liability of the ENGINEER and the Consultants of the ENGINEER, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

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

ARTICLE 7--OTHER WORK

Related Work at Site:

- 7.1 The CITY may perform other work related to the Project at the site by the own forces of the CITY, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to the CONTRACTOR prior to starting any such other work, and (ii) the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if the CONTRACTOR believes that such performance will involve additional expense to the CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.
- 7.2 The CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and CITY, if the CITY is performing the additional work with employees of the CITY) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, the CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. The CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the ENGINEER and the others whose work will be affected. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the CITY and such utility owners and other contractors.
- 7.3 If the proper execution or results of any part of the Work of the CONTRACTOR depends upon work performed by others under this Article 7, the CONTRACTOR shall inspect such other work and promptly report to the ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of the Work Contractor. Failure of the CONTRACTOR to report will constitute an acceptance of such other work as fit and proper for integration with the Work of the CONTRACTOR except for latent or non-apparent defects and deficiencies in such other work.

Coordination

- 7.4 If the CITY contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions
- 7.4.1 the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
 - 7.4.2 the specific matters to be covered by such authority and responsibility will be itemized; and
 - 7.4.3 the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, the CITY shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8--RESPONSIBILITIES OF THE CITY

- 8.1 Except as otherwise provided in these General Conditions, the CITY shall issue all communications to the CONTRACTOR through the ENGINEER.
- 8.2 In case of termination of the employment of the ENGINEER, the CITY shall appoint an engineer against whom the CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.
- 8.3 The CITY shall furnish the data required of the CITY under the Contract Documents promptly and shall make payments to the CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.
- 8.4 The duties of the CITY in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4 Paragraph 4.2 refers to City identifying and making available to the CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by the ENGINEER in preparing the Contract Documents.
- 8.5 The responsibilities of the CITY in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.
- 8.6 The City is obligated to execute Change Orders as indicated in paragraph 10.4
- 8.8 In connection with the right to stop Work or suspend Work of the City (see paragraphs 13.10 and 15.1), paragraph 15.2 deals with the right of the CITY to terminate services of the CONTRACTOR under certain circumstances.
- 8.9 The CITY shall not supervise, direct or have control or authority over, nor be responsible for, the means, methods, techniques, sequences or procedures of the CONTRACTOR for construction or the safety precautions and programs incident thereto, or for any failure of the CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. The CITY will not be responsible for the failure of the CONTRACTOR to perform or furnish the Work in accordance with the Contract Documents.
- 8.10 The responsibility of the CITY in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.
- 8.11 If and to the extent the CITY has agreed to furnish the CONTRACTOR reasonable

evidence that financial arrangements have been made to satisfy the obligations of the CITY under the Contract Documents, the responsibility of the CITY in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9--STATUS OF THE ENGINEER DURING CONSTRUCTION

Representative of the CITY:

9.1 The ENGINEER will be the representative of the CITY during the construction period. The duties and responsibilities and the limitations of authority of the ENGINEER as the representative of the CITY during construction are set forth in the Contract Documents and shall not be extended without written consent of the CITY and the ENGINEER.

Visits to Site:

9.2 The ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as the ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of the executed Work of the CONTRACTOR. Based on information obtained during such visits and observations, the ENGINEER will endeavor for the benefit of the CITY to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The efforts of the ENGINEER will be directed toward providing for the CITY a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, the ENGINEER will keep the CITY informed of the progress of the Work and will endeavor to guard the CITY against defective Work. The visits of the ENGINEER and on-site observations are subject to all the limitations on the authority and responsibility of the ENGINEER set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of the on-site visits or observations by the ENGINEER of the Work of the CONTRACTOR the ENGINEER will not supervise, direct, control or have authority over or be responsible for the means, methods, techniques, sequences or procedures of construction of the Contractor, or the safety precautions and programs incident thereto, or for any failure of the CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

9.3 If the CITY and the ENGINEER agree, the ENGINEER will furnish a Resident Project Representative to assist the ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If the CITY designates another representative or agent to represent the CITY at the site who is not a Consultant, agent or employee of the ENGINEER, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4 The ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on the CITY and the CONTRACTOR. If the CITY or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, the CITY or the CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5 The ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on the CITY and also on the CONTRACTOR who shall perform the Work involved promptly. If the CITY or the CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, the CITY or the CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Reflecting Defective Work:

9.6 The ENGINEER will have authority to disapprove or reject Work which the ENGINEER believes to be defective, or that the ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. The ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7 In connection with the authority of the ENGINEER as to Shop Drawings and Samples, see paragraphs 6.25 through 6.28 inclusive.

9.8 In connection with the authority of the ENGINEER as to Change Orders, see articles 10, 11, and 12.

9.9 In connection with the authority of the ENGINEER as to Applications for Payment,

see Article 14.

Determinations for Unit Prices:

- 9.10 The ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The ENGINEER will review with the CONTRACTOR the preliminary determinations of the ENGINEER on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). The written decision of the ENGINEER thereon will be final and binding upon the CITY and the CONTRACTOR, unless within ten days after the date of any such decision either the CITY or the CONTRACTOR delivers to the other and to the ENGINEER written notice of intention of appeal from the decision of the ENGINEER and: (a) an appeal from the decision of the ENGINEER is taken within the time limits and in accordance with the procedures set forth in a "Dispute Resolution Agreement," entered into between the CITY and the CONTRACTOR pursuant to Article 16, or (b) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to the decision of the ENGINEER, unless otherwise agreed in writing by the CITY and the CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

- 9.11 The ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to the ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to the ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence of event giving rise thereto, and written supporting data will be submitted to the ENGINEER and the other party within sixty days after the start of such occurrence or event unless the ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to the ENGINEER and the claimant within thirty days after receipt of the last submittal of the claimant unless the ENGINEER allows additional time). The ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing submittal of the party, if any, in accordance with this paragraph. The written decision of the ENGINEER on such claim, dispute or other matter will be final and binding upon the CITY and the CONTRACTOR unless: (a) an appeal from the decision of the ENGINEER is taken within the time limits and in accordance with the procedures set forth in a "Dispute Resolution Agreement," entered into between the CITY and the

CONTRACTOR pursuant to Article 16, or (b) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from the written decision of the ENGINEER is delivered by the CITY or the CONTRACTOR to the other and to the ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by the CITY and the CONTRACTOR.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, the ENGINEER will not show partiality to the CITY or the CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by the CITY or the CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13 Limitations on the Authority and Responsibilities of the ENGINEER

9.13.1 Neither authority or responsibility of the ENGINEER under this Article 9 or under any other provision of the Contract Documents nor any decision made by the ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by the ENGINEER shall create, impose or give rise to any duty owed by the ENGINEER to the CONTRACTOR, any Subcontractor, any Supplier, and other person or organization, or to any surety for or employee or agent of any of them.

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

9.13.3 The ENGINEER will not be responsible for the acts or omissions of the CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

- 9.13.4 The review of the ENGINEER of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- 9.13.5 The limitations upon authority and responsibility set forth in the paragraph 9.13 shall also apply to the Consultants of the ENGINEER, Resident Project Representative and assistants.

ARTICLE 10--CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement and without notice to any surety, the CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order or a Work Change Directive. Upon receipt of any such document, the CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 10.2 If the CITY and the CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.
- 10.3 The CONTRACTOR shall not be entitled to an increase in the Contract price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.
- 10.4 The CONTRACTOR shall execute appropriate Change Orders recommended by the ENGINEER (or Written Amendments) covering:
- 10.4.1 changes in the Work which are (i) ordered by the CITY pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.4, or (iii) agreed to by the parties;
 - 10.4.2 changes in the Contract Price or Contract Times which are agreed to by the parties; and
 - 10.4.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by the ENGINEER pursuant to paragraph 9.11;
- 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, the CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.
- 10.5 If notice of any change affecting the general scope of the Work or the provisions

of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be the responsibility of the CONTRACTOR, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11--CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at the expense of the CONTRACT without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to the ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence of event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence of event (unless the ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by written statement of the claimant that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by the ENGINEER in accordance with paragraph 9.11 if the CITY and the CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.
- 11.3 The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:
- 11.3.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);
- 11.3.2 where the Work involved is not covered by unit prices contained in the contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);
- 11.3.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

- 11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the CITY, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5
- 11.4.1 Payroll costs for employees in the direct employ of the CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by the CITY and the CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the 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' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the CITY.
- 11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the CONTRACTOR unless the CITY deposits funds with the CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the CITY. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to the CITY, and the CONTRACTOR shall make provisions to that they may be obtained.
- 11.4.3 Payments made by the CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by the CITY, the CONTRACTOR shall obtain competitive bids from subcontractors acceptable to the CITY and the CONTRACTOR shall deliver such bids to the CITY who will then determine, with the advice of the ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Cost of the Work and fee of the Subcontractor shall be determined in the same manner as the Cost of the Work and fee of the CONTRACTOR as provided in paragraphs 11.4, 11.5, 11.6, and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

- 11.4.5 Supplemental costs including the following:
- 11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of employees of the CONTRACTOR incurred in discharge of duties connected with the Work.
 - 11.4.5.2 Cost, 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 Work, and cost less market value of such items used but not consumed which remain the property of the CONTRACTOR.
 - 11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements approved by the CITY with the advice of the ENGINEER, and the costs of transportation loading, unloading, installation, dismantling and removal thereof--all in accordance with the 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 Work.
 - 11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which the CONTRACTOR is liable, imposed by Laws and Regulations.
 - 11.4.5.5 Deposits lost for causes other than negligence of the 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.
 - 11.4.5.6 Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by the CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by the CITY in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of the CONTRACTOR, and 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 approval of the CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the fee of the CONTRACTOR. If,

however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8 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.

11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work

11.5 The term Cost of the Work shall not include any of the following:

- 11.5.1 Payroll costs and other compensation of the officers, executives, principals (of partnership and sole proprietorships) general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the CONTRACTOR whether at the site or in principal or a branch office for general administration of the Work of the CONTRACTOR and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 14.4.4--all of which are to be considered administrative costs covered by the fee of the CONTRACTOR.
- 11.5.2 Expenses of principal and branch officers of the CONTRACTOR other than the office of the CONTRACTOR at the site.
- 11.5.3 Any part of capital expenses of the CONTRACTOR, including interest on capital employed for the Work of the CONTRACTOR and charges against the CONTRACTOR for delinquent payments.
- 11.5.4 Cost of premiums for all Bonds and for all insurance whether or not the CONTRACTOR is required by the CONTRACT Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).
- 11.5.5 Costs due to the negligence of the 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 or equipment wrongly supplied and making good any damage to property.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

- 11.6 The fee of the CONTRACTOR allowed to CONTRACTOR for overhead and profit shall be determined as follows:
- 11.6.1 a mutually acceptable fixed fee; or
 - 11.6.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - 11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the fee of the CONTRACTOR shall be fifteen percent;
 - 11.6.2.2 for costs incurred under paragraph 11.4.3, the fee of the CONTRACTOR shall be five percent;
 - 11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3, and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and the CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor.
 - 11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;
 - 11.6.2.5 the amount of credit to be allowed by the CONTRACTOR to the CITY for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in the fee of the CONTRACTOR by an amount equal to five percent of such net decrease; and
 - 11.6.2.6 when both additions and credits are involved in any one change, the adjustment in the fee of the CONTRACTOR shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.
- 11.7 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, the CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form

acceptable to the ENGINEER an itemized cost breakdown together with supporting data.

11.8 It is understood that the CONTRACTOR has included in the Contract Price allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to the CITY and the ENGINEER. The CONTRACTOR agrees that:

11.8.1 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

11.8.2 Costs of the CONTRACTOR 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 and no demand for additional payment on account of any of the foregoing will be valid.

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

11.9 Unit price Work:

11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit price Work performed by the CONTRACTOR will be made by the ENGINEER in accordance with paragraph 9.10.

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

11.9.3 The City or the CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1 the quantity of any item of Unit Price Work performed by the

CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

- 11.9.3.2 there is no corresponding adjustment with respect to any other item of Work; and
- 11.9.3.3 if the CONTRACTOR believes that the CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or the CITY believes that the CITY is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.
- 11.9.3.4 The term materially and significantly shall be construed to apply only to the following circumstances:
 - 11.9.3.4.1 When a major item of work, as defined in paragraph 1.43 is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed or
 - 11.9.3.4.2 When such changes or alterations are sufficient in magnitude to affect the unit cost by 10 percent or more, considering all of the estimated quantity used for bidding purposes.

ARTICLE 12--CHANGE OF CONTRACT TIMES

- 12.1 The Contract Times (or Milestones) may only be changed by a Change Order or a written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to the ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless the ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the written statement of the claimant that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by the ENGINEER in accordance with paragraph 9.11 if the CITY and the CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.
- 12.2 All time limits stated in the Contract Documents are of the essence of the Agreement.
- 12.3 Where the CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of the CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of the CONTRACTOR shall include, but not be limited to, acts or neglect by the CITY, acts or neglect of utility limited to, acts or neglect by the CITY, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of the CONTRACTOR.
- 12.4 Where the CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both the City and the CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be the sole and exclusive remedy of the CONTRACTOR for such delay. In no event shall the CITY be liable to the CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent or of any item, for damages arising out of or resulting from (i) delays caused by or within the control of the CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts of neglect by utility owners or other contractors performing other work as contemplated by Article 7.

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

- 13.1 Notice of Defects: Prompt notice of all defective Work of which the CITY or the ENGINEER have actual knowledge will be given to the CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

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

Tests and Inspections

- 13.3 The CONTRACTOR shall give the ENGINEER timely notice of readiness of the Work for all required inspections, tests or approval, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 13.4 The CITY shall perform, or employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
- 13.4.1 for inspections, tests or approvals covered by paragraph 13.5 below;
 - 13.4.2 that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and
 - 13.4.3 as otherwise specifically provided in the Contract Documents.
- 13.5 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, the CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approval, pay all costs in connection therewith, and furnish the ENGINEER the required certificates of inspection, or approval. The CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance by the CITY and the ENGINEER of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment

submitted for approval prior to purchase by the CONTRACTOR thereof for incorporation in the Work.

- 13.6 If any Work (or the work of others) that is to be inspected, tested or approved is covered by the CONTRACTOR without written concurrence of the ENGINEER, it must, if requested by the ENGINEER, be uncovered for observation.
- 13.7 Uncovering Work as provided in paragraph 13.6 shall be at the expense of the CONTRACTOR unless the CONTRACTOR has given the ENGINEER timely notice of the intention of the CONTRACTOR to cover the same and the ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

- 13.8 If any Work is covered contrary to the written request of the ENGINEER, it must, if requested by the ENGINEER, be uncovered for the observation of the ENGINEER and replaced at the expense of the CONTRACTOR.
- 13.9 If the ENGINEER considers it necessary or advisable that covered Work be observed by the ENGINEER or inspected or tested by others, the CONTRACTOR, at the request of the ENGINEER, shall uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and the CITY shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, the CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

CITY May Stop the Work:

- 13.10 If the Work is defective, or the CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the CITY may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the CITY to stop the Work

shall not give rise to any duty on the part of the CITY to exercise its right for the benefit of the CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11 If required by the ENGINEER, the CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the ENGINEER, remove it from the site and replace it with Work that is not defective. The CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12 Correction Period:

13.12.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, the CONTRACTOR shall promptly, without cost to the CITY and in accordance with the written instructions of the CITY: (i) correct such defective Work, or, if it has been rejected by the CITY, remove it from the site and replace it with Work that is not defective and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the CITY may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the CONTRACTOR.

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

13.12.3 Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work

13.3 If, instead of requiring correction or removal and replacement of defective Work,

the City (and, prior to the recommendation of the ENGINEER of final payment, also ENGINEER) prefers to accept it, the CITY may do so. The CONTRACTOR shall pay all claims, costs, losses and damages attributable to the evaluation of and determination of the CITY to accept such defective Work (such costs to be approved by the ENGINEER as to reasonableness). If any such acceptance occurs prior to the recommendation of the ENGINEER of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the CITY shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the CONTRACTOR to the City.

CITY May Correct Defective Work:

- 13.14 If the CONTRACTOR fails within a reasonable time after written notice from the ENGINEER to correct defective Work or to remove and replace rejected Work as required by the ENGINEER in accordance with paragraph 13.11, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the CITY may, after seven days written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the CITY shall proceed expeditiously. In connection with such corrective and remedial action, the CITY may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend services of the CONTRACTOR related thereto, take possession of the tools, appliances, construction equipment and machinery of the CONTRACTOR at the site and incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the CITY, the representatives, agents and employees of the CITY, other contractors of the CITY, and the ENGINEER and Consultants of the ENGINEER access to the site to enable the CITY to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by the CITY in exercising such rights and remedies will be charged against the CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the City shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the CITY may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of defective Work of the CONTRACTOR. The CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by the CITY of the rights and remedies of the CITY hereunder.

ARTICLE 14--PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

- 14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

- 14.2 At least twenty days before the date established for each progress payment (but not more often than once a month), the CONTRACTOR shall submit to the ENGINEER for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the CITY has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the interest of the CITY therein, all of which will be satisfactory to the CITY. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

Warranty of Title by CONTRACTOR:

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

Review of Applications for Progress Payment:

- 14.4 The ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the CITY, or return the Application to the CONTRACTOR indicating in writing the reasons of the ENGINEER for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to the CITY with the recommendation of the ENGINEER, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by the CITY to the CONTRACTOR.

- 14.5 Recommendation of the ENGINEER of any payment requested in an Application for Payment will constitute a representation by the ENGINEER to the CITY, based on on-site observations of the ENGINEER of the executed Work as an experienced and qualified design professional and on review of the Application for Payment by the ENGINEER and the accompanying data and schedules, that to the best of knowledge, information and belief of the ENGINEER:
- 14.5.1 the Work has progressed to the point indicated.
 - 14.5.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and
 - 14.5.3 the conditions precedent to the CONTRACTOR being entitled to such payment appear to have been fulfilled insofar as it is the responsibility of the ENGINEER to observe the Work.

However, by recommending any such payment the ENGINEER will not thereby be deemed to have represented that (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the ENGINEER in the Contract Documents of (ii) that there may not be other matters or issues between the parties that might entitle the CONTRACTOR to be paid additionally by the CITY or entitle the CITY to withhold payment to the CONTRACTOR.

- 14.6 Recommendation of the ENGINEER of any payment, including final payment, shall not mean that the ENGINEER is responsible for the means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs of the CONTRACTOR incident thereto, or for any failure of the CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work, or for any failure of the CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.
- 14.7 The ENGINEER may refuse to recommend the whole or any part of any payment if, in the opinion of the ENGINEER, it would be incorrect to make the representations to the CITY referred to in paragraph 14.5. The ENGINEER 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 the opinion of the ENGINEER to protect the CITY from loss because:
- 14.7.1 the Work is defective or completed Work has been damaged requiring

correction or replacement.

- 14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,
- 14.7.3 The CITY has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or
- 14.7.4 The ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

The CITY may refuse to make payment of the full amount recommended by the ENGINEER because:

- 14.7.5 claims have been made against the CITY on account of performance of furnishing of the Work of the CONTRACTOR.
- 14.7.6 Liens have been filed in connection with the Work, except where the CONTRACTOR has delivered a specific Bond satisfactory to the CITY to secure the satisfaction and discharge of such Liens.
- 14.7.7 there are other items entitling the CITY to a set-off against the amount recommended, or
- 14.7.8 the CITY has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive:

but the CITY must give the CONTRACTOR immediate written notice (with a copy to the ENGINEER) stating the reasons for such action and promptly pay the CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by the CITY and the CONTRACTOR, when the CONTRACTOR corrects to the satisfaction of the CITY the reasons for such action.

Substantial Completion:

- 14.8 When the CONTRACTOR considers the entire Work ready for its intended use the CONTRACTOR shall notify the CITY and the ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, the CITY, the CONTRACTOR, and the ENGINEER shall make an inspection of the Work to determine the status of completion. If the ENGINEER does not consider the Work substantially complete, the ENGINEER will notify the CONTRACTOR in writing giving the reasons therefor. If the ENGINEER considers the Work substantially complete, the ENGINEER will prepare

and deliver to the CITY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The CITY shall have seven days after receipt of the tentative certificate during which to make written objection to the ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, the ENGINEER concludes that the Work is not substantially complete, the ENGINEER will within fourteen days after submission of the tentative certificate to the CITY notify the CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the ENGINEER believes justified after consideration of any objections from the CITY. At the time of delivery of the tentative certificate of Substantial Completion the ENGINEER will deliver to the CITY and the CONTRACTOR a written recommendation as to division of responsibilities pending final payment between the CITY and the CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless the CITY and the CONTRACTOR agree otherwise in writing and so inform the ENGINEER in writing prior to the ENGINEER issuing the definitive certificate of Substantial Completion, the aforesaid recommendation of the ENGINEER will be binding on the CITY and the CONTRACTOR until final payment.

- 14.9 The CITY shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion but the CITY shall allow the CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

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

- 14.10.1 The CITY at any time may request the CONTRACTOR in writing to permit the CITY to use any such part of the Work which the CITY believes to be ready for its intended use and substantially complete. If the CONTRACTOR agrees that such part of the Work is substantially complete, the CONTRACTOR will certify to the CITY and the ENGINEER that such part of the Work is substantially complete and request the ENGINEER to issue a certificate of Substantial Completion for that part of the Work. The CONTRACTOR at any time may notify the CITY and the ENGINEER in writing that the CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request the ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within

a reasonable time after either such request, the CITY, the CONTRACTOR, and the ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If the ENGINEER does not consider that part of the Work to be substantially complete, the ENGINEER will notify the CITY and the CONTRACTOR in writing giving the reasons therefor. If the ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

Final Inspection:

- 14.11 Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the ENGINEER will make a final inspection with the CITY and the CONTRACTOR will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

- 14.12 After the CONTRACTOR has completed all such corrections to the satisfaction of the ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to the CITY) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by the CITY, the CONTRACTOR may furnish receipts or releases in full and an affidavit of the CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which the CITY or the property of the CITY might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the CITY to indemnify the CITY against any Lien.

Final Payment and Acceptance:

- 14.13 If, on the basis of the observation of the ENGINEER of the Work during

construction and final inspection, and the review and final Application for Payment and accompanying documentation by the ENGINEER as required by the Contract Documents, the ENGINEER is satisfied that the Work has been completed and other obligations of the CONTRACTOR under the Contract Documents have been fulfilled, the ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing the recommendation of payment of the ENGINEER and present the Application to the CITY for payment. At the same time the ENGINEER will also give written notice to the CITY and the CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 4.15. Otherwise, the ENGINEER will return the Application to the CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to the CITY of the Application and accompanying documentation, in appropriate form and substance with the recommendation and notice of acceptability of the ENGINEER, the amount recommended by the ENGINEER will become due and will be paid by the CITY to the CONTRACTOR.

- 14.14 If, through no fault of the CONTRACTOR, final completion of the Work is significantly delayed and if the ENGINEER so confirms, the CITY shall, upon receipt of the final Application for Payment of the CONTRACTOR and recommendation of the ENGINEER, 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 the CITY 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 paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claim:

- 14.15 The making and acceptance of final payment will constitute:
- 14.15.1 A waiver of all claims by the CITY against the CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from continuing obligations of the CONTRACTOR under the Contract Documents; and
- 14.15.2 a waiver of all claims by the CONTRACTOR against the CITY other than those previously made in writing and still unsettled.

ARTICLE 15--SUSPENSION OF WORK AND TERMINATION

- 15.1 At any time and without cause, the CITY may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to the CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. The CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if the CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

CITY May Terminate

- 15.2 Upon the occurrence of any one or more of the following events:
- 15.2.1 If the CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);
 - 15.2.2 If CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
 - 15.2.3 If CONTRACTOR disregards the authority of the ENGINEER; or
 - 15.2.4 If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

The CITY may, after giving the CONTRACTOR (and the surety, if any,) seven days written notice and to the extent permitted by Laws and Regulations, terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all tools, appliances, construction equipment and machinery of the CONTRACTOR at the site and use the same to the full extent they could be used by the CONTRACTOR (with liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the CITY has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the CITY 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 all claims, costs, losses and damages sustained by the CITY arising out of or resulting from completing the Work such excess will be paid to the CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, the CONTRACTOR shall pay the difference to the CITY. Such claims, costs, losses and damages exceed such unpaid balance, the CONTRACTOR shall pay the difference to the CITY. Such claims, costs,

losses, and damages incurred by the CITY will be reviewed by the ENGINEER as to their reasonableness and when so approved by the ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph the CITY shall not be required to obtain the lowest price for the Work performed.

- 15.3 Where the services of the CONTRACTOR have been so terminated by the CITY, the termination will not affect any rights or remedies of the CITY against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the CITY will not release the CONTRACTOR from liability.
- 15.4 Upon seven days written notice to the CONTRACTOR and ENGINEER, the CITY may, without cause and without prejudice to any other right or remedy of the CITY, elect to terminate the Agreement. In such case, the CONTRACTOR shall be paid (without duplication of any items):
- 15.4.1 For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 15.4.2 For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 15.4.3 For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
 - 15.4.4 For reasonable expenses directly attributable to termination.

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

CONTRACTOR May Stop Work or Terminate:

- 15.5 If, through no act or fault of the CONTRACTOR, the Work is suspended for a period of more than ninety days by the CITY or under an order of court or other public authority, or the ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or the CITY fails for thirty days to pay the CONTRACTOR any sum finally determined to be due, then the CONTRACTOR may, upon seven days written notice to the CITY and the ENGINEER, and provided the CITY or the ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from the CITY payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any

other right or remedy, if the ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or the CITY has failed for thirty days to pay the CONTRACTOR any sum finally determined to be due, the CONTRACTOR may upon seven days written notice to the CITY and the ENGINEER stop the Work until payment of all such amounts due the CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude the CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to the stopping Work of the CONTRACTOR as permitted by this paragraph.

ARTICLE 16--DISPUTE RESOLUTION

If and to the extent that the CITY and the CONTRACTOR have agreed on the method and procedure for resolving the disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in a "Dispute Resolution Agreement," exhibit to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of the paragraphs 9.10, 9.11, and 9.12, the CITY and the CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17--MISCELLANEOUS

Giving Notice

- 17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.
- 17.2 Computation of Times:
- 17.2.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law applicable to the CITY, such day will be omitted from the computation.
- 17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

- 17.3 Should the CITY or the CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other employees or agents or others of the party for whose acts the other party is legally liable, claim will 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 paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

- 17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3, and 15.2 and all of the rights and remedies available to the CITY and the ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

- 17.5 Whenever reference is made to “claims, cost, losses and damages,” it shall include in each case, but not be limited to, all fees and charges of engineer, architects, attorneys and other professional and all court or arbitration or other dispute resolution costs.

ARTICLE 18 -- INSURANCE REQUIREMENTS

18.1 General

Prior to commencement of the Work, the Contractor shall purchase and maintain during the entire term of the project such insurance as will protect the Contractor, the City, and the Engineer(s) from claims arising out of the Work described in this contract and performed by the Contractor, Subcontractor(s), or Sub-subcontractor(s). The certificate of insurance must contain the following statement: The City of Portage, its agents, elected officials, and employees, is included as an additionally insured party. This insurance must consist of:

18.2 Workers Compensation

Workers Compensation insurance, including Employer's Liability to cover employee injuries or disease compensable under the Workers Compensation statutes of the states in which work is conducted under this contract.

18.3 Comprehensive General Liability

A Comprehensive General Liability policy to cover bodily injury to persons other than employees and for damage to tangible property, including loss of use thereof, including the following exposures.

- a. All premises and operations.
- b. Explosion, collapse and underground damage.
- c. Protective coverage for Independent Contractors or Subcontractors employed by the Contractor.
- d. Contractual Liability for the obligation assumed in the Indemnification or Hold Harmless agreement found in the contract.
- e. Personal Injury Liability endorsement with no exclusions pertaining to employment.
- f. Products and Completed Operations coverage. This coverage shall extend through the contract guarantee period.

18.4 Comprehensive Automobile Liability

A Comprehensive Automobile Liability policy to cover bodily injury and property damage arising out of the ownership, maintenance or use of any motor vehicle, including owned, non-owned, and hired vehicles. In the light of standard policy provisions concerning (a) loading and unloading and (b) definitions pertaining to motor vehicles licensed for road use vs. unlicensed or self-propelled construction equipment, it is strongly recommended that the Comprehensive General Liability and the Comprehensive Auto Liability be written by the same insurance carrier, though not necessarily in one policy.

18.5 Builder's Risk - Installation Floater

When required, the Contractor shall purchase a Builder's Risk-Installation Floater in a form acceptable to the City covering property of the project for the full cost of replacement as of the time of any loss which shall include, as named insureds, (a) the Contractor, (b) all Subcontractors, (c) all Sub-subcontractors, (d) the City, the Engineer(s) or Architect(s), as their respective interests may prove to be at the time of loss, covering insurable property which is the subject of this contract, whether in place, stored at the job site, stored elsewhere, or in transit at the risk of the insured(s). Coverage shall be effected on "all risk" form including, but not limited to, the perils of fire, wind, vandalism, collapse, theft and earthquake, with exclusions normal to the cover. The Contractor may arrange for such deductibles as is deemed to be within the ability of the Contractor of self-assume, but the Contractor will be held solely responsible for the amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with the City and the Contractor and paid to the City and Contractor as Trustee for the other insureds.

18.6 Umbrella or Excess Liability

The City, or representatives of the City, may for certain projects, require limits higher than those stated in paragraph 18.8 which follows. The Contractor is granted the option of arranging coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy equal to the total limit(s) requested. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply to both the general liability, and to the automobile liability insurance of the Contractor.

18.7 Railroad Protective Liability

Where such an exposure exists, the Contractor will provide coverage in the name of each railroad company having jurisdiction over rights-of-way across which work under the Contract is to be performed. The form of policy and the limits of liability shall be

determined by the railroad company(ies) involved. See supplemental specifications for limits and coverage requested.

18.8 Limits of Liability

The required limits of liability for insurance coverages shall not be less than the following:

Workers Compensation	Statutory
Comprehensive General Liability Combined Single Limit (including sub-contractors)	\$1,000,000
Comprehensive Automobile Liability Combined Single Limit (Injury and Property Damage)	\$1,000,000
Builders Risk-Installation Floater	Cost to Replace
Umbrella or Excess Liability	\$2,000,000

18.9 Notice of Cancellation or Intent not to Renew

Policies will be endorsed to provide that at of least 30 days written notice shall be given to the City and to the Engineer of cancellation or of intent not to renew.

18.10 Evidence of Coverage

The Insurance Certificates referenced in Paragraph 1 above shall be submitted within ten (10) working days of notification of award and prior to the execution of any Work under this contract.

It shall be the responsibility of the Contractor to provide similar insurance for each Subcontractor, or to provide evidence that each Subcontractor carries insurance in like amounts, prior to the time such Subcontractor proceeds to perform under the contract.

18.11 Other Insurance Provisions

The term "other insurance provisions" in a policy in which the City of Portage is named as an insured, shall not apply to the City.

18.12 Right of Recovery or Subrogation

Insurers shall have no right of recovery or subrogation against the City (including its agents and employees as aforesaid), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance.

18.13 Qualifications of Insurers

In order to determine financial strength and reputation of insurance carriers, all companies providing the coverages required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating not lower than XI and a policyholder's service rating no lower than B+ as listed in A.M. Best's Key Rating Guide, current edition. Companies with ratings lower than B+:XI will be acceptable only upon written consent of the City.