

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

Bond No. 015037486
Bond issued in three (3) original counterparts
SECTION 00 6114 - PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, Spectraserv, Inc.
as Principal (the "Principal"), and Liberty Mutual Insurance Company
, a company organized and existing under the laws of the MA
, having its principal office at Boston, MA
and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the "Surety"), are held and
firmly bound, jointly and severally, unto the CITY OF READING, PENNSYLVANIA, as Obligee (the
"Obligee"), as hereinafter set forth in the full and just sum of:
EIGHT HUNDRED EIGHTY THOUSAND DOLLARS AND 00/100 (\$880,000.00)

lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to the Obligee a certain Bid, dated
January 10, 2013 (the "Bid"), to perform General Construction Work for the
Obligee, in connection with the **ANAEROBIC DIGESTER NO. 4 AND NO. 5 TANK CLEANING**
PROJECT located in the City of Reading, Berks County, Pennsylvania pursuant to Drawings, Specifications and
other related documents, constituting the Bidding Documents, which are incorporated into the Bid by reference
(the "Contract Documents"), as prepared by T&M Associates; and

WHEREAS, the Obligee is a "Contracting Body" under provisions of Act No. 385 of the General
Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known and
cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the Principal by the
Obligee in accordance with the Bid, the Principal shall furnish this Performance Bond to the Obligee, with this
Performance Bond to become binding upon the Award of the Contract to the Principal by the Obligee in
accordance with the Bid; and

WHEREAS, it also is a condition of the Contract Documents that this Performance Bond shall be
furnished by the Principal to the Obligee; and

WHEREAS, under the Contract Documents, it is provided, *inter alia*, that if the Principal shall furnish
this Performance Bond and the Payment Bond to the Obligee, and if the Obligee shall make an award to the
Principal in accordance with the Bid, then the Principal and the Obligee shall enter into an agreement with
respect to performance of such Work (the "Agreement"), the form of which Agreement is set forth in the
Contract Documents.

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

NOW, THEREFORE, the terms and conditions of this Performance Bond are and shall be that if: (a) the Principal well, truly and faithfully shall comply with and shall perform the Work in accordance with the Contract Documents, at the time and in the manner provided in the Contract Documents, and if the Principal shall satisfy all claims and demands incurred in or related to the performance of the Contract Documents by the Principal or growing out of the performance of the Contract Documents by the Principal, and if the Principal shall indemnify completely and shall save harmless the Obligee and all of its officers, agents and employees from any and all costs and damages, including, but not limited to, liquidated damages which the Obligee and all of its officers, agents and employees may sustain or suffer by reason of the failure of the Principal to do so, and if the Principal shall reimburse completely and shall pay to the Obligee any and all costs and expenses which the Obligee and all of its officers, agents and employees may incur by reason of any such default or failure of the Principal, including, but not limited to, legal fees (e.g., fees of attorneys, paralegals and other legal professionals) and professional fees resulting from such default or failure of the Principal in accordance with the Contract Documents, and (b) if the Principal shall remedy, without cost to the Obligee, all defects which may develop during the period of one (1) year from the date of final completion by the Principal and acceptance of the Obligee of the Work to be performed under the Contract Documents, which defects, in the sole judgment of the Obligee or its legal successors in interest, shall be caused by or shall result from defective or inferior materials or workmanship, then this Performance Bond shall be void; otherwise, this Performance Bond shall be and shall remain in force and effect and all claims, demands, costs, expenses and damages, including, but not limited to, legal fees and professional fees resulting from the default or failure of Principal in accordance with the Contract Documents, shall be payable by Principal and Surety upon demand of Obligee; provided, however, that the obligations of the Surety hereunder shall not exceed the amount of this Performance Bond, as this Performance Bond is amended, whether automatically or in writing, in accordance with the terms hereof.

This Performance Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Contract Documents, and/or any giving by the Obligee of any extensions of time for the performance of the Work in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee toward the other with respect to the Contract Documents, and/or the reduction of any percentage to be retained by the Obligee as permitted by the Contract Documents, shall not release, and/or discharge, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Performance Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance, and/or reduction of retained percentage.

The Principal and the Surety agree that this Performance Bond (including the penal sum) shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Contract Documents not increasing the contract price in the aggregate by more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Contract Documents as so amended and the Surety, for value received, does waive notice of any such amendment to the Contract Documents not increasing the Contract Price in the aggregate by more than twenty percent (20%). The term "Amendment", wherever used in this Performance Bond and whether referring to this Performance Bond, or the Contract Documents, shall include, without limitation, any alteration, addition, extension or modification, and of any character whatsoever.

PERFORMANCE BOND
SECTION 00 6114 - 2

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

Provided, further, that no final settlement between the Obligee and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In the event that the Obligee incurs legal fees for default or enforcement of its rights under the Contract Documents or Performance Bond, the Surety agrees to pay for all reasonable legal fees and costs incurred by the Obligee.

Any dispute resolution proceeding, legal or equitable, under this Performance Bond, shall be instituted in the Court of Common Pleas of Berks County or in the United States District Court for the Eastern District of Pennsylvania and not elsewhere. In such dispute resolution proceeding, Obligee may join both Principal and Surety as parties, and Principal and Surety hereby consent to such joinder, jurisdiction and venue. This Performance Bond shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

[Signature page follows]

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

IN WITNESS WHEREOF, the Principal and the Surety cause this Performance Bond to be signed, sealed and delivered this 30th day of January, 2013.

Individual Principal

Witness: _____

By: _____
Name: _____
Trading and/or Doing Business as: _____

Partnership Principal

Name of Partnership: _____

Witness: _____

By: _____
Name: _____
Title: _____

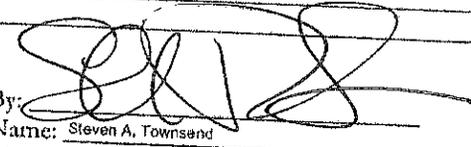
Witness: _____

By: _____
Name: _____
Title: _____

Corporate Principal

Name of Corporation: Spectraserv, Inc.

Attest: 

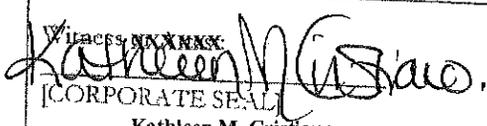
By: 
Name: Steven A. Townsend
Title: President *

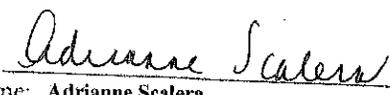
[CORPORATE SEAL]
John Wenglyn, Sr. Vice President/Secretary

* If the signatory is an authorized representative, attach proof evidencing authority to execute on behalf of the corporation

Corporate Surety

Name of Surety: Liberty Mutual Insurance Company

Witness: 
[CORPORATE SEAL]
Kathleen M. Cristiano

By: 
Name: Adrienne Scalera
Title: Attorney-In-Fact **

Attach an appropriate Power of Attorney evidencing the authority of the Attorney-in-Fact to act on behalf of the Surety.

END OF SECTION 00 6114

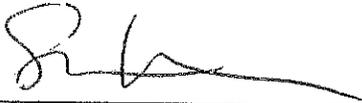
CORPORATE ACKNOWLEDGEMENT

Form 152

State of New Jersey
County of Hudson

On this 4th day of February, 2013 before me personally came Steven A. Townsend, to me known, who, being by me duly sworn, did depose and say that he/she resides in Stockton, NJ that he/she is the President of the Spectraserv Inc. the corporation described in and which executed the above instrument; that he/she knows that seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

(SEAL)



SHANNON WELLS
A Notary Public of New Jersey
My Commission Expires 5/19/2014

CORPORATE ACKNOWLEDGMENT

Form 152

**State of New Jersey
County of Union**

On this 30th day of January, 2013 before me personally came **ADRIANNE SCALERA**, to me known, who, being by me duly sworn, did depose and say that she resides in **WOOD-RIDGE, NEW JERSEY** that she is the **ATTORNEY-IN-FACT** of the
Liberty Mutual Insurance Company

the corporation described in and which executed the above instrument; that she knows that seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

(SEAL)

Kathleen M. Cristiano,

KATHLEEN M. CRISTIANO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES NOVEMBER 16, 2013



LIBERTY MUTUAL INSURANCE COMPANY
 FINANCIAL STATEMENT — DECEMBER 31, 2011

Assets		Liabilities	
Cash and Bank Deposits.....	\$ 696,606,839	Unearned Premiums.....	\$3,762,485,913
*Bonds — U.S Government.....	910,151,865	Reserve for Claims and Claims Expense.....	15,817,904,502
*Other Bonds.....	11,794,792,561	Funds Held Under Reinsurance Treaties.....	1,249,980,610
*Stocks.....	8,216,137,875	Reserve for Dividends to Policyholders.....	4,656,284
Real Estate.....	268,420,606	Additional Statutory Reserve.....	77,791,575
Agents' Balances or Uncollected Premiums.....	3,191,269,641	Reserve for Commissions, Taxes and	
Accrued Interest and Rents.....	151,164,670	Other Liabilities.....	<u>2,885,589,205</u>
Other Admitted Assets.....	<u>12,166,299,092</u>	Total.....	<u>\$23,798,408,089</u>
Total Admitted Assets.....	<u>\$37,394,843,149</u>	Special Surplus Funds.....	\$1,036,917,657
		Capital Stock.....	10,000,000
		Paid in Surplus.....	7,732,061,653
		Unassigned Surplus.....	4,817,455,750
		Surplus to Policyholders.....	<u>13,596,435,060</u>
		Total Liabilities and Surplus.....	<u>\$37,394,843,149</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
 The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2011, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 5th day of April, 2012.

T. Mikolajewski

Assistant Secretary

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 5687658

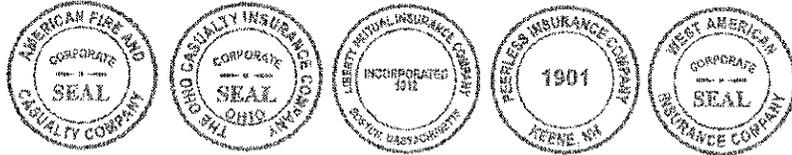
American Fire and Casualty Company
The Ohio Casualty Insurance Company
West American Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company

POWER OF ATTORNEY

KNOWNALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of Ohio, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, that Peerless Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Adrienne Scalera, Joseph Dobkowski, Jr.;
Kathleen M. Cristiano

all of the city of Clark state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 26th day of September, 2012.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 26th day of September, 2012, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, Peerless Insurance Company and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company, which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorney-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of January, 20 13.



By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

Bond No. 015037486

BOND ISSUED IN THREE ORIGINAL COUNTERPARTS

SECTION 00 6115 - PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, Spectraserv, Inc., 75 Jacobus Ave., S. Kearny, NJ 07032
as Principal (the "Principal"), and Liberty Mutual Insurance Company
, a company organized and existing under the laws of the MA
, having its principal office at Boston, MA
and authorized to do business in the Commonwealth of Pennsylvania, as Surety (the "Surety"), are held and
firmly bound, jointly and severally, unto the CITY OF READING, PENNSYLVANIA, as Obligee (the
"Obligee"), as hereinafter set forth in the full and just sum of:
EIGHT HUNDRED EIGHTY THOUSAND DOLLARS AND 00/100 (\$880,000.00)

lawful money of the United States of America, for the payment of which sum we bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WITNESSETH THAT:

WHEREAS, the Principal heretofore has submitted to the Obligee a certain Bid, dated
January 10, 2013 (the "Bid"), to perform General Construction Work for the Obligee,
in connection with the **ANAEROBIC DIGESTER NO. 4 AND NO. 5 TANK CLEANING PROJECT**
located in the City of Reading, Berks County, Pennsylvania, pursuant to Drawings, Specifications and other
related documents constituting the Bidding Documents, which are incorporated into the Bid by reference (the
"Contract Documents"), as prepared by T&M Associates, Inc.; and

WHEREAS, the Obligee, is a "Contracting Body" under provisions of Act No. 385 of the General
Assembly of the Commonwealth of Pennsylvania, approved by the Governor on December 20, 1967, known as
and cited as the "Public Works Contractors' Bond Law of 1967" (the "Act"); and

WHEREAS, the Act, in Section 3(a), requires that, before an award shall be made to the Principal by the
Obligee in accordance with the Bid, the Principal shall furnish this Payment Bond to the Obligee, with this
Payment Bond to become binding upon the Award of the Contract to the Principal by the Obligee in accordance
with the Bid; and

WHEREAS, it also is a condition of the Contract Documents that this Payment Bond shall be furnished
by the Principal to the Obligee; and

WHEREAS, under the Contract Documents, it is provided, *inter alia*, that if the Principal shall furnish
this Payment Bond and the Performance Bond to the Obligee, and if the Obligee shall make an award to the
Principal in accordance with the Bid, then the Principal and the Obligee shall enter into an agreement with
respect to performance of such Work (the "Agreement"), the form of which Agreement is set forth in the
Contract Documents.

PAYMENT BOND
SECTION 00 6115 - 1

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

NOW, THEREFORE, the terms and conditions of this Payment Bond are and shall be that if the Principal and any subcontractor of the Principal to whom any portion of the Work under the Contract Documents shall be subcontracted, and if all assignees of the Principal and of any such subcontractor, promptly shall pay or shall cause to be paid, in full, all money which may be due any claimant supplying labor or materials in the prosecution and performance of the Work in accordance with the Contract Documents, including, without limitation, any amendment, extension or addition to the Contract Documents, for material furnished, labor supplied or labor performed, then this Payment Bond shall be void; otherwise, this Payment Bond shall be and shall remain in force and effect.

This Payment Bond, as provided by the Act, shall be solely for the protection of claimants supplying labor or materials to the Principal, any subcontractor of the Principal any assignees of the Principal, or any assignees of any subcontractor of the Principal in the prosecution of the Work covered by the Contract Documents, including, without limitation, any amendment, extension or addition to the Contract Documents and is conditioned for the prompt payment of all such materials furnished and labor supplied or performed in the prosecution of any portion of the Work. The term "claimant", when used herein and as required by the Act, shall mean any individual, firm, partnership, association or corporation. The phrase "labor or materials" when used herein and as required by the Act, shall include, without limitation, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site of the Work covered by the Contract Documents. As required by the Act, the provisions of this Payment Bond shall be applicable whether or not the material furnished or labor performed enters into and becomes a component part of the public building, public Work or public improvement contemplated by the Contract Documents.

As provided and required by the Act, the Principal and the Surety agree that any claimant, who has performed labor or furnished material in the prosecution of the Work in accordance with the Contract Documents, including, without limitation, any amendment, extension or addition to the Contract Documents, and who has not been paid therefore, in full, before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which payment is claimed, may institute an action upon this Payment Bond, in the name of the claimant, in assumpsit, to recover any amount due the claimant for such labor or material; and may prosecute such action to final judgment and may have execution upon the judgment; provided, however, that: (a) any claimant who has a direct contractual relationship with any subcontractor of the Principal or any assignees of any subcontractor of the Principal, but has no contractual relationship, express or implied, with the Principal, may institute an action upon this Payment Bond only if such claimant first shall have given written notice, served in the manner provided in the Act, to the Principal, within ninety (90) days from the date upon which such claimant performed the last of the labor or furnished the last of the materials for which payment is claimed, stating, with substantial accuracy, the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished; and (b) no action upon this Payment Bond shall be commenced after the expiration of one (1) year from the day upon which the last of the labor was performed or material was supplied, for the payment of which such action is instituted by the claimant.

This Payment Bond is executed and delivered under and subject to the Act, to which reference hereby is made.

The Principal and the Surety agree that any alterations, changes and/or additions to the Contract Documents, and/or any alterations, changes and/or additions to the Work to be performed under the Contract Documents, and/or any giving by the Obligee of any extensions of time for the performance of the Work in accordance with the Contract Documents, and/or any act of forbearance of either the Principal or the Obligee

PAYMENT BOND
SECTION 00 6115 - 2

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

toward the other with respect to the Contract Documents, and/or the reduction of any percentage to be retained by the Oblige as permitted by the Contract Documents, shall not release, and/or discharge, in any manner whatsoever, the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors and assigns, from liability and obligations under this Payment Bond; and the Surety, for value received, does waive notice of any such alterations, changes, additions, extensions of time, acts of forbearance and/or reduction of retained percentage.

The Principal and the Surety agree that this Payment Bond (including the penal sum) shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract Documents not increasing the contract price in the aggregate by more than twenty percent (20%), so as to bind the Principal and the Surety to the full and faithful performance of the Contract Documents as so amended and the Surety, for value received, does waive notice of any such amendment to the Contract Documents not increasing the Contract Price in the aggregate by more than twenty percent (20%). The term "Amendment", wherever used in this Payment Bond and whether referring to this Payment Bond, or the Contract Documents, shall include any alteration, addition, extension or modification, of any character whatsoever.

Provided, further, that no final settlement between the Oblige and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In the event that the Oblige incurs legal fees (e.g., fees of attorneys, paralegals and other legal professionals) for default or enforcement of its rights under the Contract Documents or Payment Bond, the Surety agrees to pay for all reasonable legal fees and costs incurred by the Oblige.

Any dispute resolution proceeding, legal or equitable, under this Payment Bond, shall be instituted in the Court of Common Pleas of Berks County or the United States District Court for the Eastern District of Pennsylvania and not elsewhere. In such dispute resolution proceeding, Oblige may join both Principal and Surety as parties, and Principal and Surety hereby consent to such joinder, jurisdiction and venue. This Payment Bond shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law.

[Signature page follows]

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

IN WITNESS WHEREOF, the Principal and the Surety cause this Payment Bond to be signed, sealed and delivered this 30th day of January, 20 13.

Individual Principal

Witness: _____

By: _____
Name: _____
Trading and/or Doing Business as: _____

Partnership Principal

Name of Partnership: _____

Witness: _____

By: _____
Name: _____
Title: _____

Witness: _____

By: _____
Name: _____
Title: _____

Corporate Principal

Name of Corporation: Spectraserv, Inc.

Attest: [Signature]

[CORPORATE SEAL]
John Wengryn, Sr. Vice President/Secretary

By: [Signature]
Name: Steven A. Townsend
Title: President *

* If the signatory is an authorized representative, attach proof evidencing authority to execute on behalf of the corporation

Corporate Surety

Name of Surety: Liberty Mutual Insurance Company

Witness: [Signature]
[CORPORATE SEAL]
Kathleen M. Cristiano

By: [Signature]
Name: Adrienne Scalera
Title: Attorney-In-Fact **

Attach an appropriate Power of Attorney evidencing the authority of the Attorney-in-Fact to act on behalf of the Surety.

END OF SECTION 00 6115

CORPORATE ACKNOWLEDGEMENT

Form 152

State of New Jersey
County of Hudson

On this 4th day of February, 2013 before me personally came Steven A. Townsend, to me known, who, being by me duly sworn, did depose and say that he/she resides in Stockton, NJ that he/she is the President of the Spectraserv Inc. the corporation described in and which executed the above instrument; that he/she knows that seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corpora don, and that he/she signed his/her name thereto by like order.

(SEAL)



SHANNON WELLS
A Notary Public of New Jersey
My Commission Expires 5/19/2014

CORPORATE ACKNOWLEDGMENT

Form 152

**State of New Jersey
County of Union**

On this 30th day of January, 2013 before me personally came **ADRIANNE SCALERA**, to me known, who, being by me duly sworn, did depose and say that she resides in **WOOD-RIDGE, NEW JERSEY** that she is the **ATTORNEY-IN-FACT** of the
Liberty Mutual Insurance Company

the corporation described in and which executed the above instrument; that she knows that seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

(SEAL)



**KATHLEEN M. CRISTIANO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES NOVEMBER 16, 2013**



LIBERTY MUTUAL INSURANCE COMPANY
 FINANCIAL STATEMENT — DECEMBER 31, 2011

Assets		Liabilities	
Cash and Bank Deposits.....	\$ 696,606,839	Unearned Premiums.....	\$3,762,485,913
*Bonds — U.S Government.....	910,151,865	Reserve for Claims and Claims Expense.....	15,817,904,502
*Other Bonds.....	11,794,792,561	Funds Held Under Reinsurance Treaties.....	1,249,980,610
*Stocks.....	8,216,137,875	Reserve for Dividends to Policyholders.....	4,656,284
Real Estate.....	268,420,606	Additional Statutory Reserve.....	77,791,575
Agents' Balances or Uncollected Premiums.....	3,191,269,641	Reserve for Commissions, Taxes and	
Accrued Interest and Rents.....	151,164,670	Other Liabilities.....	<u>2,885,589,205</u>
Other Admitted Assets.....	<u>12,166,299,092</u>	Total.....	<u>\$23,798,408,089</u>
Total Admitted Assets.....	<u>\$37,394,843,149</u>	Special Surplus Funds.....	\$1,036,917,657
		Capital Stock.....	10,000,000
		Paid in Surplus.....	7,732,061,653
		Unassigned Surplus.....	4,817,455,750
		Surplus to Policyholders.....	<u>13,596,435,060</u>
		Total Liabilities and Surplus.....	<u>\$37,394,843,149</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
 The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2011, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 5th day of April, 2012.

TAMIKOLAJEWSKI

Assistant Secretary

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 5587661

American Fire and Casualty Company
The Ohio Casualty Insurance Company
West American Insurance Company

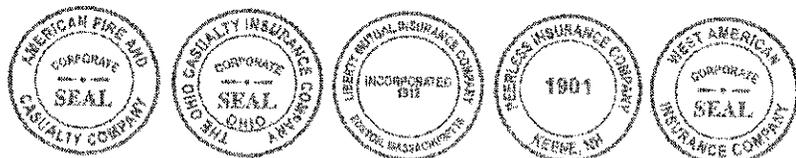
Liberty Mutual Insurance Company
Peerless Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of Ohio, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, that Peerless Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Adrienne Scalaria, Joseph Dobkowski, Jr., Kathleen M. Cristiano

all of the city of Clark, state of NJ each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 26th day of September, 2012.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
Peerless Insurance Company
West American Insurance Company

By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 26th day of September, 2012, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, Peerless Insurance Company and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley
KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company, which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorney-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, West American Insurance Company and Peerless Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of January, 20 13.



By: David M. Carey
David M. Carey, Assistant Secretary

NOT valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Reading ("Owner") and
Spectraserv, Inc. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The Project consists of, but is not limited to, the residual contents removal and disposal and complete cleaning of Anaerobic Digester No. 4 and No. 5 Tanks (the "Tanks") at the City of Reading Fritz Island Wastewater Treatment Plant ("WWTP"). The Tanks are each 75 feet in diameter. Although the Owner will assist in the coordination of the draining of free liquids from the Tanks, the Contractor will be responsible for completely removing all solid, liquid and biological contents within the Tanks as of the date of the issuance of the Notice to Proceed.

In addition, the Project allows the Contractor to furnish and operate a temporary on-site sludge dewatering system to dewater residual tank contents that cannot be gravity drained by the Owner in lieu of hauling liquid sludge. The operation of the temporary sludge dewatering system must be performed outside of normal daytime working hours and in close coordination with plant operations staff.

The liquid extracted from the residual can be disposed of at the headworks of the WWTP. The solid residual sludge shall be tested, manifested and disposed of by the Contractor at a proper licensed disposal facility in accordance with all Laws and Regulations.

The Contractor will be required to connect with plant electrical power and utility water at locations designated by the Owner.

The Site includes the Tanks and the surrounding accessory structures and areas at the WWTP, located in the City of Reading, Berks County, Pennsylvania.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

COR Project # 2012-02 – Anaerobic Digester No. 4 and No. 5 Tank Cleaning

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by T&M Associates, Inc. (Engineer), which is to act, along with the Program Manager, as Owner's representative, assume all duties and responsibilities, and have

EJCDC C-520 Agreement Between Owner and Contractor for Construction Contract (Stipulated Price)
Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project

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Page 1 of 8

the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 -- CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 120 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, as modified by the Supplementary Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions, as modified by the Supplementary Conditions, within 150 calendar days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Contractor's Surety shall be jointly and severally liable for and shall pay the Owner the cost of expenses incurred by Owner resulting from Contractor's delay in completing the Work of the Contract within the Contract Time, as liquidated damages, and not as a penalty, in the amount of One Thousand Dollars (\$1,000.00) per calendar day, for each calendar day of delay until the Work is substantially complete in accordance with the Contract Documents, subject to adjustments of the Contract Time as provided in the Contract Documents. Liquidated damages shall apply to delays in achieving each and every Milestone.
- B. In addition to the foregoing and without limiting the foregoing, Contractor and Contractor's Surety shall be jointly and severally liable for and shall pay the Owner the cost of expenses incurred by Owner resulting from Contractor's delay in submitting Shop Drawings, Product Data, Samples and similar submittals beyond the required number of days specified for such submittals as provided in the Contract Documents as liquidated damages, and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) per calendar day, for each calendar day of delay until such submittal has been properly submitted as provided in the Contract Documents. All submittals shall be received by the Engineer from Contractors by the earlier of the (i) date set forth in the Contract Documents, if applicable, or (ii) the date provided in the Schedule of Submittals accepted by the Engineer.
- C. In the event Contractor or Surety litigates the validity of the liquidated damages set forth herein or the assertion of liquidated damages, Contractor and Surety, jointly and severally, shall also be liable for legal fees, professional fees, costs, other expenses and/or damages incurred by Owner. Owner's right to receive liquidated damages shall be in addition to all other rights and remedies available to Owner at law or in equity.
- D. If Contractor is responsible, in the opinion of the Program Manager and the Engineer, for delay in the actual time of completion of any other contractor employed by the Owner in performance of any other portion of the Project, then Contractor shall be liable for and shall pay to the Owner all liquidated damages otherwise attributable to such other contractor, as well as any legal fees, professional fees, or other costs or expenses incurred by Owner.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:
- A. For all Unit Price Work, an amount equal to the sum of the unit price for each separately identified item of Unit Price Work, as provided below:
 - 1. Residual tank contents removal, dewatering, disposal and cleaning: \$100 per cubic yard
 - B. For all Work other than Unit Price Work, a lump sum amount as set forth below:
 - 1. Bonds and Insurance: \$20,000
 - 2. Mobilization and Demobilization: \$20,000
 - C. All specific cash allowances are included in the above price in accordance with Paragraph 11.02 of the General Conditions, as modified by the Supplementary Conditions.
 - D. Incorporation of Alternate No. 1 into the total contract price, will be at the discretion of the Owner and at the lump sum compensation amount of \$18,000 for the replacement of supernatant overflow piping. Owner will notify Contractor prior to the completion of Contractor's services if the Owner will award Alternate No. 1 to the Contractor.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions, as modified by the Supplementary Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions, as modified by the Supplementary Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the last Friday of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions, as modified by the Supplementary Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer or Program Manager may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions, as modified by the Supplementary Conditions.

- a. 90 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage withheld from subsequent payments (provided that the Owner will not release the retainage already withheld until Substantial Completion; and
 - b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, as modified by the Supplementary Conditions and less 150 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, as modified by the Supplementary Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – INTEREST

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions, as modified by the Supplementary Conditions shall bear interest at the rate of 2 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the document enumerated in this Article 9. In the event of conflicts, inconsistencies, or discrepancies between and/or within the Contract Documents, interpretations will be based on the following order of priorities:
 - 1. This Agreement.
 - 2. Supplementary Conditions.
 - 3. General Conditions, as revised by Owner.
 - 4. Performance bond.
 - 5. Payment bond.
 - 6. Project Manual bearing the title "City of Reading Project #2012-02 Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project" consisting of the following:
 - a. All items defined in the Project Manual
 - b. All Reference Documents which are part of the Project Manual
 - c. All Attachments to the Project Manual

- d. All Addenda to the Project Manual (the later addenda bearing greater precedence over earlier versions)
7. All Technical Specifications and Drawings
 - a. All Attachments as defined in the Project Manual Index
 - b. All Addenda to the Technical Specifications and Drawings (the later addenda bearing greater precedence over earlier versions)
 8. The following, which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 9. Contractor's Subcontractor List
 10. Contractor's Equipment and Materials List
- B. The documents listed in Paragraph 9.01.A are expressly incorporated to this Agreement.
 - C. There are no Contract Documents other than those listed above in this Article 9.
 - D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions, as modified by the Supplementary Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions, as modified by the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal

representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value in order to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. The grant requirements incorporated in the Owner's Pennsylvania H2O grant agreement apply to this Project.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective as of the date of the Owner's Notice of Award of the Project to the Contractor (which is the Effective Date of the Agreement).

OWNER:

City of Reading

By: _____

Title: _____

[SEAL]

Attest: _____

Title: _____

Address for giving notices:

815 Washington Street

Reading, PA 19601

CONTRACTOR:

Spectraserv, Inc.

By: _____

Title: _____

Steven A. Townsend
President

[CORPORATE SEAL]

Attest: _____

Title: _____

John Wengryn
Sr. Vice President/Secretary

Address for giving notices:

SPECTRASERV INC.
75 JACOBUS AVENUE
KEARNY, NJ 07032

License No.: _____

(Where applicable)

Agent for service of process:

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

SECTION 006202 - EQUIPMENT AND MATERIALS LIST

The following is a list of Equipment and Materials submitted by:

(Contractor) Spectraserv, Inc.

to be used in connection with the Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project.

This list of Equipment and Materials is part of the Contract Documents. If awarded, your company is obligated to use the Equipment and Materials listed below unless otherwise authorized by the Owner in writing.

COMPONENT OF WORK

MANUFACTURER

Mobile Dewatering Centifuge

Centrysis

Portable Odor Control System

Calgon

END OF SECTION 00 6202

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

These documents have been modified by Entech Engineering, Inc., and Fox Rothschild LLP to show additions, deletions and modifications within the General Conditions

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



ASCE American Society
of Civil Engineers

P/E National Society of
Professional Engineers
Professional Engineers in Private Practice

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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A Practice Division of the
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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

EJCDC C-700 Standard General Conditions of the Construction Contract
42-Inch Force Main - 6th and Canal Pump Station to Angelica Creek Project 2001-12
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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer and Program Manager which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *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.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer and reviewed by the Program Manager which is signed by Contractor and Owner 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.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation, after Engineer has consulted with Program Manager, of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *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.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer, after Engineer has consulted with Program Manager, which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

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.
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.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
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 Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *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.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, after Engineer has consulted with Program Manager, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish

materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

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

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer, after Engineer has consulted with Program Manager, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.



1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer, after Engineer has consulted with Program Manager. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the 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 is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

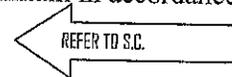
1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. ~~*Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.~~



2.02 *Copies of Documents*

- A. ~~Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.~~



2.03 *Commencement of Contract Times; Notice to Proceed*

- A. ~~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 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.~~



2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer with a copy to Program Manager for timely review:
1. a Preliminary Schedule in accordance with the General Requirements as set forth in Division 1;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, Program Manager and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, Program Manager and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer with a copy to Program Manager.
 1. The Progress Schedule will be acceptable to Engineer and Program Manager if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer or Program Manager responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer and Program Manager if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer and Program Manager as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

REFER TO S.C.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer, after Engineer has consulted with Program Manager, as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 - 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, Program Manager or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, Program Manager or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

- ~~1. Contractor's Review of Contract Documents Before Starting Work: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers,~~

~~or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.~~

REFER TO S.C.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer and Program Manager in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

- ~~3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.~~

REFER TO S.C.

B. *Resolving Discrepancies:*

- ~~1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:~~

REFER TO S.C.

- ~~a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or~~
- ~~b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).~~

3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification, after Engineer has consulted with Program Manager,.

3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer, Program Manager, Owner or any of their consultants, including electronic media editions; or
 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner, Program Manager or Engineer to Contractor, or by Contractor to Owner, Program Manager or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. ~~Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.~~
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

REFER TO S.C.

4.02 *Subsurface and Physical Conditions*

- A. ~~Reports and Drawings:~~ The Supplementary Conditions identify:
- ~~those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and~~
 - ~~those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).~~
- B. ~~Limited Reliance by Contractor on Technical Data Authorized:~~ Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
- ~~the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or~~

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

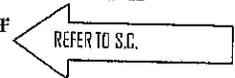
~~3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.~~



4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

~~1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or~~



2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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 Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner, Program Manager and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, consult with Program Manager, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor and Program Manager) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

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

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner, Program Manager or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner, Program Manager and Engineer. 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 or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. ~~Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner.~~ Contractor shall report to Engineer whenever any reference point or property monument 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 or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.



- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner, Program Manager or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner, Program Manager and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Program Manager and Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (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 Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment 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 Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. ~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Program Manager and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

REFER TO S.C.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

- A. ~~Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as~~

REFER TO S.C.

provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner, Program Manager and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 - 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
 - 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.
- B. The policies of insurance required by this Paragraph 5.04 shall
 - 1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner, Program Manager and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and

include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and 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 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

REFER TO S.C.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. ~~Unless otherwise provided in the Supplementary Conditions, Owner 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:~~
 1. ~~include the interests of Owner, Contractor, Subcontractors, Program Manager and Engineer, and any other individuals or entities identified in the Supplementary~~

~~Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;~~

- ~~2. be written on a Builder's Risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.~~
 - ~~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);~~
 - ~~4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;~~
 - ~~5. allow for partial utilization of the Work by Owner;~~
 - ~~6. include testing and startup; and~~
 - ~~7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.~~
- ~~B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, Program Manager and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.~~
- ~~C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.~~
- ~~D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of 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 Contractor, Subcontractors, 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 purchaser's own expense.~~

- E. ~~If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.~~

REFER TO S.C.

5.07 Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, Program Manager and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss 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 loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, Program Manager and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages 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 Owner as trustee or otherwise payable under any policy so issued.

- B. ~~Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:~~

- ~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
- ~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during~~

~~partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.~~

- C. ~~Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.~~



5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner 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.
- B. Owner 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 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner 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, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. ~~If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.~~



5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer 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.
- B. ~~At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.~~



6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Program Manager.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer or Program Manager, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer, with a copy to Program Manager, for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar

so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:

- a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
- 2) will state:
- a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
- a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer, after Engineer has consulted with Program Manager,. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to consult with Program Manager and evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and

an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's and Program Manager's Cost Reimbursement:* Engineer and Program Manager will record ~~Engineer's~~ its costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer and Program Manager for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner, Program Manager and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities

performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner, Program Manager or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner, Program Manager or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss 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, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual

knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Program Manager and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. ~~Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses.~~ Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.



6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner, Program Manager nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising

out of or relating to such Work. ~~However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.~~

- C. ~~Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.~~



6.10 *Taxes*

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



6.11 *Use of Site and Other Areas*

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

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Program Manager and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work or due to the failure or omission of the Contractor including, but not limited to, fines, penalties or other fees or damages.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

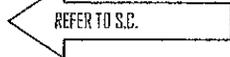
- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer and Program Manager for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and

shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner, Program Manager and Engineer of the specific requirements of Contractor's safety program with which Owner's, Program Manager's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner, Program Manager or 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 Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).



6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer and Program Manager prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If

Engineer, after Engineer has consulted with Program Manager, determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, 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.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review ~~and approval~~ will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review ~~and approval~~ will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review ~~and approval~~ of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review ~~and approval~~ shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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. Engineer's review ~~and approval~~ shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required,

new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

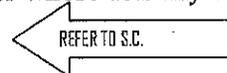
6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Owner, Program Manager and Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 *Indemnification*

A. ~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that 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 but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.~~



B. In any and all claims against Owner, Program Manager or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner, Program Manager and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.



ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise

make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer, Program Manager and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer and Program Manager in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

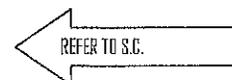
7.02 *Coordination*



- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.



ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Program Manager.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of

construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

~~8.11 *Evidence of Financial Arrangements*~~

- ~~A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.~~

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

~~ARTICLE 9 — ENGINEER'S STATUS DURING CONSTRUCTION~~



~~9.01 *Owner's Representative*~~

- ~~A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.~~

~~9.02 *Visits to Site*~~

- ~~A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as 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 Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.~~
- ~~B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's~~

~~Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.~~

~~9.03 — *Project Representative*~~

- ~~A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.~~

~~9.04 — *Authorized Variations in Work*~~

- ~~A. 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 Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.~~

~~9.05 — *Rejecting Defective Work*~~

- ~~A. Engineer will have authority to reject Work which Engineer believes to be defective, or that 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. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.~~

~~9.06 — *Shop Drawings, Change Orders and Payments*~~

- ~~A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.~~
- ~~B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.~~

- C. ~~In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.~~
- D. ~~In connection with Engineer's authority as to Applications for Payment, see Article 14.~~

~~9.07—Determinations for Unit Price Work~~

- A. ~~Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.~~

~~9.08—Decisions on Requirements of Contract Documents and Acceptability of Work~~

- A. ~~Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.~~
- B. ~~Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.~~
- C. ~~Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.~~
- D. ~~When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.~~

~~9.09—Limitations on Engineer's Authority and Responsibilities~~

- A. ~~Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by 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 Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.~~

- B. ~~Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.~~
- C. ~~Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.~~
- D. ~~Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.~~
- E. ~~The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.~~

~~9.10 Compliance with Safety Program~~

- A. ~~While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.~~

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

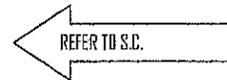
10.02 *Unauthorized Changes in the Work*

- A. 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, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer, after Engineer has consulted with Program Manager, covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.



10.04 *Notification to Surety*

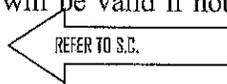
- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer

allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial. However, prior to pursuing any remedy under Article 16, the parties will meet in person with Engineer and Program Manager to engage in good faith negotiations to resolve the issue.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.



ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the

Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. 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 outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
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 Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer and Program Manager, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
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.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. 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 Contractor.

- c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Program Manager, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be 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.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal

or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Program Manager.
- B. *Cash Allowances:*
1. ~~Contractor agrees that:~~
 - a. ~~the cash 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~~
 - b. ~~Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash 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.~~

REFER TO S.C.

C. *Contingency Allowance:*

~~1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.~~

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

11.03 *Unit Price Work*

A. 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 unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly (as defined below in Sections 11.03.D.4) from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner 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.

4. If the total quantity of any item of Unit Price Work varies from the estimate contained in the Bid Form by more than 25 percent, payment may be made according to the following categories:

a. *Increases of More Than 25 Percent.* Should the total quantity of any "major item" of Unit Price Work exceed the estimate contained in the Bid Form by

more than 25 percent, the Work in excess of 125 percent of such estimate may be adjusted. Such adjustment of the unit price is to be the difference between the Bid unit price and the unit cost determined. Overhead will be deemed to have been recovered by the contractor by the payments made for the 125 percent of the Contract quantity for such item already paid, and in computing the new unit cost, such overhead will be excluded.

- b. The term "major item" means any item of Unit Price Work having an original Contract value in excess of fifteen percent (15%) of the original Contract Price.
- c. Decreases of More Than 25 Percent. Should the total quantity of any "major item be less than 75 percent of the estimate contained in the Bid, the quantity of said item may be adjusted. Such adjustment of the unit price is to be the difference between the Bid unit Price and the unit cost determined, of the total quantity of the item, including overhead. Payment for the total quantity of such item of Unit Price Work is not to exceed the payment that would be made for the performance of 75 percent of the estimate contained in the Bid Form for such item at the original unit price bid.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. 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:
 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 Paragraph 11.03); or
 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 12.01.C.2); or
 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 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. ~~Contractor's Fee: The Contractor's fee for overhead and profit shall be determined as follows:~~

- ~~1. a mutually acceptable fixed fee; or~~
- ~~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:

 - ~~a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;~~
 - ~~b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;~~
 - ~~c. 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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;~~
 - ~~d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;~~
 - ~~e. the amount of credit to be allowed by Contractor to Owner 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 Contractor's fee by an amount equal to five percent of such net decrease; and~~
 - ~~f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.~~~~

REFER TO S.C.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times 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 12.02.A. Delays beyond the control of Contractor

shall include, but not be limited to, acts or neglect by Owner, 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.

- B. ~~If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.~~
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Program Manager, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

REFER TO S.C.

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

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner, Program Manager or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

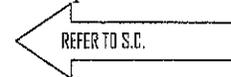
13.02 *Access to Work*

- A. Owner, Program Manager, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for

their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer and Program Manager timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer, with a copy to Program Manager, the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's, Program Manager's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.



13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer or Program, it must, if requested by Engineer or Program Manager, be uncovered for Engineer's or Program Manager's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such

correction or removal (including but not limited to all costs of repair or replacement of work of others).

- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as

a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Program Manager, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate

decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

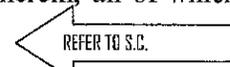
- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.



14.02 *Progress Payments*

A. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer, with a copy to Program Manager, for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. 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 Owner 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 or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.



B. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's consultation with Program Manager and observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. 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, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09, or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Payment Becomes Due:*

- 1. ~~Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.~~



D. *Reduction in Payment:*

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

- c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. 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 Owner no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner, Program Manager and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, Program Manager and Engineer shall make an inspection of the Work to determine the status of completion. If, after consulting with Program Manager, Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If, after consulting with Program Manager, Engineer considers the Work substantially complete, Engineer will deliver to Owner 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. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially

complete, Engineer will, within said 14 days, execute and deliver to Owner and 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 Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor, after consulting with Program Manager, a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, Program Manager and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 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.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

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

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, with consultation of the Program Manager, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full,

Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to 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.

14.09 *Waiver of Claims*

- A. ~~The making and acceptance of final payment will constitute:~~

- ~~1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and~~
- ~~2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.~~



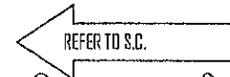
ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor, Program Manager and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

- A. ~~The occurrence of any one or more of the following events will justify termination for cause:~~
 - ~~1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);~~
 - ~~2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;~~
 - ~~3. Contractor's repeated disregard of the authority of Engineer; or~~
 - ~~4. Contractor's violation in any substantial way of any provisions of the Contract Documents.~~
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site,



and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor no later than 45 days after the Owner has tabulated and paid all of the aforesaid expenses. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. ~~Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.~~
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

REFER TO S.C.

REFER TO S.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor, Program Manager and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. ~~If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.~~
- B. ~~In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.~~

REFER TO S.C.

ARTICLE 16 -- DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Berks County Bar Association Mediation Rules in effect as of the Effective Date of the Agreement. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith in Berks County. The process shall be concluded within 60 days of filing of the request. The

date of termination of the mediation shall be determined by application of the mediation rules referenced above. In the event that the Owner and Contractor do not agree upon a mediation within ten (10) days of said request, both agree that the Berks County Bar Association will immediately appoint a mediator who will serve and comply with the aforementioned timeframe.

- C. ~~If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:~~
- ~~1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or~~
 - ~~2. agrees with the other party to submit the Claim to another dispute resolution process; or~~
 - ~~3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.~~



ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. 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
 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

SECTION 00 8000 – SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect. If any of the following Supplementary Conditions is inconsistent or conflicts with any of the provisions or terms of the General Conditions, the Supplementary Condition shall control. All provisions of the General Conditions which are not so amended or supplemented by these Supplementary Conditions shall remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01 Defined Terms

SC-1.01 Add the following new paragraph immediately after Paragraph 1.01.A.51

52. *Program Manager* – Hill International, Inc., and its subcontractors.

SC-2.01 Delivery of Bonds and Evidence of Insurance

SC-2.01 Paragraph 2.01.B shall be deleted in its entirety and insert the following in its place:

B. *Evidence of Insurance*: Before any work at the site is started, Contractor shall deliver to Owner, with a copy to Engineer and Program Manager, Certificates of Insurance (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with Article 5.

SC-2.02 Copies of Documents

SC-2.02 Paragraph 2.02.A shall be deleted in its entirety and insert the following in its place:

A. The Engineer will furnish to Contractor up to two (2) sets of the Contract Documents. Additional sets of the Contract Documents may be obtained from the Engineer at cost specified below:

1. Additional bound copies of the Project Manual and Technical Specifications - \$100.00 per set.
2. Additional drawings - \$5.00 per sheet.

Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project
City of Reading, Pennsylvania

SC-2.03 Commencement of Contract Times: Notice to Proceed

SC-2.03 Paragraph 2.03.A shall be deleted in its entirety and insert the following in its place:

- A. The Contract Time shall commence on the date stated in the Notice to Proceed.

SC-2.07 Initial Acceptance of Schedules

SC-2.07.A.2. Add the following sentence at the end of 2.07.A.2:

The Schedule of Submittals shall provide that all submittals shall be due to Engineer no later than ten (10) days after the Contractor's receipt of notice that the Owner has elected to award the Alternate Number 1.

SC-3.03 Reporting and Resolving Discrepancies

SC-3.03.A.1 Paragraph 3.03.A.1 shall be deleted in its entirety and insert the following in its place:

1. Contractor's Review of Contract Documents Before Starting Work.
 - a. Contractor shall carefully examine the civil, architectural, plumbing, electrical, fire protection drawings and other Contract Drawings and Specifications. If any conflicts, inconsistencies, or discrepancies occur between and/or within the Drawings and Specifications, Contractor shall promptly report such a conflict, inconsistency, or discrepancy to Engineer in writing and obtain written instructions as to the manner in which to proceed. No departures from the Contract Documents shall be made without the prior written approval of Engineer and written notice to Owner.
 - b. Any conflict, inconsistency, or discrepancy shall be reported at least seven (7) days prior to submission of the Bid on the requisite, attached Bid Form. In the event that such conflicts, inconsistencies or discrepancies are not reported and a difference in quantity or quality is concerned, then, Engineer will make a selection, based on its sole judgment, and no additional compensation or extension of time will be allowed for Contractor.

SC-3.03.A.3 Paragraph 3.03.A.3 shall be deleted in its entirety.

SC-3.03.B Paragraph 3.03.B.1 and all of its subparagraphs shall be deleted in their entirety and insert the following in their place:

1. In the event of conflicts, inconsistencies or discrepancies between and/or within the Contract Documents and/or with applicable standards or Laws and Regulations, Contractor shall: (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement or (3) both, in accordance with Engineer's interpretation.
2. Except as provided in Paragraph 3.03.B.1, the following order of precedence shall be

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followed. In the event of conflicts, inconsistencies, or discrepancies between and/or within the Contract Documents, interpretations will be based on the following order of priorities:

- a. The Agreement.
 - b. These Supplementary Conditions.
 - c. The General Conditions, as revised by Owner.
 - d. The Performance bond.
 - e. The Payment bond.
 - f. The Project Manual bearing the title "City of Reading Project #2012-02 Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project" consisting of the following:
 - i. All items defined in the Project Manual;
 - ii. All Reference Documents which are part of the Project Manual;
 - iii. All Attachments to the Project Manual; and
 - iv. All Addenda to the Project Manual (the later addenda bearing greater precedence over earlier versions).
 - g. All Technical Specifications and Drawings:
 - i. All Addenda to the Technical Specifications and Drawings (the later addenda bearing greater precedence over earlier versions);
 - ii. Large-scale Drawings shall supersede smaller-scale Drawings; and
 - iii. Dimensions shall govern over scaling of the Drawings.
3. In case of conflicts, inconsistencies, or discrepancies either in dimensions in the Drawings or in the Specifications, the latter shall be submitted to Engineer who will promptly make a determination in writing.
 4. In the case of a conflict, inconsistency, or discrepancy between and/or within the Drawings and Specifications not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with Engineer's interpretation.

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SC-4.01 Availability of Lands

SC-4.01 Paragraph 4.01.A shall be deleted in its entirety and insert the following in its place:

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

SC-4.02 Subsurface and Physical Conditions

SC-4.02 Paragraphs 4.02.A and 4.02.B shall be deleted in their entirety and insert the following in their place:

- A. Owner shall not be responsible for furnishing surveys or other information as to the physical characteristics of, legal limitations of or utility locations for the Site. Contractor shall confirm the location of each utility as required to perform the Work and as may be included in the Specifications. To the extent required for the execution of the Work, Owner shall only provide to Contractor such test borings and information that it has as to subsurface conditions and site geology. This data shall not constitute one of the Contract Documents. Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of any geotechnical report(s), borings made, or of the logs of test borings, or of other investigations, or of the interpretations or recommendations made thereof, and there is no warranty or guaranty, express or implied, that the conditions indicated by such geotechnical report(s), investigations, borings, logs or information are representative of those existing throughout the Site, or any part thereof, or that unforeseen developments may not occur. Contractor represents that it is familiar with the Site and has received all information it needs concerning the condition of the Site. Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof, including, without limitation, all structural, surface and reasonably ascertainable subsurface conditions. Based upon the foregoing inspections, understandings, agreements and acknowledgments, Contractor agrees and acknowledges: (1) that the Contract Price is just and reasonable compensation for all Work, including, without limitation, foreseen and foreseeable risks, hazards and difficulties in connection therewith, and (2) that the Contract Time is adequate for the performance of the Work. Contractor shall have no claims for surface or reasonably ascertainable subsurface conditions encountered. Contractor shall exercise special care in executing subsurface Work in proximity of known subsurface utilities, improvements, and easements.
- B. Except as to any reported error, inconsistencies or omissions, and to concealed or unknown conditions, by executing the Agreement, Contractor represents the following:
1. The Contract Documents are sufficiently complete and detailed for Contractor to: (1) perform the Work required and to produce the results intended by the Contract Documents; and (2) comply with all requirements of the Contract Documents.

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2. The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures, and techniques necessary to perform the Work, use of materials, selection of equipment, and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) requirements of any warranties applicable to the Work; and (4) all applicable Laws and Regulations which bear upon the performance of the Work.
- C. Contractor shall, therefore, satisfy itself as to the accuracy of all dimensions and locations. In all cases of interconnection of its Work with existing or other Work, Contractor shall verify at the Site, all dimensions relating to such existing or other Work. Any errors due to Contractor's failure to verify all such locations or dimensions shall be promptly rectified by Contractor without any additional cost to Owner.
- D. Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Program Manager and Engineer at once.
- E. Before ordering any materials or doing any Work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge by Contractor or compensation to Contractor will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted by Contractor to Engineer in writing for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, Contractor shall submit detailed drawings of such departure for the approval by Engineer before making the change.
- F. Prior to proceeding with any Work, and in sufficient time as not to delay the Work, Contractor shall:
1. Review, compare and analyze the Contract Documents and any information or surveys provided by Owner; and
 2. Inspect and check such portion of the Work for proper fit and matching with continuous Work and for proper coordination with other Work and the Work of Owner or of separate contractors; and
 3. Verify all dimensions and measurements with actual field conditions at the Project.
- G. Contractor shall immediately notify Owner, Program Manager, and Engineer of any errors, omissions or inconsistencies noted as the result of Contractor's activities under Paragraph 4.02. If Contractor knows or reasonably should know of any such error, omission or inconsistency and proceeds with the construction in question without first giving such notice, any claim for an adjustment to the Contract Price or the Contract Time shall be deemed waived and released and Contractor and its Surety shall assume all responsibility

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and liability on a joint and several basis for such performance and shall indemnify Owner for all costs, expenses, losses and damages incurred by Owner, including, but not limited to, legal fees, costs, and expenses, incurred by Owner as the result thereof, including any cost to repair, correct or rework the construction in question.

SC-4.03 Differing Subsurface or Physical Conditions

SC-4.03 Paragraph 4.03.A.1 shall be deleted in its entirety.

SC-4.05 Reference Points

SC-4.05 The first sentence of Paragraph 4.05.A shall be deleted.

SC-4.06 Hazardous Environmental Conditions

SC-4.06.A Add the following subparagraph 4.06.A.1:

1. There are no reports/drawings regarding Hazardous Environmental Conditions at the Site that are applicable to the Work and known to Owner.

SC-4.06.G Paragraph 4.06.G shall be deleted in its entirety and insert the following in its place:

- G. Owner shall indemnify and hold harmless Contractor and its Subcontractors and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition was specifically caused by Owner. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

SC-5.01 Performance, Payment, and Other Bonds

SC-5.01 The first sentence of Paragraph 5.01 shall be deleted in its entirety and insert the following in its place:

- A. Contractor shall furnish a performance bond and payment bond, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents.

SC-5.04 Contractor's Liability Insurance

SC-5.04 Add the following new paragraph immediately after Paragraph 5.04.B:

- C. The Contractor shall maintain the insurance products and coverage for not less than the following amounts (or greater where required by Laws and Regulations) as set forth below:

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1. Workers' Compensation, and related coverages under paragraphs 5.04.A.1 and A.2 of the General Conditions:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoreman's): Statutory
 - c. Employer's Liability: \$500,000.00

2. Contractor's General Liability under paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - a. General Aggregate \$2,000,000.00
 - b. Products - Completed Operations Aggregate \$2,000,000.00
 - c. Personal and Advertising Injury \$1,000,000.00
 - d. Each Occurrence (Bodily Injury and Property Damage) \$1,000,000.00
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
 - f. Excess or Umbrella Liability
 - 1) General Aggregate \$2,000,000.00
 - 2) Each Occurrence \$2,000,000.00
 - g. Contractor's General Liability insurance shall provide coverage for loss or damage to all contents of the Project field offices supplied by Contractor for its own forces and the Engineer/Program Manager. Such contents may include, but are not limited to, office records, supplies, instruments, equipment, and personal property of the Engineer's and Program Manager's employees using the office.

3. Automobile Liability under paragraph 5.04.A.6 of the General Conditions:
 - a. Combined Single Limit of \$1,000,000.00

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SC-5.06 *Property Insurance*

SC-5.06 Paragraph 5.06 shall be deleted in its entirety.

SC-5.07 *Waiver of Rights*

SC-5.07 Paragraphs 5.07.B and C shall be deleted in their entirety.

SC-5.09 *Acceptance of Bonds and Insurance; Option to Replace*

SC-5.09 Paragraph 5.09.A shall be deleted in its entirety and insert the following in its place:

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party. If Contractor does not purchase or maintain all of the bonds and insurance required by the Construction Documents, Owner may elect to obtain equivalent bonds or insurance and a Change Order shall be issued to reduce the Contract Price for the costs thereof.
- B. Contractor shall provide to Owner such additional information with respect to bonds and insurance provided as may reasonably be requested. Failure by Owner to give a notice of objection within the time provided above shall constitute acceptance of such insurance purchased by the Contractor as complying with the Contract Documents.

SC-6.01 *Supervision and Superintendence*

SC-6.01 Paragraph 6.01.B shall be deleted in its entirety and insert the following in its place:

- B. The Contractor's superintendent shall be on site full time until Substantial Completion of Contractor's Work and shall not be changed except with the consent of Owner and Program Manager, unless the superintendent ceases to be in Contractor's employ. If Contractor should at any time fail to provide adequate supervision and superintendence, as may be evidenced by incomplete, delayed or non-conforming Work, Owner may provide supervision and superintendence and the cost thereof, including, but not limited to, compensation for additional professional services, legal fees, or other costs or expenses incurred, shall be charged to Contractor in the form of a Change Order incorporating an appropriate reduction in the Contract Price. If the payments due to Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner. Owner, Engineer and/or Program Manager shall have the right to dismiss from the Project any superintendent whose performance is not satisfactory in the sole discretion of Owner. If during the course of the Project it is evident that the superintendent is not competent or is not managing the progress of the Project or is not coordinating the various trades, entities, and/or persons under his supervision, then Program Manager will document such findings to Contractor. If within ten (10) days of receiving such notice, no substantial effort or correction of the finding is made known to Program Manager, then Engineer, as requested by Owner, may require the immediate replacement of the superintendent with an acceptable one at no additional cost to Owner.

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C. Contractor shall remove from the Project such employees of Contractor or of any Subcontractor as Owner requests be removed, with or without a reason. Contractor shall require Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor to comply with the following requirements:

1. Smoking and other use of tobacco is prohibited in buildings owned by or under the control of Owner.
2. Using the building facilities, e.g., lunchroom, toilets, etc. is prohibited.
3. Making any remarks to passing individuals that violate decency or cause embarrassment to that individual or Owner is prohibited.

SC-6.08 *Permits*

SC-6.08 The first sentence of paragraph 6.08.A shall be deleted in its entirety and the following inserted in its place:

"Contractor shall obtain and pay for all permits and licenses necessary or required by applicable Laws and Regulations Work."

SC-6.09 *Laws and Regulations*

SC-6.09 The last sentence in Paragraph 6.09.B shall be deleted. Paragraph 6.09.C shall be deleted in its entirety.

SC-6.10 *Taxes*

SC-6.10 Add a new paragraph immediately after Paragraph 6.10.A:

B. Owner is exempt from payment of sales and compensating use taxes of the Commonwealth of Pennsylvania and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-6.13 *Safety and Precautions*

SC-6.13 The following paragraphs shall be added immediately following Paragraph 6.13.F:

G. Prior to performing any Work at the Site, Contractor shall submit to Program Manager with a copy to the Engineer its Project Safety and Health Program fully describing Contractor's commitments for meeting its obligations to provide safe and healthy

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working conditions for its employees, and generally contribute and enhance safety at the Site. Contractor's program shall reference federal and state OSHA standards and other rules and regulations applicable to construction activities on the Project. Contractor's Project Safety and Health Program shall include, without limitation, as a minimum, the following:

1. New Hire Safety and Orientation Program: Each new or reassigned employee of Contractor shall receive a thorough safety orientation including, without limitation, employer/employee responsibilities under federal/state OSHA regulations, ear protection in high noise level areas, respiratory protection, Material Safety Data Sheets (MSDS), fire protection, first aid facilities, and lock out procedures on electrical equipment. Attendance at the New Hire Safety and Orientation Program meeting is required and records must be kept on file in Contractor's office for review.
2. Weekly Tool Box Safety Meetings: Contractor shall conduct Weekly Tool Box Safety Meetings to provide employees with current safety information. Attendance is required and records must be kept on file in Contractor's office for review.

SC-6.17 Shop Drawings and Samples

SC-6.17 The words "and approved" shall be deleted from Paragraphs 6.17.A.; 6.17.B; 6.17.D.1; 6.17.D.2; and 6.17.D.3.

SC-6.19 Contractor's General Warranty and Guarantee

SC-6.19 The words "and approved" shall be deleted from Paragraph 6.19.C

SC-6.20 Indemnification

SC-6.20 Paragraph 6.20.A shall be deleted in its entirety and insert the following in its place:

- A. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend Owner, Engineer and Program Manager and including their consultants, agents, employees, officers, elected officials, affiliates and attorneys (collectively, the "Indemnified Parties") from and against claims, damages, losses and expenses, including, but not limited to, injuries to Contractor's employees, legal fees and defense costs, penalties, fines or losses arising out of or resulting from performance of the Work, but only to the extent caused, in whole or in part, by the acts or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 6.20.A. Contractor agrees to and does hereby assume on behalf of Owner, Engineer, and Program Manager the defense of any action, at law or in equity, which may be brought against such Indemnified Parties, upon their demand, and pay the amount of any judgment that may be entered against such Indemnified Parties in

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any such action. In the event that any such claim, loss, cost, expense, liability, damage or injury arises or is made, asserted or threatened against Owner for which Contractor or its insurer does not admit coverage, or if Owner reasonably determines such coverage to be inadequate, Owner shall have the right to withhold from Contractor any payments due or to become due to Contractor in an amount sufficient to protect Owner from such claim, loss, cost, expense, liability, damage or injury, including, but not limited to, legal fees and expenses reasonably necessary for the defense thereof.

SC-6.22 Contractor's Representations and Warranties

SC-6.22 Add the following new paragraphs immediately after Paragraph 6.21.E:

6.22 Contractor's Representations and Warranties

- A. Contractor represents and warrants the following to Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to Owner to execute Owner Contractor Agreement, which representations and warranties shall survive the execution and delivery of Owner Contractor Agreement and the Final Completion of the Work:
1. that it is financially solvent, able to pay its debts as they mature and possess sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
 2. that it is able to furnish the personnel, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
 3. that it is authorized to do business in the Commonwealth of Pennsylvania and is properly licensed by all necessary governmental and public and quasi public authorities having jurisdiction over it and over the Work and the site of the Project;
 4. that its execution of the Agreement and its performance thereof is within its duly authorized powers;
 5. that it is familiar with all Federal, State and Municipal Laws and Regulations, which may in any way affect the Work of those employed herein, including, but not limited to, any special acts relating to the Work or to the Project of which it is a part;
 6. that such temporary and permanent Work required by the Contract Documents as is to be done by it, can be satisfactorily constructed and used for the purposes for which it is intended, and that such construction will not injure any person or damage any property;
 7. that it is familiar with local trade jurisdictional practices at the site of the Project;

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8. that it has carefully examined the Plans, the Specifications and the Site of the Work, and that, from its own investigation, it has satisfied itself as to the nature and location of the Work, the character, quality and quantity of the surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, and the general local conditions, and all other materials which may in any way affect the Work or its performance; and
9. that it has determined what local ordinances, if any, will affect its Work. Contractor has checked for any County, City, Borough, or Township rules or regulations applicable to the area in which the Project is being constructed and in addition, Contractor has checked for any rules or regulations of other organizations having jurisdiction, including, but not limited to, chambers of commerce, planning commission, industries, or utility companies who have jurisdiction over lands which Contractor occupies. All costs of compliance with local controls are included in the prices bid, even though documents of such local controlling agencies are not listed herein.

SC-7.01 *Related Work at Site*

SC-7.01 Add the following new paragraph immediately after Paragraph 7.01.C:

- D. Contractor shall not be relieved of its responsibility for performing any Work by showing that a separate contractor has, or should have, responsibility to perform the same portion of the Work. Disputes concerning who, as between Contractor and a separate contractor, must perform a particular aspect of the Work or comply with a particular requirement shall be determined by Engineer, whose decision shall be final and binding upon Contractor and, if so provided in the separate contractor's contract for construction, upon the separate contractor. If Engineer decides that the particular aspect or requirement is within the scope of Work of both Contractor and a separate contractor, Engineer shall decide which shall perform the Work and which shall give Owner a credit to the Contract Price for omitting the Work.

SC-7.03 *Legal Relationship*

SC-7.03 Add the following new paragraph immediately after Paragraph 7.03.C:

- D. Contractor shall promptly remedy damage Contractor, either itself or by its Subcontractor or Sub-Subcontractors or their respective agents, servants, or employees, causes to completed or partially completed construction or to property of Owner or its separate contractors. Contractor agrees to defend, indemnify and hold harmless Owner, Program Manager and Engineer and the consultants, agents and employees of any of them from and against any claims or damages brought by a separate contractor arising out of actions or omissions of Contractor, Subcontractors, sub-subcontractors or suppliers in performing its Work under the Contract Documents.

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SC-7.04 Claims Between Contractors

SC-7.04 Add the following new paragraph immediately after Paragraph 7.03:

7.04 *Claims Between Contractors*

- A. Should Contractor, either itself or by its Subcontractor or Sub-Subcontractors or their respective agents, servants, or employees, cause damage or injury to the property or Work of other contractors, or by failing to perform Work (including, without limitation, the Work of its Subcontractor or sub-Subcontractors) with due diligence, delay any other contractor or Subcontractor, which causes a dispute related to the additional expense or damage resulting therefrom, the parties involved in such dispute and their respective Sureties shall resolve said dispute as set forth below. It is agreed by all parties that claims, disputes or actions between or among Contractor or its Sureties and Subcontractors or other contractors concerning the additional expense or damage shall not delay completion of the Work, which shall be continued by the parties, subject to the rights herein. It is agreed by the parties to this Agreement (Owner as promisee and Contractor as promisor) that the intent of Paragraph 7.04 is to benefit Contractor and its Sureties on the Project and to serve as an indication of the mutual intent of Owner and Contractor that this clause raise such other contractors to the status of third party beneficiaries only as to the terms and conditions of Paragraph 7.04. Contractor agrees that the provisions in this Paragraph 7.04 are provided as a benefit to Contractor and, that they specifically exclude claims, disputes or actions against Owner for delay or other damages.
- B. Contractor agrees that all claims, disputes and other matters in question between it and other contractors, their Sureties or Subcontractors, which arise out of, or are related to Work or this Agreement, or the breach thereof, shall be settled by agreement or resolved by arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise. This agreement to arbitrate is in consideration of the fact that Owner's other contractors agree to this same arbitration provision, and is specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable Laws and Regulations in any court having jurisdiction thereof. Owner shall not be a party to this arbitration.
- C. Notice of the demand for arbitration shall be filed in writing with the other contractor(s) and with the Regional Office of the American Arbitration Association. A copy of the demand shall be filed with Program Manager and Owner. The demand for arbitration shall be made within thirty (30) days after the claim, dispute or other matter in question has arisen. Owner shall not be a party to the claim, dispute or other matter in question, but will be a witness in any arbitration at the request of any party to the arbitration. Contractor shall contemporaneously provide Owner with copies of all documents submitted to the arbitrator at no cost to Owner.
- D. Contractor hereby agrees that Contractor's sole remedy for including, without limitation, injuries, damages or expenses resulting from disputes between other contractors, Sureties or Subcontractors will be to seek recovery from the other contractors, Sureties or Subcontractors for the transgressions of such other contractors, Sureties or Subcontractors.

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Contractor hereby further agrees that it shall have no recourse against Owner for the transgressions of other contractors, Sureties or Subcontractors that result in including, without limitation, delay, acceleration, out-of-sequence Work, overtime, stacking of trades, failure to adequately clean the work areas, disputes over the scope of Contractor's Work, or disputes between contractors, Sureties or Subcontractors regarding any other matter concerning the Project.

- E. Contractor acknowledges that the restrictions contained in the General and Supplementary Conditions are reasonable and necessary in order to protect the legitimate interests of Owner and that any violation of these General Conditions would result in irreparable injuries to Owner and monetary damages would be inadequate to compensate Owner for a violation of the General Conditions or Supplementary Conditions. Therefore, Contractor hereby agrees that if Contractor disregards any paragraph of the General Conditions or Supplementary Conditions, including, without limitation, any portion of this Paragraph 7.04, and institutes or attempts to institute any proceeding (e.g., arbitration, litigation, mediation, etc.) against Owner for including, without limitation, injuries, damages or expenses resulting from disputes between contractors, Sureties or Subcontractors, Owner is entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief to prevent Contractor from pursuing any proceeding against Owner and Owner is entitled to stay any such proceeding. In the event that Owner pursues preliminary or permanent injunctive relief to prevent Contractor from pursuing any proceeding against Owner or that Owner attempts to stay any such proceeding, Contractor and Contractor's Surety shall be jointly and severally liable for and shall reimburse Owner immediately upon demand for including, without limitation, all legal fees, professional fees and all other costs associated therewith incurred by Owner. Owner's rights set forth in Paragraph 7.04 shall be in addition to all other rights of Owner granted in the Contract Documents, at law, or in equity.
- F. Program Manager and Engineer shall not be a party to claims, disputes or actions which are solely between Contractor, its Sureties or Subcontractors and/or which arise out of, or are related to this Agreement or the Contractor, its Sureties or Subcontractors breach thereof.
- G. In case any direct or indirect injury is done to existing street or underground structures sewers, mains, or to public or private property of any kind, or to any materials or fixtures, by or because of the Work, in consequence of any act or omission on the part of Contractor, its employees or agents, Contractor, at its own cost and expense, except where hereinafter specified otherwise, shall restore such structures, property, or materials to a condition equal to or similar to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise as may be required by Engineer. To the extent that Contractor fails or refuses to meet the requirements of this Paragraph 7.04 and such failure and/or refusal results in Owner incurring additional legal fees, professional fees, other cost or expenses, Contractor shall be liable for the same.
- H. If Contractor fails to restore such property or make good such damage, Owner may, by contract or otherwise, proceed to repair, rebuild, or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any money due, or to become due, Contractor under this Contract; or Owner may deduct from any money due Contractor a sum sufficient to reimburse Owner of property so damaged. If the amount owed is not

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sufficient to reimburse Owner, Contractor will pay Owner said amount immediately upon demand.

SC-8.11 *Evidence of Financial Arrangements*

SC-8.11 Paragraph 8.11 shall be deleted in its entirety.

ARTICLE 9 ENGINEER AND PROGRAM MANAGER

SC-9 Article 9 and its subparagraphs shall be deleted in their entirety and insert the following in their place:

9.01 Owner's Representatives

- A. Program Manager and Engineer will be Owner's representative during the construction period. The duties, responsibilities and limitations of authority of Program Manager and Engineer as Owner's representative during construction are set forth in the Contract Documents.
- B. Owner shall retain an engineer lawfully licensed to practice engineering or an entity lawfully practicing engineering in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- C. Duties, responsibilities and limitations of authority of the Program Manager and Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of Owner, Program Manager, Engineer and Contractor. Consent shall not be unreasonably withheld.
- D. If the employment of the Program Manager or Engineer is terminated, the Owner, in its sole discretion, will employ a successor Program Manager or Engineer and the Contractor hereby consents to the aforesaid appointment and consents that the status under the Contract Documents shall remain the same.

9.02 Administration of the Contract

- A. The Program Manager and Engineer will provide administration of the Contract as described in the Contract Documents and will be Owner's representatives during construction until the date the Engineer issues the final Certificate for Payment. The Program Manager and Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents.
- B. The Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the

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Work. On the basis of the site visits, the Engineer will keep Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to Owner and Program Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Program Manager, and (2) defects and deficiencies observed in the Work.

- C. The Program Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Site whenever the Work is being performed or shall otherwise be available upon request. The Program Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep Owner reasonably informed of the progress of the Work, and will report to Owner and Engineer (1) known deviations from the Contract Documents and the most recent Progress Schedule, and (2) defects and deficiencies observed in the Work.
- D. The Program Manager will coordinate the activities of Contractor and other contractors in accordance with the latest approved Progress Schedule.
- E. The Program Manager, except as specifically set forth herein, and Engineer will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely Contractor's rights and responsibilities under the Contract Documents, and neither will be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Program Manager nor the Engineer will have control over or charge of or be responsible for acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

9.03 Communications Facilitating Contract Administration

- A. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall endeavor to communicate with each other through the Program Manager, and shall contemporaneously provide the same communications to the Engineer about matters arising out of or relating to the Contract Documents. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with other contractors shall be through the Program Manager and shall be contemporaneously provided to the Engineer if those communications are about matters arising out of or related to the Contract Documents. Communications by and with Owner's own forces shall be through Owner.
- B. The Program Manager and Engineer will review all Applications for Payment by Contractor.
- C. The Engineer, after consultation with the Program Manager, will have the authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. However, neither the Engineer's nor the Program Manager's authority to act under Paragraph 9.03.C nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the

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Engineer or the Program Manager to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

- D. Engineer will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from Contractor such as Shop Drawings, Product Data and Samples. Where there are other contractors, the Program Manager will coordinate the information contained within each submittal received from Contractor and other contractors, and transmit to the Engineer those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to Program Manager and Engineer that the Contractor has reviewed and recommended them for approval. The Contractor's actions will be taken in accordance with the Schedule of Submittals approved by the Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time to permit adequate review by the Engineer.
- E. The Engineer will review and take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the Schedule of Submittals approved by the Engineer or, in the absence of an approved Schedule of Submittals, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Upon the Engineer's completed review, the Engineer shall transmit its submittal review to the Program Manager.
- F. Review of Contractor's submittals by the Program Manager and Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor. The Program Manager's and Engineer's review of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents. The Program Manager's and Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Program Manager and Engineer, of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- G. The Engineer will prepare Change Orders and Work Change Directives.
- H. The Program Manager and the Engineer will take appropriate action on Change Orders or Work Change Directives in accordance with the Contract Documents and the Engineer will have authority to order minor changes in the Work. The Engineer, in consultation with the Program Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions.
- I. The Program Manager will assist the Engineer in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Engineer; and receive and forward to

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Owner written warranties and related documents required by the Contract and assembled by Contractor.

- J. If Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The Resident Project Representative will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding the Resident Project Representative's actions. The Resident Project Representative's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. The Resident Project Representative's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The Resident Project Representative shall not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, suppliers, or Contractor's superintendent.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.
- K. The Engineer will interpret and decide matters concerning performance under, and requirements of the Contract Documents on written request of the Program Manager, Owner or Contractor through the Program Manager. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- L. Interpretations and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

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- M. The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.
- N. The Program Manager will receive and review requests for information from Contractor, and forward each request for information to the Engineer, with the Program Manager's recommendation. The Engineer will review and respond in writing to the Program Manager to requests for information about the Contract Documents. The Program Manager's recommendation and the Engineer's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

SC-10.03 Execution of Change Orders

SC-10.03 Add the following new paragraphs immediately after paragraph 10.03.A.3:

- B. Notwithstanding anything contained in the Contract Documents to the contrary, a change in the Contract Price, the Contract Time and/or any Milestone Date shall be accomplished only by Change Order or by a Work Change Directive. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions of the Work and no claim that Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis of any claim or adjustment in compensation due under the Contract and/or time period provided for under the Contract.
- C. Agreement on any Change Order shall constitute a final settlement of all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and the Progress Schedule. In the event a Change Order increases the Contract Price, Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work were originally part of the Contract Documents. Present or future claims by Owner relating to defective performance of the Work shall not be deemed settled through agreement on a Change Order unless so expressly agreed in writing.
- D. To the extent that any Contractor makes an excessive number of Change Order requests, which excessiveness, shall be determined solely in the discretion of Owner, Owner shall have the authority in its sole discretion, to disregard any subsequent Change Order requests made by such Contractor on the same or similar scope of services and Contractor's sole remedy against Owner under this Agreement shall be pursuant to Paragraph 10.05. Furthermore, to the extent Owner incurs any legal fees, professional fees, expenses or costs (including, but not limited to, employee costs), arising out of or resulting from Contractor making an excessive number of Change Order requests, Contractor shall be liable for such legal fees, professional fees, expenses and costs.
- E. Any action(s) by Owner, Program Manager, Engineer and/or Contractor other than actions taken pursuant to the procedures set forth herein shall not constitute the approval of a Change Order, including, without limitation, Owner's, Program Manager's and/or Engineer's execution of Contractor's time sheets upon which Contractor

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submits a Change Order request. Furthermore, to the extent Owner incurs any legal fees, professional fees, expenses or costs (including, but not limited to, employee costs), arising out of or resulting from Contractor's failure to follow the proper procedures for approval of a Change Order, Contractor shall be liable for such legal fees, professional fees, expenses and costs.

- F. So as not to unduly delay the Project when a Contractor's Change Order request has not been approved pursuant to the procedures set forth herein within thirty (30) days of Contractor's submittal of such Change Order, or where the parties cannot agree as to the amount of compensation for a Change Order, Contractor shall continue to perform its services and Contractor's sole remedy against Owner under this Agreement shall be pursuant to Paragraph 10.05.

SC-10.05 *Claims*

SC-10.05 Add the following new paragraphs immediately after Paragraph 10.05.F:

- G. Contractor waives Claims against Owner for consequential damages and/or incidental damages arising out of or relating to this Contract. This waiver includes: (1) damages incurred for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages and/or incidental damages due to either party's termination in accordance with Article 15. Notwithstanding anything else to the contrary in the Contract Documents, Owner shall have the right to recover liquidated damages, consequential damages and/or incidental damages from Contractor to the extent permitted by law and the Contract Documents.
- H. No claim for an increase in the Contract Price or change in the Contract Time shall be based on constructive acceleration. Accordingly, no course of conduct or dealings between the parties, or any express or implied statements made by the parties, nor any express or implied acceptance of alterations to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Price or change in the Contract Time.
- I. Contractor shall have no claim or right of recovery of damages against Owner, Engineer and/or Program Manager for economic loss sustained, in whole or in part, by any act or omission of Owner, Engineer and/or Program Manager to the extent that such act or omission constitutes a breach of contract. Specifically, and without limiting the generality of the foregoing, Contractor shall have no claim against Owner, Engineer and/or Program Manager for economic loss based upon any tort, including, without limitation, negligence, negligent misrepresentation or any other tort-based theory of liability.

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SC-11.02 Cash Allowances

SC-11.02 Paragraphs 11.02.B and 11.02.C and all of their subparagraphs shall be deleted in their entirety and insert the following in their place:

1. No cash allowances for any purpose are included in the Project Manual and Contract Documents of this Project.

SC-12.01 Change of Contract Price

SC-12.01 Paragraph 12.01.C and all of its subparagraphs shall be deleted in their entirety and insert the following in their place:

- C. Contractor's fee for the combined overhead and profit that may be included (but shall not be exceeded) in the total cost to Owner shall be a mutually acceptable fixed fee or otherwise based on the following schedule:
 1. For Contractor, for Work performed by Contractor's own forces, ten percent (10%) of the cost.
 2. For Contractor, for Work performed by Contractor's Subcontractor, five percent (5%) of the amount due the Subcontractor.
 3. For each Subcontractor or sub-Subcontractor involved, for Work performed by the Subcontractor's or sub-Subcontractor's own forces, five percent (5%) of the cost.
 4. No fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, or 11.01.B.
 5. In order to facilitate checking of quotation for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including, without limitation, labor, materials, equipment and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving an amount greater than or equal to Two Hundred Dollars (\$200) be approved without such itemization.
 6. When both additions and deductions are involved in any one Change Order or Work Change Directive, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.

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SC-12.03 Delays

SC-12.03.A Add the following paragraphs immediately after Paragraph 12.03.A

1. No extension of Contract Time will be considered or approved if the act or occurrence constituting the basis of the request or claim is for nondelivery of materials due to any act or neglect of Contractor, or the failure of Contractor to employ, furnish or obtain, as necessary for the timely prosecution of the Work, Shop Drawings, sufficient labor, materials or equipment, or other matters which shall be within the control of Contractor. Any delay which results due to any of the foregoing causes shall be the sole responsibility of Contractor.
2. No payment or compensation will be made to Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delays be avoidable or unavoidable. Contractor's sole remedy for delays shall be an extension of Contract Time, pursuant to and only in accordance with Paragraph 12.02. Such extension shall be a period equivalent to the time lost, day for day, by reason of any and all of the aforesaid causes. Nor will Contractor be permitted to make any claim for acceleration or for costs or expenses associated with acceleration nor will Contractor be permitted to make a claim for out-of-sequence work (e.g., winter protection costs). In the event that Contractor chooses to assert such a claim for delay, acceleration or out-of-sequence work, or litigate this provision, and Contractor fails to prevail as to its entire claim in its litigation, Contractor shall be liable to Owner and shall reimburse Owner, Program Manager, and Engineer for any legal fees, professional fees, costs or expenses associated with analyzing, defending or otherwise opposing any such claim or litigation.
3. Owner shall not be liable to Contractor for any expenses, damages, loss of profits (anticipated or otherwise) or charges of any nature whatsoever (including, but not limited to, legal fees and professional fees) which shall result because of any extension of the time of completion which is granted by Owner to Contractor or to any other contractor employed by Owner to perform any other portion of the Project, or which shall result because of any delay or hindrance of any nature whatsoever in the progress of the Work (e.g., winter protection costs), whether such delay or hindrance shall be avoidable or unavoidable. In the event Contractor chooses to litigate and fails to prevail as to its entire claim in its litigation, Contractor shall reimburse Owner, Program Manager, and Engineer for any legal fees, professional fees and all other costs and expenses associated with analyzing, defending or otherwise opposing any such claim or litigation.
4. No extension of Contract Time granted by Owner shall be or shall be deemed to be a waiver by Owner of any rights accruing to it under the Contract Documents and no extension of Contract Time granted by Owner

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shall relieve or shall be deemed to relieve Contractor from full responsibility for performance of the Work.

5. Should Owner be prevented or enjoined from proceeding with the Project either before or after the start of construction by reason of any litigation or any other reason beyond the control of Owner, Contractor shall not be entitled to make or assert claims for damage by reason of said delay, or for acceleration or out-of-sequence work; but time for completion of the Work will be extended to such reasonable time as Owner, Program Manager and Engineer may determine will compensate for time lost for such delay with such determination to be set forth in writing.
6. Any delay attributable to lack of coordination or cooperation by and/or between Contractor and any other contractor among themselves or their Subcontractors, will not be recognized by Owner as a basis for any claim for increasing any Contract Price, but shall be resolved as provided in Paragraph 7.04.

SC-12.03.B Paragraph 12.03.B shall be deleted in its entirety.

SC-13.03 Tests and inspections

SC-13.03 Add the following paragraph immediately after Paragraph 13.03.F:

- G. If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, then Contractor shall be responsible for any legal fees, professional fees, or other costs or expenses incurred by Owner as a result thereof, including, without limitation, costs of repeated procedures and compensation for Program Manager's and Engineer's services and expenses. Such amounts may be deducted, to the extent available, from any amount due to Contractor. If the amount due to Contractor is not sufficient to cover such amounts, Contractor shall pay the difference to Owner within seven (7) days of receipt of Owner's invoice for such legal fees, professional fees or other cost or expenses.

SC-14.01 Schedule of Values

SC-14.01 Add the following paragraphs immediately after Paragraph 14.01.A:

- B. If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage withheld from subsequent payments (provided that the Owner will not release the retainage already withheld until Substantial Completion. Notwithstanding the foregoing, Owner may continue to withhold ten percent (10%) of the amount due Contractor after the Project is fifty percent (50%) completed if Engineer or Program Manager provides written notification to Owner of a specific cause for greater withholding or if Owner determines in its sole discretion that

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there is a specific cause for greater withholding. A specific cause for greater withholding shall include, without limitation, the following:

1. Contractor's inability to produce evidence satisfactory to Program Manager and/or Owner evidencing payments for materials, labor and/or payments to Subcontractors, manufacturers or suppliers;
 2. The existence of a dispute between Owner and Contractor regarding increased costs claimed by such Contractor; or
 3. A Contractor's failure to complete the Work in accordance with the Contract Documents, including, without limitation, the Drawings and Specifications, etc.
- C. In addition to Owner's right to determine if a specific cause for greater withholding exists, Engineer shall also be entitled to determine if a specific cause for greater withholding exists. Engineer shall reject the reduction in retainage if Contractor is not making satisfactory progress in its Work or if Engineer determines that there is a specific cause for greater withholding. Engineer's decision to reject a reduction of retainage shall be final and binding on Contractor. Engineer will consider the following items when reviewing a request for reduction in retainage and failure to meet any of the following requirements may be considered by Engineer as sufficient grounds for rejecting a reduction of retainage:
1. Satisfactory performance of the Work.
 2. Satisfactory maintenance of the Progress Schedule.
 3. Proper manning of the Project.
 4. Satisfactory completion of the Work.
 5. Satisfactory organization of the Project.
 6. Proper organization and coordination of subcontractors.
 7. Proper coordination with other contractors.
 8. All defective Work has been remedied or is in the process of being remedied.
 9. Work completed is not in contention.
 10. Satisfactory follow through of paperwork, certified payrolls, Change Order proposals, or Work Change Directives.
- D. In the event a dispute arises between Owner and a Contractor, Owner shall have the option as it deems necessary in its sole discretion to either continue to withhold ten percent (10%) of the amount due Contractor or to withhold additional retainage over

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and above the amount already retained by Owner in the sum of one and one half (1.5) times the amount of any possible liability until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless Contractor causing the additional claim furnishes a bond satisfactory to Owner to indemnify Owner against the claim.

SC-14.02 Progress Payments

SC-14.02.A Add the following sentence to Paragraph 14.02.A.1:

No credit or payment shall be made for stored material.

SC-14.02.C Paragraph 14.02.C.1 shall be deleted in its entirety and insert the following in its place:

C. Payment Becomes Due:

1. Forty-five (45) days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

SC-14.09 Waiver of Claims

SC-14.09 Paragraph 14.09.A and its subparagraphs shall be deleted in their entirety and insert the following in their place:

- A. The making of any payment, including, but not limited to the final payment, shall not constitute a waiver of Claims by Owner.
- B. Acceptance of final payment by Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

SC-14.10 Liquidated Damages

SC-14.10 The following paragraphs shall be added immediately after Paragraph 14.09.B:

14.10 *Liquidated Damages*

- A. Contractor and Contractor's Surety shall be jointly and severally liable for and shall pay the Owner the cost of expenses incurred by Owner resulting from Contractor's delay in completing the Work of the Contract within the Contract Time, as liquidated damages, and not as a penalty, in the amount of One Thousand Dollars (\$1,000.00) per calendar day, for each calendar day of delay until the Work is substantially complete at each Milestone of construction, subject to adjustments of the Contract Time as provided in the Contract Documents.
- B. In addition to the foregoing and without limiting the foregoing, Contractor and Contractor's Surety shall be jointly and severally liable for and shall pay the Owner the

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cost of expenses incurred by Owner resulting from Contractor's delay in submitting Shop Drawings, Product Data, Samples and similar submittals beyond the required number of days specified for such submittals as provided in the Contract Documents as liquidated damages, and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) per calendar day, for each calendar day of delay until such submittal has been properly submitted as provided in the Contract Documents. All submittals shall be received by the Engineer from Contractors by the earlier of the (i) date set forth in the Contract Documents, if applicable, or (ii) the date provided in the Schedule of Submittals accepted by the Engineer.

- C. In the event Contractor or Surety litigates the validity of the liquidated damages set forth herein or the assertion of liquidated damages, Contractor and Surety, jointly and severally, shall also be liable for legal fees, professional fees, costs, other expenses and/or damages incurred by Owner. This liquidated damages provision applies to each phase of construction. Owner's right to receive liquidated damages shall be in addition to all other rights and remedies available to Owner at law or in equity.
- D. If Contractor is responsible, in the opinion of the Program Manager and the Engineer, for delay in the actual time of completion of any other contractor employed by the Owner in performance of any other portion of the Project, then Contractor shall be liable for and shall pay to the Owner all liquidated damages otherwise attributable to such other contractor, as well as any legal fees, professional fees, or other costs or expenses incurred by Owner.
- E. Owner shall have the right to deduct the total amount of liquidated damages for which Contractor may be liable under this Paragraph 14.10 from any payments then or thereafter due Contractor.

SC-15.02 Owner May Terminate for Cause

SC-15.02.A Paragraph 15.02.A and its subparagraphs shall be deleted in their entirety and insert the following in their place:

- A. Owner may terminate the Contract for cause if Contractor:
1. refuses or fails to supply enough properly skilled workers or proper materials;
 2. fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
 3. disregards applicable Laws or Regulations;
 4. otherwise is guilty of material breach of a provision of the Contract Documents;

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5. fails to abide by the Progress Schedule, and fails within three (3) days after receipt of written notice to correct any scheduling problems or provide required scheduling information; or
 6. the Contractor or any of its Subcontractors or suppliers is suspended or debarred by the Commonwealth of Pennsylvania, any other state, or the federal government.
- SC-15.02.C The following sentence shall be added at the end of Paragraph 15.02.C:
- This Paragraph shall survive the expiration or sooner termination of the Agreement.
- SC-15.02.D Paragraph 15.02.D shall be deleted in its entirety and the following inserted in its place:
- Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor cures such failure within seven days of receipt of notice of intent to terminate; Owner may then terminate the Contract at any time after the expiration of such seven day cure period if Contractor does not cure such failure during the cure period. However, if Owner reasonably deems that such failure cannot be cured within such seven day cure period, Owner may terminate the Contract with immediate effect.
- SC-15.02.F Add the following new paragraph immediately after 15.02.F:
- G. In the event that Owner declares Contractor in default and Contractor's Surety fails to adhere to its obligations under the Performance Bond and Payment Bond, the Surety shall be liable to Owner for any and all damages that Owner incurs including, but not limited to, any legal fees, professional fees, or other costs or expenses incurred by Owner in connection with Owner's pursuit of its rights under the Performance Bond, Payment Bond and/or applicable Laws and Regulations, including, but not limited to, the cost of all litigation, including, but not limited to, legal fees, professional fees, and all other costs or expenses. To the extent Contractor sues Owner and Owner prevails in such litigation, Contractor shall be responsible for all of Owner's damages including, but not limited to, any and all legal fees, professional fees and all other costs and expenses.
- SC-15.04 Contractor May Stop Work or Terminate**
- SC-15.04.A Paragraph 15.04.A shall be deleted in its entirety and insert the following in its place:
- A. If the Work is stopped for a period of sixty (60) consecutive days under final, nonappealable order of any court or other public authority having jurisdiction, through no act or fault of Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with Contractor, then Contractor may provide written notice to Owner, Program Manager and Engineer, that it will seek payment pursuant to the alternate dispute resolution procedures, in accordance with the requirements of the Contract Documents and keep working.
 - B. In no event may the Contractor stop Work due to a project dispute. Contractor must provide Owner written notice containing detailed information regarding the nature of the disputed issues and utilize the dispute resolution procedures set forth herein.

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SC-16.01 Methods and Procedure

SC-16.01.C Paragraph 16.01.C shall be deleted in its entirety and insert the following in its place:

- C. To the extent Contractor pursues a claim or litigation against Owner and Owner prevails, partially or completely, on any or all of its own claims or defenses to Contractor's claims, leaving Contractor with less than one hundred percent (100%) recovery, Contractor will be liable for any and all legal fees, professional fees, costs or expenses of Owner, as well as the true cost of any of Owner's employees' time, associated with analyzing any claim, pursuing litigation or defending the claim or litigation and Contractor shall reimburse Owner for such legal fees, professional fees, costs and expenses immediately upon demand by Owner. Further, to the extent any Contractor makes an excessive number of claims, which excessiveness, shall be determined solely in the discretion of Owner, and Owner incurs any legal fees, professional fees, expenses, costs (including, but not limited to, employee cost), Contractor shall be liable for such fees, expenses or costs and Contractor shall reimburse Owner for such legal fees, professional fees, costs and expenses immediately upon demand by Owner.

SC-16.01.D Add the following paragraphs immediately after Paragraph 16.01.C:

- D. In the event of a dispute between Contractor and Owner, to the extent that Owner incurs any legal fees, professional fees, or other costs or expenses, Contractor will be responsible for those amounts, which will be deducted, to the extent available, from any amount due Contractor. If the amount due Contractor is not sufficient to cover such cost, Contractor shall pay the difference to Owner within seven (7) days of receipt of Owner's invoice for such legal fees, professional fees, or other cost or expenses.
- E. Pending final resolution of a dispute, except as otherwise agreed in writing, Contractor shall proceed diligently with performance of Work and Owner shall continue to make payments in accordance with the Contract Documents.
- F. The Contract shall be governed by the laws of the Commonwealth of Pennsylvania without regard to conflicts of law. All actions shall be settled in a non-jury trial and shall be brought in the Court of Common Pleas of Berks County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania and not elsewhere

SC-17.07 Grant Requirements

SC-17.07 Add the following new paragraph immediately after 17.06:

17.07 Grant Requirements

- A. The Project is being funded in part by grant money provided by the Commonwealth of Pennsylvania. Contractor shall perform Work and ensure that its Subcontractors perform Work in strict accordance with the requirements and conditions set forth in all grant documents applicable to the Project. If any grant money is forfeited as a direct or indirect result of Contractor's or Subcontractor's performance or non-performance of

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ARTICLE 18 STATUTORY REQUIREMENTS

SC-18 Add the following paragraphs as Article 18 immediately following Paragraph 17.06:

18.01 *Applicable Laws*

A. Contractor's attention is directed to the fact that all applicable Federal and State laws, Municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Agreement throughout, and they are deemed to be included in the Agreement the same as though herein written in full.

18.02. *Human Relations Act*

A. The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 P.L. 744, as amended from time to time (43 P.S. Section 951, et seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, or non-job related handicap or disability or the use of a guide or support animal because of blindness, deafness or physical handicap, by employers, employment agencies, labor organizations, contractors and others. Contractor shall agree to comply with the provisions of the Pennsylvania Human Relations Act, as amended from time to time, which is made part of these General Conditions as if included herein at length. Contractor's attention is directed to the language of the Commonwealth's non-discrimination clause in 16 Pa. Code Section 49.101, et seq., as amended from time to time.

18.03. *Prevailing Wages*

A. The Pennsylvania Prevailing Wage Rates, as determined by the Pennsylvania Department of Labor and Industry, shall apply to the Project. The Pennsylvania Prevailing Wage Act (Act No. 442 of 1961, P.L. 987, amended by Act 342 of 1963, P.L. 653), and as amended from time to time (43 P.S. Section 165-1, et seq.), the regulations thereto, and the Prevailing Minimum Wage Determination Schedule, as determined by the Secretary of Labor and Industry, which shall be paid for each craft or classification of all workers needed to

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perform the Contract during the anticipated term therefore in the locality in which the Work is performed, are made part of these General Conditions.

- B. No person shall be employed to perform Work under this Contract except competent and first-class workers and mechanics. No workers shall be regarded as competent and first-class except those who are duly skilled in their respective branches of labor, and who shall be paid not less than such rates of wages and for such hours as established by the Secretary of the Department of Labor and Industry under the "Pennsylvania Prevailing Wage Act" (Act No. 442), effective February 1, 1962, amended by Act 342 of 1963, P.L. 653 and as amended from time to time.
- C. The general prevailing minimum wage rates including contributions for employee benefits as determined by the Secretary shall be paid to the workers employed in the performance of the Contract.
- D. Contractor shall pay no less than the wage rates as determined in the decision of the Secretary of the Pennsylvania Department of Labor and Industry and shall comply with the conditions of the Pennsylvania Prevailing Wage Act approved August 15, 1961 (Act No. 442), as amended August 9, 1963 (Act No. 342 of 1963, P.L. 653, and as amended from time to time), and the Regulations issued pursuant thereto, to assure the full and proper payment of said rates.
- E. All workers shall be paid no less than such general prevailing minimum wage rates and such other provisions to assure payment thereof as heretofore set forth in the Contract Documents.
- F. The Contract provisions shall apply to all Work performed on the Contract by Contractor and to all Work performed on the Contract by all Subcontractors and Sub-subcontractors.
- G. Contractor shall insert into each subcontract all of the stipulations contained in Paragraph 18.03 and such other stipulations as may be required.
- H. No workers shall be employed on the Project except in accordance with the classifications set forth in the applicable prevailing minimum wage rate decision. In the event that additional or different classifications are necessary, the procedure set forth in the applicable Laws and Regulations shall be followed.
- I. All workers employed or working on the Project shall be paid unconditionally, regardless of whether any contractual relationship exists or the nature of any contractual relationship which may be alleged to exist between any Contractor, Subcontractor and workers, not less than once a week without deduction or rebate, on any account, either directly or indirectly, except authorized deduction, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the Contract, the Pennsylvania Prevailing Wage Act or any applicable regulations shall prohibit the payment of more than the applicable prevailing minimum wage rates as determined by the Secretary to any worker on the Project.

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- J. Contractor and each Subcontractor shall post for the entire period of construction, the applicable wage determination decisions, including, without limitation, the effective date of any changes thereof, in a prominent and easily accessible place or places at the Site of the Work and at such place or places used by them to pay workers their wages. The posted notice of wage rates shall contain the following information:
1. Name of Project.
 2. Name of public body of which it is being constructed.
 3. The crafts and classifications of workers listed in the applicable prevailing minimum wage rate determination for the particular project.
 4. The applicable prevailing minimum wage rates determined for each craft and classification and the effective date of any changes.
 5. A statement advising workers that if they have been paid less than the applicable prevailing minimum wage rate for the job classification or that Contractor and/or Subcontractor are not complying with the Pennsylvania Prevailing Wage Act or the applicable regulations in any manner whatsoever, they may file a protest in writing with the applicable governmental agency, within three (3) months of the date of the occurrence, objecting to the payment to any Contractor to the extent of the amount or amounts due or to become due to them as wages for Work performed on the Project. Any workers paid less than the rate specified in the Contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the Contract, which right of action must be exercised within six (6) months from the occurrence of the event creating such right.
- K. Contractor and all Subcontractors shall keep an accurate record showing the time, craft and/or classification, number of hours worked per day, and the actual hourly rate of wage paid (including employee benefits) to each worker employed by them in connection with the Project (including apprentices) and such record must include, without limitation, any deductions from each worker. The record shall be preserved for two (2) years from the date of payment and shall be open at all reasonable hours to the inspection of Owner and to any other applicable governmental authority's authorized representatives.
- L. Wages shall be paid without any deductions except authorized deductions. Employers not parties to a Contract requiring contributions for employee benefits which the applicable governmental authority has determined to be included in the applicable prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workers.
- M. Payment of compensation to workers for Work performed on the Project on a lump sum basis, or a piece work basis, or a price certain for the completion of a certain amount of Work, or the production of a certain result, shall be deemed a violation of the Pennsylvania Prevailing Wage Act and the regulations thereto, regardless of the average hourly earnings resulting therefrom.

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- N. Contractor and Subcontractor shall file a statement each week and a final statement at the conclusion of the Work on the Project with Owner, under oath, and in form, satisfactory to the applicable governmental authority, certifying that all workers have been paid wages in strict conformity with the provisions of the Contract as prescribed in the Pennsylvania Prevailing Wage Act and the regulations thereto, or if any wages remain unpaid to set forth the amount of wages due and owing to each worker respectively.
- O. If Contractor fails to comply with the requirements set forth in Paragraph 18.03, Contractor shall pay Owner, as liquidated damages, an amount equal to twice the difference between the minimum wage required to be paid in compliance with Paragraph 18.03 and the wage actually paid to each laborer or mechanic for each day during which said laborer or mechanic has been employed at a wage less than prescribed.

18.04 *Citizens*

- A. Only citizens of the United States of America shall be employed, in any capacity, in the performance of any Work under the Contract; provided, however, that apprentices to a trade or profession who may be under twenty-one (21) years of age shall not be subject to the foregoing restriction.
- B. The Contractor and each Subcontractor shall submit to the Owner a separate and complete Verification Form, executed by a representative who has sufficient knowledge and authority to make the representations and certifications contained in the Verification Form, as required by the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637), before performing any Work on the Project.

18.05 *Safety And Health Regulations For Construction*

- A. Contractor shall be fully informed of and shall comply with all local, state and federal regulations for construction as amended to date, as the rules and regulations in detail apply for the Work under the Contract. All applicable rules and regulations of governing bodies are hereby made a part of these General Conditions by reference, as if written out in full within.

18.06 *Steel Products Procurement Act*

- A. In accordance with Act 3 of the 1978 General Assembly of the Commonwealth of Pennsylvania, (March 3, 1978 P.L. 6), as amended from time to time (73 P.S. Section 1881, et seq.), all steel products used or supplied in the performance of the Work, only those steel products produced in the United States, as herein defined, shall be used or supplied in the performance of the Contract or any Subcontractors thereunder.
- B. "Steel products" are defined as products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process and shall include cast iron products, machinery and equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35

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(machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from, or containing steel components. If a product contains both foreign and United States steel, such product shall be determined to be a United States steel product only if at least seventy-five percent (75%) of the cost of the articles, materials and supplies have been mined, produced or manufactured, as the case may be, in the United States. Transportation equipment shall be determined to be a United States steel product if it complies with Section 165 of Public Law 97-424 (96 Stat. 2136).

- C. "United States" is defined as the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.
- D. In accordance with Act 161 of 1982 (June 18, 1982 P.L. 556) cast iron products shall also be included and produced in the United States. Act 144 of 1984 (July 9, 1984 P.L. 674) further defines "steel products" to include machinery and equipment. Act 142 of 1980 (Oct. 5, 1980 P.L. 693), Act 161 of 1982 and Act 141 of 1984 provide clarifications and penalties and Contractor shall abide by these Acts, as amended from time to time.

18.07 *Anti-Pollution Legislation*

- A. 62 Pa. C.S.A. Section 3301 requires that Bidders on construction contracts for governmental agencies be advised that there are provisions of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the Project on which Bids are being received.
- B. The Bidder shall become thoroughly acquainted with the terms of the listed statutes, rules and regulations, including, but not limited to, Flood Plain Management Act (32 P.S. Section 679.101, et seq.), Water Well Drillers License Act (32 P.S. Section 645.1, et seq.), Pennsylvania Scenic Rivers Act (32 P.S. Section 820.21, et seq.), Dam Safety and Encroachment Act (32 P.S. Sec. 693.1, et seq.), Bluff Recession and Setback Act (32 P.S. Section 5201, et seq.), Storm Water Management Act (32 P.S. Section 680, et seq.), Pennsylvania Sewage Facilities Act (35 P.S. Section 750.1, et seq.), Pennsylvania Solid Waste Management Act (35 P.S. Section 6018.101, et seq.), Pennsylvania Safe Drinking Water Act (35 P.S. Section 721.1, et seq.), the Clean Streams Law (35 P.S. Section 691.901 et seq. and 35 P.S. Section 691.1 et seq.), Air Pollution Control Act (35 P.S. Section 4001, et seq.), Pennsylvania Historic Preservation Act (37 Pa. C.S.A. Section 501, et seq.), Pennsylvania Hazardous Sites Clean Up Act (35 P.S. Section 6020.101, et seq.), Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. Sec. 6021.101, et seq.), Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601-9675), as amended, including, but not limited to, the Superfund Amendments and Reauthorization Act (P.L. 99-499), Federal Solid Waste Disposal Act (42 U.S.C. Sections 6901-6992), Federal Clean Air Act (Air Pollution Act) (42 U.S.C. Sections 7401-7642), Federal Safe Drinking Water Act (See Public Health Service Act Sections 1401-1451) (42 U.S.C. Sections 300f-300j), Wild and Scenic River Act (P.L. 90-542), Endangered Species Conservation Act of 1969 (P.L. 89-669), Endangered Species Conservation Act of 1973 (16 U.S.C. Sections 1531-1544), Federal Clean Water Act of 1977 (P.L. 95-217), Rivers and Harbor Act of 1970 (P.L. 91-611), Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136-136y), Toxic

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Substance Control Act (15 U.S.C. Sections 2601-2692), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. Sections 3951-3956), Coastal Zone Management Act of 1972 (16 U.S.C. Sections 1451-1464), Community Environmental Response Facilitation Act (42 U.S.C. Section 9620), Emergency Planning and Right-to-Know Act of 1986 (42 U.S.C. Sections 11001-11050), Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. Sections 791-798), Environmental Quality Improvement Act of 1970 (42 U.S.C. Sections 4371-4375), Federal Facility Compliance Act of 1992 (42 U.S.C. Section 6901), Federal Land Policy and Management Act of 1976 (43 U.S.C. Sections 1701-1784), Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1387), Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. Sections 2001-1264), Global Climate Protection Act of 1987 (15 U.S.C. Section 2901 note), Hazardous Substance Response Revenue Act of 1980 (see 26 U.S.C. Sections 4611, 4612, 4661, 4662), Lead-Based Paint Exposure Reduction Act (15 U.S.C. Sections 2681-2692), Lead Contamination Control Act of 1988 (42 U.S.C. Sections 300j-21 to 300j-25), Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021b-2021d), National Climate Program Act (15 U.S.C. Sections 2901-2908), National Contaminated Sediment Assessment and Management Act (33 U.S.C. Section 1271 note), National Environmental Policy Act of 1969 (42 U.S.C. Sections 4321-4370b), National Ocean Pollution Planning Act of 1978 (33 U.S.C. Sections 1701-1709), Noise Control Act of 1972 (42 U.S.C. Sections 4901-4918), Oil Pollution Act of 1990 (33 U.S.C. Sections 2701-2761), Pollution Prevention Act of 1990 (42 U.S.C. Sections 13101-13109), Public Health Service Act (42 U.S.C. Sections 300f-300j-11), Renewable Resources Extension Act of 1978 (16 U.S.C. Sections 1671-1676), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Soil and Water Resources Conservation Act of 1977 (16 U.S.C. Sections 2001-2009), Water Resources Research Act of 1984 (42 U.S.C. Sections 10301-10309), Wood Residue Utilization Act of 1980 (16 U.S.C. Sections 1681-1687), Pennsylvania Worker and Community Right-to-Know Act (35 P.S. Section 7301, et seq.), Asbestos Hazard Emergency Response Act of 1986 (see Toxic Substances Control Act Sections 201-214) (15 U.S.C. Sections 2651-2654), Delaware River Basin Compact (32 P.S. Section 815.101, et seq.), Brandywine River Valley Compact (32 P.S. Section 818, et seq.), Wheeling Creek Watershed Protection and Flood Prevention District Compact (32 P.S. Section 819, et seq.), Susquehanna River Basin Compact (32 P.S. Section 820.1, et seq.), Chesapeake Bay Commission Agreement (32 P.S. Section 820.11, et seq.), Land and Water Conservation and Reclamation Act (32 P.S. Section 5101, et seq.), Wild Resource Conservation Act (32 P.S. Section 5301, et seq.), Cave Protection Act (32 P.S. Section 5601, et seq.), Rails to Trails Act (32 P.S. Section 5611, et seq.), Phosphate Detergent Act (35 P.S. Section 722.1, et seq.), Plumbing System Lead Ban and Notification Act (35 P.S. Section 723.1, et seq.), Publicly Owned Treatment Works Penalty Law (35 P.S. Section 752.1, et seq.), Pennsylvania Solid Waste-Resources Recovery Act (35 P.S. Section 755.1, et seq.), Sewage System Cleaner Control Act (35 P.S. Section 770.01, et seq.), Hazardous Material Emergency Planning and Response Act (35 P.S. Section 6022.101, et seq.), Oil Spill Responder Liability Act (35 P.S. Section 6023.1, et seq.), Land Recycling and Environmental Remediation Standards Act (35 P.S. Section 6026.101, et seq.), Radiation Protection Act (35 P.S. Section 7110.101, et seq.), Low-Level Radioactive Waste Disposal Act (35 P.S. Section 7130.101, et seq.), Pennsylvania Municipalities Planning Code (53 P.S. Section 10101, et seq.), regulations, ordinances,

SUPPLEMENTARY CONDITIONS

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and other actions pursuant to the foregoing, regulations pertaining to Pennsylvania Erosion and Sediment Control, and so on.

- C. No separate or additional payment will be made for such compliance. In the event that the listed statutes, rules and regulations are amended, or if new statutes, rules or regulations become effective, after date of receipt of Bids, upon receipt of documentation which causes Contractor to perform additional Work, Owner may issue a Change Order setting forth the additional Work that must be undertaken and such additional Work shall be undertaken at no additional cost to Owner. It is also the responsibility of Contractor to determine what local ordinances, if any, will affect its portion of the Work. Contractor shall check for any County, City, Borough or Township rules or regulations applicable to the area in which the Project is being constructed and, in addition, for any rules or regulations of other organizations having jurisdiction, including, without limitation, chambers of commerce, planning commissions, industries or utility companies who have jurisdiction over lands which Contractor occupies. Any costs of compliance with local controls shall be included in the prices bid, even though documents of such local controlling agencies are not listed herein.

18.08 *Erosion Control*

- A. Contractors performing excavation work shall comply with all rules and regulations of Chapter 102, Title 25 of Pennsylvania Soils Erosion and Sedimentation Control (25 Pa. Code Section 102.1, et seq.). Prior to any grading, Contractor shall be responsible to obtain approval from the Department of Environmental Protection for an approved sedimentation and erosion control site plan and shall perform all necessary site work in accordance with said plan. The plan shall be available at the site at all times. Contractors performing excavation work shall maintain all devices as required to control erosion caused by storing water and preventing dust and particles from being distributed off site.
- B. Site Excavation: Contractor shall:
1. Request the location and type of facility owner lines at the Site by notifying the facility owner through the one call system as defined in 73 P.S. § 176. Notification shall be not less than three (3) business days nor more than ten (10) business days in advance of beginning excavation or demolition work. No work shall begin earlier than the scheduled excavation date which shall be on or after the third business day after notification. The scheduled excavation date shall exclude the date upon which notification was received by the one call system and notification received on a Saturday, Sunday or holiday, which shall be processed on the following business day. In the case of a complex project as defined in 73 P.S. § 176, notification shall not be less than ten (10) business days in advance of the beginning of excavation or demolition work.
 2. Provide the one call system with specific information to identify the Site so that facility owners might provide indications of their lines.
 3. Take reasonable steps to work with facility owners including, without limitation, scheduling and conducting a preconstruction meeting, so that Contractor may

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locate the facilities at a time reasonably in advance of the actual start of excavation or demolition work for each phase of the Work if the Project is a complex project as defined in 73 P.S. § 176 or if an excavation Contractor intends to perform work at multiple sites or over a large area. After commencement of excavation or demolition work, the excavation Contractor shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility, or by contacting the one call system to request that the facilities be marked again in the event that the previous markings have been compromised or eliminated.

4. Comply with the requirements established by the one call system as determined by the board of directors regarding the maximum area that a notification may cover.
5. Inform each operator employed by the excavation Contractor at the Site of the information received with respect to location and type of underground installations and any other information required by 73 P.S. § 176, et. seq.
6. Report immediately to Owner and Engineer, any break or leak on its lines or any dent, gouge, groove or other damage to such lines, to their coating or cathodic protection, made or discovered in the course of the excavation or demolition work.
7. Immediately notify 911 and the facility owner if the damage results in the escape of any flammable, toxic or corrosive gas or liquid which endangers life, health or property.
8. Assist a facility owner in determining involvement of a facility owner's lines by disclosing additional available information requested by the facility owner, including, without limitation, dimensions and the direction of proposed excavations.
9. Re-notify the one call system unless other arrangements have been made directly with the facility owners involved at the Site if the excavation Contractor removes its equipment and vacates the Site for more than two (2) business days.
10. Submit an incident report to the Department of Labor and Industry of the Commonwealth of Pennsylvania not more than ten (10) business days after striking or otherwise damaging a facility owner's line during excavation or demolition activities that resulted in personal injury or property damage to parties other than the affected excavation Contractor or facility owner.
11. Comply with all requests for information by the Department of Labor and Industry of the Commonwealth of Pennsylvania relating to such Department of Labor and Industry's enforcement authority under the 73 P.S. § 176, et. seq. within thirty (30) days of the receipt of the request.

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12. Ensure the accuracy of the information provided to the one call system pursuant to 73 P.S. § 176, et. seq.
13. Become thoroughly acquainted with and comply with all other terms and conditions specified in 73 P.S. § 176, et. seq., as amended from time to time including, without limitation, Contractor shall pay all applicable fees.
14. Complete the site excavation in full compliance with all applicable Laws and Regulations.

18.09 Nondiscrimination/Sexual Harassment Clause

A. Each Contract entered into by a governmental agency for the construction, alteration or repair of any public building or public work shall contain the following provisions by which Contractor agrees:

1. In the hiring of any employees for the manufacturer of supplies, performance of the Work, or any other activity required under the Contract or any subcontract, Contractor, Subcontractor, or any person acting on behalf of Contractor or Subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the Work to which the employment relates. (62 Pa. C.S.A. Section 3701).
2. Neither Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacturer of supplies, the performance of Work, or any other activity required under the Contract on account of gender, race, creed, or color. (62 Pa. C.S.A. Section 3701).
3. Contractors and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. Contractors shall not discriminate by reason of gender, race, creed, or color against any Subcontractor or supplier who is qualified to perform the Work to which the Contract relates.
5. Contractor and each Subcontractor shall furnish necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of Paragraph 18.09. If Contractor or any Subcontractor does not possess documents or records reflecting the necessary information requested, Contractor or Subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

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6. Contractor shall include, without limitation, the provisions of Paragraph 18.09 in every subcontract so that such provisions will be binding, upon each Subcontractor.
7. The Commonwealth of Pennsylvania may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of Paragraph 18.09. In addition, the agency may proceed with debarment or suspension and may place Contractor in the contractor responsibility file.

18.10 *Pennsylvania Uniform Construction Code*

- A. Contractor shall comply with all requirements of the Pennsylvania Uniform Construction Code, 35 P.S. § 7210.301 – 7210.304, as amended by S.B. 1139, Session of 2004, as further amended from time to time.

18.11 *The Right to Know Law*

- A. Contractor shall comply with all requirements of Act 3 of 2008, "The Right-To-Know Law", 65 P.S. Section 67.101 et seq. Upon notification that Owner has received a request for records under the Right-to-Know Law ("RTKL"), Contractor shall assist Owner in responding to the request. Contractor shall provide Owner within three (3) days, access to, and copies of, any document or information arising out of the Contract that Owner deems a Public Record ("Requested Information") and Contractor shall provide such other assistance as Owner may request in order to comply with the RTKL. If Contractor is unable to provide the Requested Information within three (3) days for one of the reasons specified in the RTKL, Contractor shall immediately notify Owner that it will need up to an additional twenty-five (25) days and must provide in writing the reason the additional time is needed. The failure by Contractor to provide the Requested Information to Owner within the period specified in this provision will be considered an event of default. Contractor shall defend, indemnify and hold Owner harmless from and against any damages, penalties, expenses, detriment or harm that Owner may incur as a result of the failure to provide the Requested Information to Owner within the period specified in this provision. If the Office of Open Records or the Pennsylvania Courts determines that the record requested by Owner is a Public Record, liquidated damages of Five Hundred Dollars (\$500.00) per day will be assessed against Contractor for each calendar day beyond the date the record was required to be provided by Contractor to Owner.
- B. Owner's determination as to whether the Requested Information is a Public Record is dispositive of the question as between Owner and Contractor. Contractor agrees not to challenge Owner's decision to deem the Requested Information a Public Record. If the Requested Information is a Trade Secret or Confidential Proprietary Information, as defined by the RTKL, Contractor shall immediately notify Owner, and provide a written statement signed by a representative of Contractor(s) explaining why the requested material is exempt from public disclosure under the RTKL within five (5) days. If, upon review of the written statement, Owner still decides to provide the Requested Information, Contractor shall not challenge or in any way hold liable Owner for such a decision.

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- C. Owner will provide Contractor with reimbursement for costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- D. Contractor shall abide by any decision to release a record to the public made by the Office of Open Records or by the Pennsylvania Courts. Contractor waives all rights or remedies that may be available to as a result of Owner's disclosure of Requested Information pursuant to the RTKL. Duties relating to the RTKL are continuing duties that survive the expiration of the Contract and continue as long as the Requested Information is retained.

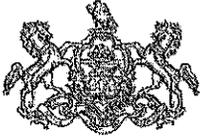
18.12. *Prohibition of Illegal Alien Labor on Assisted Projects Act.*

- A. Pursuant to the Act of May 11, 2006, (P.L. 173, No. 43), known as the Prohibition of Illegal Alien Labor on Assisted Projects Act, Contractor shall not knowingly employ, or knowingly permit any of its subcontractors to knowingly employ, the labor services of an illegal alien.

18.13. *Bona Fide Apprenticeship Program*

- A. Prior to performing any Work and throughout the duration of the Project, the Contractor shall employ apprentices on the Project in such numbers as to establish a bona fide apprenticeship program. Such apprenticeship program shall be registered with and approved by the Pennsylvania Apprenticeship and Training Council and employ apprentices whose training and employment are in full compliance with the provisions of the Apprenticeship and Training Act effective as of June 1, 1961 (Act No. 304, P.L. 604; 43 P.S. Sec. 90.1, et seq.), the rules and regulations issued pursuant thereto, as amended from time to time. Any workers using the tools of a craft who does not qualify as an apprentice within the provisions of the Apprenticeship and Training Act shall be paid the rate predetermined for journeymen in that particular craft and/or classification.

END OF SECTION 00 8000



COMMONWEALTH OF PENNSYLVANIA

PUBLIC WORKS EMPLOYMENT VERIFICATION FORM

Date 02/05/2013

Business or Organization Name (Employer) Spectraserv Inc.

Address 75 Jacobus Avenue

City Kearny State NJ Zip Code 07032

Contractor Subcontractor (check one)

Contracting Public Body City of Reading

Contract/Project No Anaerobic Digester No. 4 and No. 5 Tank Cleaning Project

Project Description _____

Project Location City of Reading, PA

As a contractor/subcontractor for the above referenced public works contract, I hereby affirm that as of the above date, our company is in compliance with the Public Works Employment Verification Act ('the Act') through utilization of the federal E-Verify Program (EVP) operated by the United States Department of Homeland Security. To the best of my/our knowledge, all employees hired post January 1, 2013 are authorized to work in the United States.

It is also agreed to that all public works contractors/subcontractors will utilize the federal EVP to verify the employment eligibility of each new hire within five (5) business days of the employee start date throughout the duration of the public works contract. Documentation confirming the use of the federal EVP upon each new hire shall be maintained in the event of an investigation or audit.

I, Steven A. Townsend, authorized representative of the company above, attest that the information contained in this verification form is true and correct and understand that the submission of false or misleading information in connection with the above verification shall be subject to sanctions provided by law.

Authorized Representative Signature