

M-0005

SPECIFICATIONS AND INSTRUCTIONS TO QUOTERS FOR

Demolition of former Fenimores Service Station
located at

134 West Mishawaka Avenue
Mishawaka, IN 46545

Department of Redevelopment



Quotes to be Opened 10:00 A.M.
July 5, 2006

Board of Public Works and Safety
600 E. Third Street
Mishawaka, IN 46544

NOTICE TO PUBLIC AND QUOTERS

Notice is hereby given that the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, will receive sealed Quotes until the hour of 10:00 a.m., local time, Wednesday, July 5, 2006, at the office of the City Controller, Room 100 at City Hall, 600 E. Third Street, Mishawaka, Indiana, at which time they will be opened and publicly read aloud in Room 205, for the following:

Demolition and removal of the former Fenimores Service Station located at 134 West Mishawaka Ave. Mishawaka, IN. The base quote to include the removal and disposal of the cashier office building, foundations, slabs, footings, canopy, pump islands and associated piping and conduits, asphalt and business sign. Not including the city sidewalk. The successful Quoter will be required to rough grade areas affected by demolition and leave level, maintaining grades and contours of site.

All more particularly described in specifications on file and available during regular work hours in the office of the Department of Community Development, Room 205, City Hall, Mishawaka, Indiana.

Quotes must be on the forms prescribed by the State Board of Accounts, accompanied by a non-collusion affidavit and a certified check or bid bond in the amount of not less than 5%. The guarantee shall be made out to the City of Mishawaka, Indiana.

The Board reserves the right to reject any and all proposals, or to waive any informalities in proposals, to accept a full or partial award of the bid which, in its judgment, will be in the best interests of the City of Mishawaka.

Dated this 20th day of June, 2006.

**CITY OF MISHAWAKA, INDIANA
BOARD OF PUBLIC WORKS & SAFETY**

ATTEST:



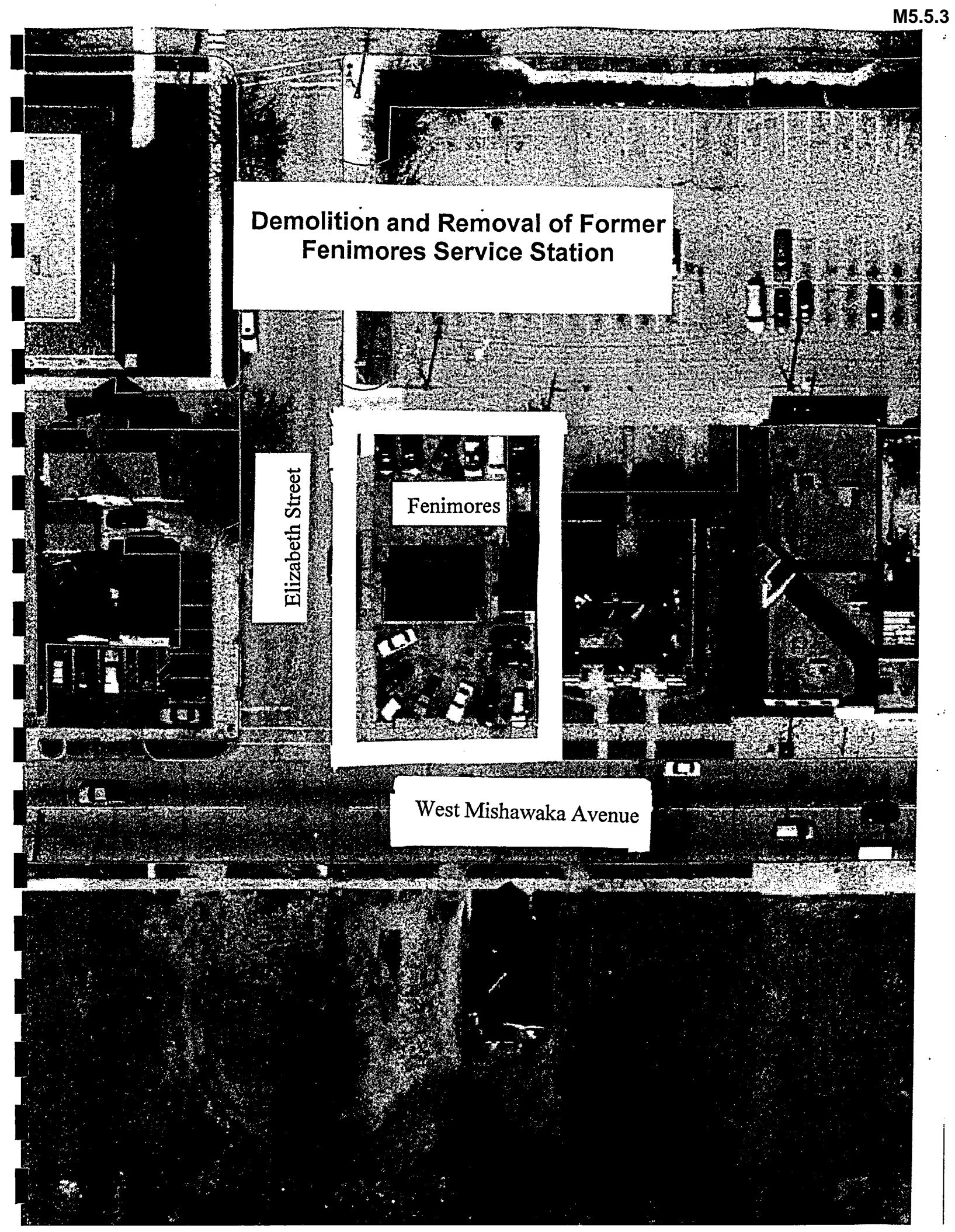
Cynthia S. Lutz, Clerk of the BOARD OF PUBLIC WORKS & SAFETY

**Demolition and Removal of Former
Fenimores Service Station**

Elizabeth Street

Fenimores

West Mishawaka Avenue





INSTRUCTIONS TO QUOTERS

1. QUALIFICATIONS OF QUOTERS

The Quoter must be able to demonstrate sufficient experience to satisfy the Owner that the provisions of the contract documents can be fully and satisfactorily complied with. Furthermore, each Quoter shall be required to demonstrate to the satisfaction of the Owner that it has adequate equipment, financial resources and experience to perform the demolition and removal services called for by this contract. Each Quoter shall furnish such information and/or proof covering its qualifications with the bid.

Quotes will be considered from only those Quoters, that in the opinion of the Owner has a sufficient background or experience in the area of work requested and meets all other requirements called for in the Specifications.

2. SECURITY

Security shall be made payable to Owner, in an amount specified in the Notice to Quoters, maximum bid price in the form of a certified or bank check or a bid bond.

The security of the successful Quoter will be retained until such Quoter has executed the Agreement and furnished the required Contract Security, whereupon it will be returned. If the successful Quoter fails to execute and deliver the Agreement and furnish the required Contract Security within fifteen (15) days of the Notice of Award, Owner may annul the Notice of Award and the Security of that Quoter will be forfeited.

3. PROPOSALS

Each proposal must be completed by typewriter or legibly printed in ink. The bid price on the form must be stated in words and number; in case of conflict, words will take precedence. No alterations are to be made on the printed forms by erasures, interpolations or otherwise unless each such alteration is signed or initialed by the Quoter. If initialed, the Owner may require the Quoter to identify any alteration so initialed. No alteration in any proposal, or in the form, on which it is submitted, shall be made after the proposal has been submitted.

Quotes by partnerships must be executed in the partnership name and signed by a partner whose title must appear under the signature. The official address of the partnership must be shown below the signature.

All names must be typed or printed below the signature. The bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).

Quoter must execute a Non-Collusion Affidavit with notarized signatures as required. Failure to execute Non-Collusion Affidavit will be grounds for declaring proposal void.

The address to which communications regarding the quote are to be directed must be shown.

4. QUOTERS QUESTIONS

01. Any technical questions regarding the Quote documents should be directed to:

Department of Redevelopment

Attn: Laura Wagley

600 E. Third Street

Mishawaka, IN 46544

(574) 258-1668

(574) 258-1739 (fax)

02. The above individual will represent the City in all matters pertaining to this project, including but not limited to, answering technical questions of prospective Quoters, review of any project documents prepared by the Quoter, recommendation of award and review and approval of invoices prior to payment by the City. Quoters should note that this individual recommends action to the Board of Public Works and Safety. The Board of Public Works and Safety is the final signatory on all contracts and awards.
03. All questions, inquiries or explanations desired by prospective Quoters shall be requested in writing from the City not later than seven (7) days prior to the Quote opening. The City will issue a written reply in the form of an addendum to all prospective Quoters of record shortly thereafter. Neither the above individual nor the City will be responsible for oral clarifications, explanations or instructions.
04. The Contractor is held to have examined the site and to have compared it with the Specifications and to have satisfied himself as to the conditions and intent of work to be done before the delivery of his quote. No allowance on this account may be subsequently made, on behalf of the Contractor by reason of any error or oversight on his part or lack of coordination.
05. If it becomes necessary to revise any part of the Request for Quotes, the quote documents or specifications, an Addendum will be provided to all prospective Quoters who received this Request for Quotes. The Quoter shall acknowledge receipt of all addenda distributed on its proposal.

5. SUBMISSION OF QUOTES

Quotes, security, and all other required documents shall be submitted at the time and place indicated in the Notice to Quoters and shall be included in an opaque, sealed envelope, marked with the following words:

**"QUOTE – CITY OF MISHAWAKA DEPARTMENT OF
REDEVELOPMENT- Demolition and removal of the former Fenimores
service station located at 134 West Mishawaka Ave.**

Quotes shall be addressed to:

**Clerk of the Board of Public Works & Safety
City Hall, Room 100
600 E. Third Street
Mishawaka, Indiana 46546-0363.**

Name, as well as address of the Quoter, must accompany the Bid Security and other required documents. If the bid is sent through the mail or other delivery system, the sealed envelope shall include the notation "QUOTE ENCLOSED" on the face thereof.

One duplicate copy of the quote, bid security, and other pertinent information should also be included in the submission. The duplicate copy should be clearly marked as "COPY" on the top of the packet.

6. MODIFICATION AND WITHDRAWAL OF QUOTES

Quotes may be modified or withdrawn by an appropriate document duly executed (in the manner that a quote must be executed) and delivered to the place where Quotes are to be submitted at any time prior to the opening of the Quotes.

7. OPENING OF QUOTES

Quotes will be opened publicly and read aloud at the time and place indicated in the Notice to Quoters, and an abstract of the amounts of the Quotes will be made available after the opening of the Quotes. Quotes will be opened at the City of Mishawaka Board of Public Works and Safety meeting in room 205 on the date and time stated in the notice to Quoters.

8. QUOTES TO REMAIN OPEN

All Quotes shall remain open for sixty (60) days after the day of the bid opening unless otherwise stated; but Owner may, at its sole discretion, release any quotes and return the bid Security prior to that date.

9. AWARD OF CONTRACT

The Owner reserves the right to reject any and all Quotes, to waive any and all informalities and to negotiate contract terms with the successful Quoter, and the right to disregard all non-conforming, non-responsive, or conditional Quotes. Discrepancies between words and figures will be resolved in favor of words.

In evaluating quotes, Owner shall consider the qualifications of the Quoters and whether or not the Quotes comply with the prescribed documents.

Owner may conduct such investigations, as it deems necessary to assist in the evaluation of any quote and to establish the responsibility, qualifications, and financial ability of the Quoter's organization to do the work in accordance with the Contract Documents and to the Owner's satisfaction within the prescribed time.

Owner reserves the right to reject the quote of any Quoter who does not pass any such evaluation to Owner's satisfaction.

If the contract is to be awarded, it will be awarded to the lowest Quoter whose evaluation by Owner indicates to Owner that the award will be in the best interests of the City of Mishawaka.

10. OUT-OF-STATE CORPORATION

All out-of-state corporations must first be registered with the Secretary of State of Indiana before they can be awarded the contract. There is a fee to register with the Secretary of State. For further information and applications, please contact the Secretary of State at the following address:

**Secretary of State
Corporate Division
302 West Washington, Room E018
Indianapolis, Indiana 46204
Telephone: (317) 232-6576**

A Quoter may be considered not responsible and its Quote rejected by the City of Mishawaka if it fails to register with the Secretary of State.

11. INSURANCE

The contractor shall purchase and maintain for the life of the contract. Comprehensive General Liability Insurance as is appropriate for the work being performed. The City of Mishawaka shall be named as an additional insured for the following minimum amounts or greater when required by law:

- A. Worker's compensation
 - 1. State Statutory
 - 2. Applicable Federal Statutory
 - 3. Employer's Liability \$100,000

- B. Comprehensive General Liability
 - 1. Bodily Injury
 - a. \$1,000,000 Each occurrence
 - b. \$1,000,000 Annual aggregate, products and completed operations
 - 2. Property Damage
 - a. \$1,000,000 Each occurrence
 - b. \$1,000,000 Annual aggregate
 - 3. Property Damage Liability Insurance will provide Explosion, Collapse and Underground coverage's where applicable.
 - 4. Personal Injury, with employment exclusion deleted
 - a. \$1,000,000 Annual Aggregate

- C. Comprehensive Automobile Liability
 - 1. Bodily Injury
 - a. \$500,000 Each person
 - b. \$500,000 Each accident
 - 2. Property Damage
 - a. \$500,000 Each occurrence

- D. Contractual Liability Insurance
 - 1. Bodily Injury
 - a. \$1,000,000 Each occurrence
 - 2. Property Damage
 - a. \$1,000,000 Each occurrence
 - b. \$1,000,000 Annual aggregate

- E. Proof of insurance shall be submitted prior to issuance of a Notice to Proceed.

12. CONTROL OF WORK

- A. The Contractor shall be responsible to provide all necessary qualified personnel, equipment and supplies to perform all work required in this item.
- B. The control and responsibility for this project is with the Department of Community Development of the City of Mishawaka. Any questions should be directed to the Director, Department of Community Development at (574) 258-1609.

13. DRUG-FREE AND SAFE WORKSITE POLICIES

The City of Mishawaka has adopted Drug-Free and Safe Worksite policies that apply to any location where city business is conducted. All Public Works projects will be defined as city business and are therefore subject to these policies. Quoter agrees, by submitting a Proposal, to a Quote by these policies. Copies of these policies can be provided by the Contact Person listed in this Request.

14. PRE-CONSTRUCTION MEETING

A mandatory pre-demolition meeting will be held in Room 205 of Mishawaka City Hall, 600 E. Third Street, Mishawaka, Indiana, with the successful Quoter once the project is awarded and prior to demolition.

15. SPECIFICATIONS

See attached specifications for work to be performed.

Proposal Form

For

Demolition and Removal of
The former Fenimores Service Station located at
134 West Mishawaka Avenue, Mishawaka, Indiana

Please Submit Bid on “Yellow” Proposal Form

A complete bid package shall consist of one “original” and one clearly marked “copy” of the following:

- Bid Security
- Yellow Proposal Form (5 pages), including executed Non-Collusion Affidavit
- Standard Questionnaire and Financial Statement for Quoters



CONTRACTOR'S PROPOSAL

TO: The City of Mishawaka DATE: _____
Department of Redevelopment

**RE: Demolition and removal of the former Fenimores service station
located at 134 West Mishawaka Ave. Mishawaka, Indiana**

FROM: (Company Name) _____
(Address) _____
(City, State, Zip Code) _____
(Telephone) _____
(Contact Person) _____

The undersigned, having familiarized himself/herself with the conditions affecting the cost of his/her work and all terms, conditions and requirements contained in the Request for Quotes, hereby proposes and agrees to furnish to the City of Mishawaka, Indiana labor and/or materials necessary to complete the project in accordance with the plans and specifications for the sum listed below.

The undersigned acknowledges I have read and understand, and that this proposal is subject to, all the terms, conditions and requirements set forth in the Request for Quotes. If awarded all or part of the contract, I agree to comply with all terms, conditions and requirements of the contract and to furnish such labor and material as may be awarded pursuant to this Proposal. The undersigned further acknowledges receipt of all Addenda to the Request for Quotes, if applicable.

Date: _____ By: _____

(Title)

ATTEST:
By: _____
Name: _____
Title: _____



CONTRACTOR'S QUOTED PRICE

Contractor's Name _____

BASE QUOTE: Demolition 134 W. Mishawaka Ave.

Demolition and removal of the former Fenimores service station located at 134 West Mishawaka Ave. Mishawaka IN. The base quote to include the removal and disposal of the cashier office building, foundations, slabs, footings, canopy, pump islands and associated piping and conduits, asphalt and business sign. Not including the city sidewalk. The successful Quoter will be required to rough grade areas affected by demolition and leave level, maintaining grades and contours of site.

1) Cost of building demolition and disposal, compaction, and grading \$ _____

Total Base Quote (item 1): \$ _____

(_____ Dollars)

Estimated time of completion in calendar days from Notice to Proceed: _____

ALTERNATE:

1) Costs to fill, grade, compact, and seeding the disturbed areas according to specs.

\$ _____

Estimated time of completion in calendar days from Notice to Proceed: _____

Quote submitted by: _____

Address and Telephone: _____

(IF ADDITIONAL SPACE IS NEEDED, ATTACH SEPARATE SHEET LISTING EACH ITEM QUOTED BASED ON SPECIFICATIONS.)

PART II

These statements are to be submitted under oath by each Quoter with and as a part of this quote. Attach additional pages for each section as needed.

Experience

1. Name at least three public works projects your organization has completed.

Contract Amount	Class of Work	Date Completed	Name and Address of Owner

2. What public works projects is your organization currently awarded but not completed?

Contract Amount	Class of Work	When to be Completed	Name and Address of Owner

3. Have you ever failed to complete any public works project awarded to you? _____
If so, please explain.

4. List references from private firms for which you have performed work.

Plan and Equipment

- Attach your plan or layout for performing proposed work.
- If you intend to sublet any portion of the work, state the name and address of each subcontractor, equipment to be used by the contractor, and whether you expect to require a bond from that subcontractor.
- What equipment do you intend to use for the proposed project? Do you own or rent this equipment?

4. Have you made contracts or received offers for all the materials within prices used in preparing your proposal?

Financial Statement

Attach a recent financial statement of your company. The financial statement should be specific and detailed enough so that said governing body can make a proper determination of the Quoter's capability for completing the project if awarded.

NON-COLLUSION AFFIDAVIT

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

_____, of lawful age, being first duly sworn according to law, states the following:

- 1. He/She is the officer or agent authorized by the quoter to submit the attached quote.
2. The quoter (has) (has not) been convicted of perjury for filing a false affidavit or affirmation within the last three years pursuant to IC 5-22-16-6.
3. The quoter understands that if the quoter has been convicted as aforesaid, the City of Mishawaka is prohibited from accepting a quote from or awarding a contract to the quoter pursuant to IC 5-22-16-6(e).
4. The quoter, nor any other member, representative or agent of the firm, company, corporation or partnership represented by him/her has entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
5. The foregoing statements are accurate with respect to the quoter and its current or previous officers and employees.
6. The foregoing statements are true and correct to the best of the affiant's knowledge, information and belief.

Sworn to and subscribed before me, a Notary Public, on the ____ day of ____
_____, 20__.

My Commission Expires: _____
Notary Public

Resident: _____

ACCEPTANCE

The City of Mishawaka hereby accepts the terms of the quote for the items specified herein and promises to pay the price quoted to the undersigned Vendor upon delivery and acceptance of the item(s) stipulated in said quote.

Date: _____

By: _____
Gary E. West, President

By: _____
Ronald E. Watson, Vice President

By: _____
Kenneth Prince, Member

ATTEST:

Cynthia Lutz, Clerk

Demolition and Removal of Former Fenimores Service Station at 134 West Mishawaka Ave.

SPECIFICATIONS

Section 1- Demolition General

Work Included

- A. Demolition and removal of the former service station located at 134 West Mishawaka Ave. The base quote to include the removal and disposal of the cashier office building, foundations, slabs, footings, canopy, pump islands and associated piping and conduits runs, asphalt and business sign. not including the city sidewalk. The successful bidder will be required to rough grade areas affected by demolition and leave level, maintaining grades and contours of site.
- B. Alternate bid, costs to fill, grade, compact, and seed the disturbed areas according to specs.

Regulatory Requirements

- A. Comply with local rules and codes governing demolition of structures and related work.
- B. Comply with applicable City "Erosion Control Ordinance" 162.10 and federal, state rules and regulations associated with control of storm water run-off from construction activities. Obtain any permit required for storm water run-off associated with construction activity and develop implement, and maintain a storm water management plan consistent with the requirements of 327 IAC 15-5-7
- C. Obtain City of Mishawaka Demolition Permit prior to the commencement of work

Removal and Disposal of Solid Wastes

- A. At a minimum, disposal of solid waste from the site shall be at a permitted and licensed landfill. The basis of the bid shall include the use of legal facilities for solid waste disposal. Disposal and/or recycling of solid waste from the site at other facilities, including construction yards, or burial on-site, are prohibited. Manifests shall be provided to the owner verifying the exact disposal location of all material leaving the site.
- B. Do not bury, store, or burn materials on site
- C. Transport demolition debris to approved off-site disposal area. The prescribed truck route shall be W. Grove Street (adjacent to municipal parking lot north side), then east on Grove Street to N. Main Street, then following designated truck routes.

- D. Remove demolished materials, tools, and equipment upon completion of work. Leave site in a condition suitable to the owner.

Submittals

- A. Secure permits and notices authorizing building demolition.
- B. Secure certificates of severance of utility services.
- C. Secure permit for transport and disposal of debris as necessary.
- D. Submit weekly progress report to City regarding on-site activity.
- E. Submit waste disposal manifests verifying disposal amounts and locations of **all** material that leaves the site.

Existing Conditions

- A. Condition of site and building: Condition of site and building are to be accepted as found. The owner cannot assume responsibility for conditions found or continuation of conditions existing at time of Proposal Invitation or thereafter. Any damage or loss whether by reason of fire, theft, or other casualty or happening on site will not relieve contracts obligations to complete work.
- B. Adjacent roadways will be in use during demolition operations Ensure minimum interference with roadway, streets, driveways, sidewalks, and adjacent structures. Ensure adequate provisions are taken to ensure safety of passing traffic. Any detour of traffic in streets shall be permitted only with prior written approval of the City of Mishawaka.

Protection

- A. Do not interfere with adjacent structures. This contract will require videotaping of site and surrounding property prior to demolition to accurately document existing condition. The contractor will assume liability for any damage to any adjacent buildings, structures, landscaping, street pavements, curbing, city side walks or vehicles that may occur during the demolition process as a part of demolition activities. Video shall be shot in the mini-DV (or better) format. Every effort should be taken to give some visual reference to each photo. A video log shall be submitted on DVD format, providing two (2) copies“ Before starting demolition” The videotaping shall be review by the Owner for accuracy prior to commencement of demolition. Maintain protected egress and access at all times around work areas.
- B. Protect existing appurtenances and structures, which are not to be demolished on-site and off-site. This shall include items such as curbs, street lights, and parking lot asphalt. Utility Services including but not limited to natural gas, electric, water, storm and sanitary sewer which are to remain.

- C. Cease operations and notify the Department of Community Development immediately if safety of adjacent structures appears to be endangered. Take precautions to properly support structure. Do not resume operations until safety is restored.
- D. Prevent movement, settlement damage, or collapse both on-site and off-site of adjacent structures, services, utilities, sidewalks, and driveways. Assume liability for such movement, settlement damage, or collapse. Promptly repair damage at no cost to Owner.
- E. Provide, erect, and maintain barricades, chutes, lighting, and guard rails as required to protect general public, workers, and utilities, meeting all Federal, OSHA, State, and local laws and regulations.
- F. The Contractor shall coordinate his work with the local agencies (Fire, Police, etc), adjacent business owners and the City of Mishawaka.
- G. Prior to any traffic pattern changes, the Contractor shall submit a detour plan to the Department of Engineering.
- H. All construction signs and barricades shall be in accordance with the current edition of the "Indiana Manual on Uniform Traffic Control Devices."
- I. The site shall be at a minimum fenced off with orange type snow fence using drive in posts. To provide protection to the public each day and terminate parking on property.
- J. The Contractor shall maintain access to all commercial drives at all times during the demolition of this project.

Existing Services

- A. Arrange and pay for disconnecting, removing, capping, and plugging utility services, including but not limited to, natural gas, electric, water and sanitary sewer. Disconnect and stub off. Notify affected utility company in advance and obtain approval before starting this work.
- B. Place markers to indicate location of disconnected services. Identify service lines and capping locations on sketch to owner.

Maintaining Traffic

- A. Adjacent roadways will be in use during demolition operations Ensure minimum interference with roadway, streets, driveways, sidewalks, and adjacent structures. Ensure adequate provisions are taken to ensure safety of passing traffic. Any detour of traffic in streets shall be permitted only with prior written approval of the City of Mishawaka.

- B. Do not close or obstruct streets, sidewalks, or passageways without prior written permission from authorities having jurisdiction.
- C. If required by governing authorities, provide alternate routes around closed or obstructed traffic ways.

Section 2 Products

Materials

- A. Except where noted otherwise, maintain possession of materials being demolished. Immediately remove from the site those materials not Owner requested.

Section 3 Execution

Inspection

- A. Verify that structures to be demolished are unoccupied prior to demolition.
- B. Do not commence work until conditions are acceptable to Community Development Director.

Preparation

- A. Arrange for and verify termination of utility services to include removing meters and capping lines.
- B. Exterminate vermin and rodents in structures to be demolished if necessary.

Demolition

- A. Completely demolish structures and appurtenances in an orderly and careful manner. Remove materials from site.
- B. Perform demolition in accordance with applicable authorities having jurisdiction.
- C. Repair demolition performed in excess of that required, at no cost to the owner.
- D. Keep work sprinkled to prevent dust. Provide hoses and water main or hydrant connections for this purpose. All costs for water are to be the responsibility of the contractor.
- E. Do not use water to the extent of causing flooding, contaminated run-off, or icing.
- F. Begin demolition at top of building and proceed to lowest point, not using explosives.
- G. Demolish structures above each floor level before damaging supporting members at lower levels.
- H. Remove basement walls, floor, and foundations completely.

- I. Remove from below grade all metal piping and conduit runs under former fuel islands and metal from building demolition area.
- J. Repair any damage to street, curbs, and city sidewalk, as necessary, to City standards.
- K. Fill any voids with soil or backfill material.
- L. Place fill in lifts not exceeding twelve inch's and compact to density 95% compaction not less than adjacent soil.
- M. Rough grade areas affected by demolition maintaining grades and contours of site.
- N. Slope grade away from demolition site minimum 2 inches in 10 feet, unless noted other wise.
- O. Inspect earthwork periodically to detect any evidence of the start of erosion. Apply corrective measures as required to control erosion.

Disposal

- A. Do not bury, store, or burn materials on site.
- B. Transport demolition debris to approved off-site disposal area. The prescribed truck route shall be W. Grove Street (adjacent to municipal parking lot north side), then east on Grove Street to N. Main Street, then following designated truck routes.
- C. Remove demolished materials, tools, and equipment upon completion of work. Leave site in a condition suitable to the Owner.

Repair

- A. Repair damage to adjacent structures caused as a result of demolition.

Section 4 Backfilling

Products

- A. Subsoil: Imported granular fills; free of clay material and gravel larger than three-inch size.
- B. Inspection: Verify stockpiled fill to be reused is approved. Also, verify areas to be backfilled are free of debris, snow, ice, frozen materials or water, and ground surfaces are not frozen.

Preparation

- A. When necessary, compact sub grade surfaces to density requirements for backfill material.

- B. Cut out soft areas of sub grade not readily capable of in-situ compaction. Backfill with subsoil and compact to density equal to requirements for subsequent backfill material.

Backfilling

- A. Backfill areas to existing contours and elevations. Use unfrozen materials.
- B. Backfill systematically, as early as possible. Do not backfill over porous, wet, or spongy sub grade surfaces.
- C. Place and compact common fill materials in continuous layers not exceeding 12 inches in loose depth.
- D. Maintain optimum moisture content of backfill materials to attain required compaction density.
- E. Slope grade away from demolition site minimum 2 inches in 10 feet, unless noted otherwise.
- F. Make changes in grade gradual. Blend slopes into level areas.
- G. Remove surplus backfill materials from site.
- H. Leave stockpile areas completely free of excess fill materials.

Tolerances

- A. Top surface of backfilling: Plus or minus 2 inches

Compaction Testing

- A. Compaction testing shall be performed by an independent testing lab in accordance with ANSI/ATSM D1556.
- B. If tests indicate work does not meet specified requirements, remove work, replace, and retest at no cost to the owner.

Schedule of Location

- A. At building demolition site: mix subsoil fill, place in 12-inch layers, compacted to 95 percent.
- B. Fill under Grassed areas: subsoil fill, to six inches below finish grade, compacted to 95 percent.

Section 5 Finish Grading**Work Included**

- A. Place, finish grade, and compact topsoil.

Existing Conditions

- A. Verify site conditions and note irregularities affecting work of this section.
- B. Do not hold owner liable for extra charges for conditions uncovered and not shown or described on contract documents, without acceptance of Program construction manager.
- C. Beginning work of this question means acceptance of existing conditions.

Protection

- A. Protect benchmarks, existing structures, fences, roads, sidewalks, paving, and curbs against damage from equipment and vehicular traffic.
- B. Protect aerial, surface, or underground utility lines or appurtenances, which are to remain.
- C. Provide all necessary barricades in accordance with Indiana Manual of Uniform Traffic Control Device.
- D. Repair any damage at no cost to the owner.
- E. Prevent soil and debris from entering any ditches or sewers.

Products (If alternate is selected)

- A. Topsoil: Furnished topsoil shall be natural, fertile, friable soil possessing characteristics of representative productive soils in the vicinity. It shall not contain toxic substances which may be harmful to plant growth and the soil shall have an acidity range of pH 6.0 to 6.5 before it is delivered to the site for use in landscape operations. Topsoil shall be without admixture of subsoil and shall be cleaned and reasonable free from clay lumps, stones over one inch in diameter, stumps, roots, debris, or other extraneous matter which might be a hindrance to planting operation. It shall not be used for lawn or planting operations while in a muddy or frozen condition.
- B. The Program Construction Manager may, at his option, review topsoil to be furnished at its source, or require the Contractor to deliver a one cubic foot sample of the topsoil proposed for use, to determine whether or not it meets the requirements specified. After the review, the Contractor may be required to have representative soil samples tested for pH from several locations in the area under consideration.

- C. If the pH range of the topsoil is not between 6.0 and 6.5, it may be amended by the Contractor, at his own expense, to bring it within these limits, or he may select another source for review.

Preparation

- A. Establish and identify required lines, levels, contours, and datum.
- B. Maintain benchmarks, monuments, and other reference points. Re-establish if disturbed or destroyed, at no cost to the owner.
- C. Before start of grading, establish location and extent of utilities in work areas.
- D. Maintain, protect, reroute, or extend as required existing utilities to remain which pass through work area.

Subsoil Preparation

- A. Prior to placing topsoil, assure that subsoil elevations are to a reasonable true and even plane at the required elevations, with due allowance for topsoil, hydro mulching and seed.
- B. Adjust discrepancies in elevations of subsoil to required levels, profiles, and contours. Make changes in grade gradual. Blend slopes into level areas.
- C. Clear sub grade surface of stones, in excess of one inch, debris, and rubbish.
- D. Cultivate or scarify sub grade to a depth of 3 inches where topsoil is to be placed. Repeat cultivation in areas where equipment, used for hauling and spreading topsoil, has compacted subsoil.

Placing Topsoil

- A. Use topsoil in relatively dry state. Place during dry weather. Do not spread topsoil when frozen.
- B. Place topsoil in area where hydro mulch seeding is scheduled.
- C. Fine grade topsoil eliminating rough and low areas to ensure positive drainage. Maintain levels, profiles, and contours of sub-grades and final grades to blend with existing site grades.
- D. Remove stone, roots, grass, weeds, debris, and other foreign material while spreading.
- E. Manually spread topsoil around trees, plants, and permanent structures to prevent damage that may be caused by grading equipment.
- F. Lightly compact placed topsoil to depths indicated.

- G. Spread topsoil in such a manner that hydro mulch seeding can proceed with a minimum of additional soil preparation and tillage.

Restoration of Adjacent areas

- A. Where adjacent lawn or surface areas within project site, but outside grading limits, are disturbed as a result of building demolition operations or storage of materials under this contract, clean these areas of all debris and restore to original grades and to a condition equal or better than originally received.

Clean-up

- A. Leave stockpile areas clean, raked, and ready to receive landscaping.
- B. Remove any soil, which may have been brought onto paved surfaces by hauling and grading operations.

Maintenance of Grades

- A. Protect newly graded areas from traffic and erosion and keep free of trash and debris.
- B. The Contractor shall submit to the program construction manager for review, his plan of operation for accomplishing temporary and permanent erosion control.
- C. Repair and re-establish grades in settled, eroded, and rutted areas to specified tolerances.

Section 6 Hydro mulched Lawns (If alternate is selected)

Work included

- A. Raking and smoothing of finish grades in lawn areas, soil treatment lawn construction and protection, maintenance replacement of lawns during the guarantee period, clean-up and related items to complete lawns.

Quality Assurance

- A. The Contractor must have a sufficient work force and equipment to complete the work without causing delay.
- B. Design modifications may be made only as necessary to meet field conditions and to insure correct alignment and relationship of the work and only as acceptable to the program construction manager.
- C. The intent of this section is to have a completed lawn area, at uniform grade, and an acceptable stand of grass with no surface irregularities.

Submittals

- A. The seed suppliers guaranteed statement of composition and analysis of each seed variety shall be submitted for approval prior to application of the job.

Delivery, Storage, and Handling

- A. Deliver materials to the project site in such quantities and at such times as to insure the continuity of installation.
- B. Seed may be pre-mixed by a dealer or by an approved method at the site. If seed is mixed on the site, the individual varieties must be delivered in separate unopened original containers.
 - 1. All pre-mixed seed shall be furnished in sealed standard containers.

Job Conditions

- A. The contractor and the Program Construction Manager shall inspect the job conditions at the completion of finish grading, prior to any hydro mulch operations, and the contractor shall not proceed without written authorization from the Program Construction Manager.

Inspection

- A. The Program Construction Manager shall have free access to the site during preparation and installation of the lawn areas to inspect the equipment, materials, and installation methods so to ensure compliance with the specifications.

Products

- A. Fertilizer: A complete commercial fertilizer containing, in available form, the following specified parts by weight of Nitrogen, Phosphorus, and Potash in a 13/25/12 ration. It shall be free flowing and suitable for application with approved equipment, delivered to the site in bags or other convenient containers, each fully labeled conforming to State fertilizer laws and bearing the name, or trademark and warranty of the producer
- B. Hydro mulch: Conwed Hydro Mulch, Weyerhaeuser Sliva Fiber, or approved equal. The mulch shall be composed of wood cellulose fiber and shall contain no germination or growth inhibiting factors. Hydro mulch shall be at the rate and with seed mixture as shown on the plans.
- C. Lawn Seed: Fresh, clean and new crop seed composed of varieties as shown on the plans. All seed used shall be labeled in accordance with the U.S. Department of Agriculture Rules and Regulations. Under the federal seed act in effect at the time of installation of the work involved under seeding operations.
- D. Water: Furnish all necessary hose, equipment, attachments, and accessories, for the adequate irrigation of lawn areas. Contractor shall make, at own expense, whatever arrangements are necessary to meet the needs of this contract. Owner shall not be responsible for supplying water.

Time of Planting

- A. Place no hydro seed until topsoil placement has been inspected and approved by the Program Construction Manager.

- B. When other divisions of the work have progressed sufficiently and after topsoil placement approval by the Program Construction Manager, the contractor shall commence with finish, raking, and hydro seeding. Thereafter, the finished grade shall be maintained through completion of the lawns. The Contractor shall be responsible for notifying and insuring that this final grade is not disturbed by other contractors working on the site.
1. Rake all topsoil areas to receive hydro mulch. Remove all stones over 1". Bring surfaces to final grade for drainage with allowance for settlement.
- C. The Contractor shall make every effort to develop the lawn within two (2) weeks following placement of topsoil. When conditions are such by reason of drought, high winds, excessive moisture, or other factors that satisfactorily results are not likely to be obtained work shall be stopped and shall be resumed only when conditions are favorable again or when approved alternate or corrective measures and procedures have been put into effect as authorized by the Program Construction Manager.

Application Rates

- A. Fertilizer: Applied at the minimum rate of 25 pounds per 1,000 square feet to all areas being prepared for lawn.
- B. The hydro mulch application rate shall be 40 pounds per 1,000 square feet including 5 pounds per 1,000 square feet of seed mix as specified. All seed must be 85% purity.

Hydro mulching

- A. The specified proportionate quantities of fertilizer, seed, and other approved materials shall be premixed and along with wood fibers added to the water to form a slurry mixture.
- B. Apply hydro mulch slurry mix with mulching equipment at the rates shown on plans. It shall be sprayed uniformly on the surface of the soil.

Clean-up

- A. Promptly remove any soil, hydro mulch, or similar material which has been brought onto paved areas by raking or hydro mulch operations or otherwise keeping these areas clean at all times. Upon completion of the work, all excess soil and debris which has not previously been cleaned up shall be removed from the site or disposed of as directed by the Program Construction Manager. All lawn areas shall be prepared for final inspection.

Maintenance

- A. Begin maintenance immediately after each portion of lawn is planted and continue in accordance with the following requirements.
 1. Protect and maintain hydro mulched lawns by watering, weeding, and replanting as necessary for at least 45 days after germination of the seed.

2. Mowing of the lawn areas during the maintenance period will be done by the Owner under the direct supervision and instruction of the Contractor. The Contractor shall be responsible for meeting with the Owner or his representative and making arrangements, suitable to both parties, for accomplishing the mowing of the lawn areas.
 3. Mowing of the lawn areas by the Owner under the direct supervision and instruction of the Contractor shall not relieve the Contractor of his obligation to provide an acceptable stand of grass in accordance with the terms of these specifications. Correction of any damage to the lawn area caused by the mowing operations shall be the responsibility of the Contractor.
- B. Provide adequate protection at all times for all lawn area against trespassing and damage, including erosion, until acceptance.
 - C. Protect slopes from damage by erosion, settlement, or backfill or other causes, and, when damaged, promptly repair at Contractors expense.
 - D. Damage to the lawn area due to vandalism or on the part of others prior to occupancy or acceptance by the owner will be the responsibility of the Contractor.
 - E. Occupancy of the project shall not relieve the Contractor of any of the obligations outlined in these specifications. However, repairs to lawns necessary during maintenance period due to damage resulting from occupancy of the project may be made on order of the Program Construction Manager or the Owner, at the Owners expense.

Inspection

- A. At the end of the maintenance period as specified above, and upon written notice requesting such an inspection, submitted by the Contractor at least 2 days prior to the anticipated date, the lawn areas will be inspected by the Program Construction Manager. Inspection will be for acceptance of the lawn areas in total or in part.
- B. An acceptable stand of hydro mulched grass is defined as a healthy, uniform, close stand of specified grasses, free of weeds and bare spots larger than one square foot and free of any surface irregularities. Bare spots smaller than one square foot will be allowed up to a maximum of 3% of any lawn area, as defined by adjacent structures, walks, or other site improvements.

Acceptance

- A. After inspection, the contractor shall be notified in writing by the Program Construction Manager of the acceptance of the lawn areas in total, or if there are any deficiencies, of the acceptance of a part of the lawn areas. Areas not accepted shall be subject to a re-inspection prior to acceptance

- B. Upon inspection and partial acceptance of the lawn areas, maintenance of the total lawn areas is to be continued by the Owner, under the direction and supervision of the Contractor. During this time, the Contractor is to make such adjustments and repairs, including but not limited to reseeding as required to bring all areas to acceptable standards.
- C. Additional inspections of portions of the lawn areas not originally accepted, will be made by the Program Construction Manager upon written notice requesting such and inspection, submitted by the Contractor at least 2 days prior to the anticipated date.
- D. Written notification of the acceptance of the total lawn area by the Program Construction Manager relieves the contractor of any further maintenance obligations of lawn areas.



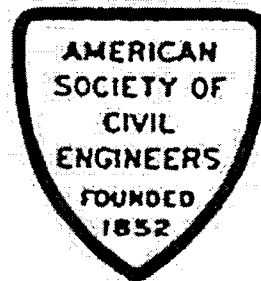
STANDARD
GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT

Prepared by

Engineers Joint Contract Documents Committee

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
 NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

CONSTRUCTION SPECIFICATIONS INSTITUTE

This document has been approved and endorsed by

The Associated General  Contractors of America

GC-1

© 1990 National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

Construction Specifications Institute
601 Madison St., Alexandria, VA 22314

GC-2

TABLE OF CONTENTS OF GENERAL CONDITIONS

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>	<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
1. DEFINITIONS	13	2.5-2.7 Before Starting Construction	
1.1 Addenda	13	CONTRACTOR's Responsibility to	
1.2 Agreement	13	Report: Preliminary Schedules;	
1.3 Application for Payment	13	Delivery of Certificates of	
1.4 Asbestos	13	Insurance	15
1.5 Bid	13	2.8 Preconstruction Conference	15
1.6 Bidding Documents	13	2.9 Initially Acceptable Schedules	16
1.7 Bidding Requirements	13		
1.8 Bonds	13	3. CONTRACT DOCUMENTS: INTENT,	
1.9 Change Order	13	AMENDING, REUSE	16
1.10 Contract Documents	13	3.1-3.2 Intent	16
1.11 Contract Price	13	3.3 Reference to Standards and	
1.12 Contract Time	13	Specifications of Technical Societies;	
1.13 CONTRACTOR	13	Reporting and Resolving	
1.14 defective	13	Discrepancies	16
1.15 Drawings	13	3.4 Intent of Certain Terms of Adjectives. .	17
1.16 Effective Date of the Agreement .	13	3.5 Amending Contract Documents	17
1.17 ENGINEER	13	3.6 Supplementing Contract Documents .	17
1.18 ENGINEER's Consultant	13	3.7 Reuse of Documents	17
1.19 Field Order	13		
1.20 General Requirements	14	4. AVAILABILITY OF LANDS; SUBSURFACE AND	
1.21 Hazardous Waste	14	PHYSICAL CONDITIONS: REFERENCE POINTS	17
1.22 Laws and Regulations; Laws or		4.1 Availability of Lands	17
Regulations	14	4.2 Subsurface and Physical Conditions ...	17
1.23 Liens	14	4.2.1 Reports and Drawings	17
1.24 Milestone	14	4.2.2 Limited Reliance by CONTRACTOR	
1.25 Notice of Award	14	Authorized; Technical Data	18
1.26 Notice of Proceed	14	4.2.3 Notice of Differing Subsurface or	
1.27 OWNER	14	Physical Conditions	18
1.28 Partial Utilization	14	4.2.4 ENGINEER's Review	18
1.29 PCBs	14	4.2.5 Possible Contract Documents Change .	18
1.30 Petroleum	14	4.2.6 Possible Price and Times Adjustments	18
1.31 Project	14	4.3 Physical Conditions – Underground	
1.32 Radioactive Material	14	Facilities	18
1.33 Resident Project Representative .	14	4.3.1 Shown or Indicated	18
1.34 Samples	14	4.3.2 Not Shown or Indicated	19
1.35 Shop Drawings	14	4.4 Reference Points	19
1.36 Specifications	14	4.5 Asbestos, PCBs, Petroleum, Hazardous	
1.37 Subcontractor	14	Waste or Radioactive Material	19
1.38 Substantial Completion	14		
1.39 Supplementary Conditions	14	5. BONDS AND INSURANCE	20
1.40 Supplier	14	5.1-5.2 Performance, Payment and Other Bonds ...	20
1.41 Underground Facilities	14	5.3 Licensed Sureties and Insurers;	
1.42 Unit Price Work	14	Certificates of Insurance	20
1.43 Work	15	5.4 CONTRACTOR's Liability Insurance .	20
1.44 Work Change Directive	15	5.5 OWNER's Liability Insurance	21
1.45 Written Amendment	15	5.6 Property Insurance	21
		5.7 Boiler and Machinery or Additional	
		Property Insurance	21
2. PRELIMINARY MATTERS	15	5.8 Notice of Cancellation Provisions	21
2.1 Delivery of Bonds	15	5.9 CONTRACTOR's Responsibility for	
2.2 Copies of Documents	15	Deductible Amounts	22
2.3 Commencement of Contract Times;		5.10 Other Special Insurance	22
Notice to Proceed	15	5.11 Waiver of Rights	22
2.4 Starting the Work	15		

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>	<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
5.12-5.13 Receipt and Application of Insurance Proceeds	22	8.6 Change Orders	29
5.14 Acceptance of Bonds and Insurance; Option to Replace	22	8.7 Inspections, Tests and Approvals	29
5.15 Partial Utilization—Property Insurance	22	8.8 Stop or Suspend Work; Terminate CONTRACTOR's Services	29
6. CONTRACTOR'S RESPONSIBILITIES	23	8.9 Limitations on OWNER's Responsibilities	30
6.1-6.2 Supervision and Superintendence	23	8.10 Asbestos, PCBs, Petroleum, Hazardous Waste of Radioactive Material	30
6.3-6.5 Labor, Materials and Equipment	23	8.11 Evidence of Financial Arrangements	30
6.6 Progress Schedule	23	9. ENGINEER'S STATUS DURING CONSTRUCTION	30
6.7 Substitutes and "Or-Equal" Items; CONTRACTOR's Expense; Substitutes Construction Methods or Procedures; ENGINEER's Evaluation	23	9.1 OWNER's Representative	30
6.8-6.11 Concerning Subcontractors, Suppliers and Others; Waiver of Rights	24	9.2 Visits to Site	30
6.12 Patent Fees and Royalties	25	9.3 Project Representative	30
6.13 Permits	25	9.4 Clarifications and Interpretations	30
6.14 Laws and Regulations	25	9.5 Authorized Variations in Work	30
6.15 Taxes	25	9.6 Rejecting Defective Work	30
6.16 Use of Premises	26	9.7-9.9 Shop Drawings, Change Orders and Payments	31
6.17 Site Cleanliness	26	9.10 Determinations for Unit Prices	31
6.18 Safe Structural Loading	26	9.11-9.12 Decisions on Disputes; ENGINEER as Initial Interpreter	31
6.19 Record Documents	26	9.13 Limitations on ENGINEER's Authority and Responsibilities	31
6.20 Safety and Protection	26	10 CHANGES IN THE WORK	32
6.21 Safety Representative	26	10.1 OWNER Ordered Change	32
6.22 Hazard Communication Programs	27	10.2 Claim for Adjustment	32
6.23 Emergencies	27	10.3 Work Not Required by Contract Documents	32
6.24 Shop Drawings and Samples	27	10.4 Change Orders	32
6.25 Submittal Procedures; CONTRACTOR's Review Prior to Shop Drawing & Sample Submittal	27	10.5 Notification of Surety	32
6.26 Shop Drawing & Sample Submittals Review by ENGINEER	27	11. CHANGE OF CONTRACT PRICE	32
6.27 Responsibility for Variation From Contract Documents	27	11.1-11.3 Contract Price; Claim for Adjustment; Value of the Work	32
6.28 Related Work Performed Prior to ENGINEER's Review and Approval of Required Submittals	27	11.4 Cost of the Work	33
6.29 Continuing the Work	28	11.5 Exclusions to Cost of the Work	34
6.30 CONTRACTOR's General Warranty and Guarantee	28	11.6 CONTRACTOR's Fee	34
6.31-6.33 Indemnification	28	11.7 Cost Records	34
6.34 Survival of Obligations	28	11.8 Cash Allowances	35
7. OTHER WORK	29	11.9 Unit Price Work	35
7.1-7.3 Related Work at Site	29	12. CHANGE OF CONTRACT TIMES	35
7.4 Coordination	29	12.1 Claim for Adjustment	35
8. OWNER'S RESPONSIBILITIES	29	12.2 Time of the Essence	35
8.1 Communications to Contractor	29	12.3 Delays Beyond OWNER's Control	35
8.2 Replacement of ENGINEER	29	12.4 Delays Beyond OWNER's and CONTRACTOR's Control	35
8.3 Furnish Data and Pay Promptly When Due	29	13. TESTS AND INSPECTIONS; CORRECTION REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK	36
8.4 Lands and Easements; Reports and Tests	29	13.1 Notice of Defects	36
8.5 Insurance	29	13.2 Access to the Work	36
		13.3 Tests and Inspection; Contractor's Cooperation	36

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>	<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
13.4	OWNER's Responsibilities: Independent Testing Laboratory	36	
13.5	CONTRACTOR's Responsibilities	36	
13.6-13.7	Covering Work Prior to Inspection, Testing or Approval	36	
13.8-13.9	Uncovering Work at ENGINEER's Request	36	
13.10	OWNER May Stop the Work	36	
13.11	Correction or Removal of Defective Work	37	
13.12	Correction Period	37	
13.13	Acceptance of Defective Work	37	
13.14	OWNER May Correct Defective Work	37	
14.	PAYMENTS TO CONTRACTOR AND COMPLETION	37	
14.1	Schedule of Values	37	
14.2	Application for Progress Payment	38	
14.3	CONTRACTOR's Warranty of Title	38	
14.4-14.7	Review of Applications for Progress Payments	38	
14.8-14.9	Substantial Completion	39	
14.10	Partial Utilization	39	
14.11	Final Inspection	39	
14.12	Final Application for Payment	40	
14.13-14.14	Final Payment and Acceptance	40	
14.15	Waiver of Claims	40	
15.	SUSPENSION OF WORK AND TERMINATION	40	
15.1	OWNER May Suspend Work	40	
15.2-15.4	OWNER May Terminate	40	
15.5	CONTRACTOR May Stop Work or Terminate	41	
16.	DISPUTE RESOLUTION	41	
17.	MISCELLANEOUS	42	
17.1	Giving Notice	42	
17.2	Computation of Times	42	
17.3	Notice of Claim	42	
17.4	Cumulative Remedies	42	
17.5	Professional Fees and Court Costs Included	42	
EXHIBIT GC-A (Optional):			
Dispute Resolution Agreement (Optional)	GC-A1		
16.1-16.16.6 Arbitration	GC-A1		
16.7 Mediation	GC-A2		

INDEX TO GENERAL CONDITIONS

	<i>Article or Paragraph Number</i>		<i>Article or Paragraph Number</i>
Acceptance of—		Bidding Documents—definition of	1.6 (6.8.2)
Bonds and Insurance	5.14	Bidding Requirements—definitions of	1.7 (1.1, 4.26.2)
<i>defective Work</i>	10.4.1, 13.13, 13.15	Bonds—	
final payment	9.12, 14.15	acceptance of	5.14
insurance	5.14	additional bonds	10.5, 11.4.5.9
other Work, by CONTRACTOR	7.3	Cost of the Work	11.5.4
Substitutes and “Or-Equal” Items	6.7.1	definition of	1.8
Work by OWNER	2.5, 6.30, 6.34	delivery of	2.1, 5.1
Access to the—		final application for payment	14.2-14.14
Lands, OWNER and CONTRACTOR		general	1.10, 5.1.3, 5.13, 9.13, 10.5, 14.7.6
responsibilities	4.1	performance, Payment and Other	5.1-5.2
site, related work	7.2	Bonds and Insurance—in general	5
Work	13.2, 13.14, 14.9	Builder’s risk “all risk” policy form	5.6.2
Acts or Omissions—, Acts and Omissions—		Cancellation Provisions, Insurance	5.4.11, 5.8, 5.15
CONTRACTOR	6.9.1, 9.13.3	Cash Allowances	11.8
ENGINEER	6.20, 9.13.3	Certificate of Substantial Completion	1.38, 6.30.2.3, 14.8, 14.10
OWNER	6.20, 8.9	Certificate of Inspection	9.13.4, 13.5, 14.12
Addenda—definition of (also see		Certificates of Insurance	2.7, 5.3, 5.4.11, 5.4.13, 5.6.5, 5.8, 5.14, 9.13.4, 14.12
definition of Specifications)	(1.6, 1.10, 6.19) 1.1	Change in Contract Price—	
Additional Property Insurances	5.7	Cash Allowances	11.8
Adjustments		claim for price adjustment	4.1, 4.2.6, 4.5, 5.15, 6.8.2, 9.4, 9.5, 9.11, 10.2, 10.5, 11.2, 13.9, 13.13, 13.14, 15.1, 15.5
Contract Price or Contract		CONTRACTOR’s fee	11.6
Times	5, 3.5, 4.1, 4.3.2, 4.5.2, 4.5.3, 9.4, 9.5, 10.2-10.4, 11, 12, 14.8, 15.1	Cost of the Work	
progress schedule	6.6	General	11.4, 11.7
Agreement—		Exclusions to	11.5
definition of	1.2	Cost Records	11.7
All risk Insurance, policy form	5.6.2	in general	1.19, 1.44, 9.11, 10.4.2, 10.4.3, 11
Allowances, Cash	11.8	Lump Sum Pricing	11.3.2
Amending Contract Documents	3.5	Notification of Surety	10.5
Amendment, Written—		Scope of	10.3-10.4
in general	1.10, 1.45, 3.5, 5.10, 5.12, 6.6.2, 6.8.2, 6.19, 10.1, 10.4, 11.2, 12.1, 13.12.2, 14.7.2	Testing and Inspection, Uncovering the Work	13.9
Appeal, OWNER or CONTRACTOR		Unit Price Work	11.9
intent to	9.10, 9.11, 10.4, 16.2, 16.5	Value of Work	11.3
Application for Payment—		Change in Contract Times—	
definition of	1.3	Claim for times adjustment	4.1, 4.2.6, 4.5, 5.15, 6.8.2, 9.4, 9.5, 9.11, 10.2, 10.5, 12.1, 13.9, 13.13, 13.14, 14.7, 15.1, 15.5
ENGINEER’s Responsibility	9.9	Contractual time limits	12.2
final payment	9.13.4, 9.13.5, 14.12-14.15	Delays beyond CONTRACTOR’s control	12.3
in general	2.8, 2.9, 5.6.4, 9.10, 15.5	Delays beyond OWNER’s and CONTRACTOR’s control	12.4
progress payment	14.1, 14.7	Notification of surety	10.5
review of	14.1, 14.7	Scope of change	10.3, 10.4
Arbitration (Optional)	16.1, 16.6	Change Orders—	
Asbestos—		Acceptance of Defective Work	13.13
claims pursuant thereto	4.5.2, 4.5.3	Amending Contract Documents	3.5
CONTRACTOR authorized to stop Work	4.5.2	Cash Allowances	11.8
definition of	1.4	Change of Contract Price	11
OWNER responsibility for	4.5.1, 8.10	Change of Contract Times	12
possible price and times change	4.5.2	Changes in the Work	10
Authorized Variations in Work	3.6, 6.25, 6.27, 9.5	CONTRACTOR’s fee	11.6
Availability of Lands	4.1, 8.4	Cost of the Work	11.4-11.7
Award, Notice of—defined	1.25		
Before Starting Construction	2.5-2.8		
and—definition of	1.5		
(1.1, 1.10, 2.3, 3.3, 4.2.6.4, 6.13, 11.4.3, 11.9.1)			

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Cost Records	11.7
definition of	1.9
emergencies	6.23
ENGINEER's responsibility	9.8, 10.4, 11.2, 12.1
execution of	10.4
Indemnification	6.12, 6.16, 6.31, 6.33
Insurance, Bonds and	5.10, 5.13, 10.5
OWNER may terminate	15.2-15.4
OWNER's Responsibility	8.6, 10.4
Physical Conditions—	
Subsurface and,	4.2
Underground Facilities	4.3.2
Record Documents	6.19
Scope of Change	10.3-10.4
Substitutes	6.7.3, 6.8.2
Unit Price Work	11.9
value of Work, covered by	11.3
Changes in the Work	10
Notification of surety	10.5
OWNER's and CONTRACTOR's responsibilities	10.4
Right to an adjustment	10.2
Scope of change	10.3, 10.4
Claims—	
against CONTRACTOR	6.16
against ENGINEER	6.32
against OWNER	6.32
Change of Contract Price	9.4, 11.2
Change of Contract Times	9.4, 12.1
CONTRACTOR's..	4, 7.1, 9.4, 9.5, 9.11, 10.2, 11.2, 11.9, 12.1, 14.8, 15.1, 15.5, 17.3
CONTRACTOR's Fee	11.6
CONTRACTOR's liability	5.4, 6.12, 6.16, 6.31
Cost of the Work	11.4, 11.5
Decisions on Disputes	9.11, 9.12
Dispute Resolution	16.1
Dispute Resolution Agreement	16.1-16.6
ENGINEER as initial interpreter	9.11
Lump Sum Pricing	11.3.2
Notice of	17.3
OWNER's	9.4, 9.5, 9.11, 10.2, 11.2, 11.9, 12.1, 13.9, 13.13, 13.14, 17.3
OWNER's liability	5.5
OWNER may refuse to make payment	14.7
Professional Fees and Court Costs Included	17.5
request for formal decision on	9.11
Substitute items	6.7, 1.2
Time Extension	12.1
Time requirements	9.11, 12.1
Unit Price Work	11.9.3
Value of	11.3
Waiver of—on Final Payment	14.14, 14.15
Work Change Directive	10.2
written notice required	9.11, 11.2, 12.1
Clarifications and Interpretations	3.6.3, 9.4, 9.11
Clean Site	6.17
Codes of Technical Society, Organization or Association	3.3.3
Commencement of Contract Times	2.3
Communications—	
General	6.2, 6.9.2, 8.1
Hazard Communication Programs	6.22
Completion—	
Final Application for Payment	14.12
Final Inspection	14.11
Final Payment and Acceptance	14.13-14.14
Partial Utilization	14.10
Substantial Completion	1.38, 14.8-14.9
Waiver of Claims	14.15
Computation of Times	17.2.1, 17.2.2
Concerning Subcontractors, Suppliers and Others	6.8-6.11
Conferences—	
initially acceptable schedules	2.9
preconstruction	2.8
Conflict, Error, Ambiguity, Discrepancy—	
CONTRACTOR to Report	2.5, 3.3.2
Construction, before starting by CONTRACTOR	2.5-2.7
Construction Machinery, Equipment, etc.	6.4
Continuing the Work	6.29, 10.4
Contract Documents—	
Amending	3.5
Bonds	5.1
Cash Allowances	11.8
Change of Contract Price	11
Change of Contract Times	12
Change in the Work	10.4-10.5
check and verify	2.5
Clarifications and Interpretations	3.2, 3.6, 9.4, 9.11
definition of	1.10
ENGINEER as initial interpreter of	9.11
ENGINEER as OWNER's representative	9.1
general	3
Insurance	5.3
Intent	3.1-3.4
minor variations in the Work	3.6
OWNER's responsibility to furnish data	8.3
OWNER's responsibility to make prompt payment	8.3, 14.4, 14.13
precedence	3.1, 3.3.3
Record Documents	6.19
Reference to Standards and Specifications of Technical Societies	3.3
Related Work	7.2
Reporting and Resolving Discrepancies	2.5, 3.3
Reuse of	3.7
Supplementing	3.6
Termination of ENGINEER's Employment	8.2
Unit Price Work	11.9
variations	3.6, 6.23, 6.27
Visits to Site, ENGINEER's	9.2
Contract Price—	
adjustment of	3.5, 4.1, 9.4, 10.3, 11.2-11.3
Change of	11
Decision on Disputes	9.11
definition of	1.11
Contract times—	
adjustment of	3.5, 4.1, 9.4, 10.3, 12
Change of	12.1, 12.4

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Commencement of	2.3
definition of	1.12
CONTRACTOR—	
Acceptance of Insurance	5.14
Limited Reliance on Technical Data Authorized	4.2.2
Communications	6.2, 6.9.2
Continue Work	6.29, 10.4
coordination and scheduling	6.9.2
definition of	1.13
May Stop Work or Terminate	1.15
provide site access to others	7.2, 13.2
Safety and Protection	4.3, 1.2, 6.16, 6.18, 6.21, 6.23, 7.2, 13.2
Shop Drawing and Sample Review Prior to Submittal	6.25
Stop Work requirements	4.5.2
CONTRACTOR'S	
Compensation	11.1-11.2
Continuing Obligation	14.15
Defective Work	9.6, 13.10-13.14
Duty to correct defective Work	13.11
Duty to Report—	
Changes in the Work caused by	
Emergency	6.23
Defects in Work of Others	7.3
Differing conditions	4.2.3
Discrepancy in Documents	2.5, 3.3.2, 6.14.2
Underground Facilities not indicated	4.2.3
Emergencies	6.23
Equipment and Machinery Rental, Cost of Work	11.4.5.3
Fee—Cost-Plus	11.4.5.6, 11.5.1, 11.6
General Warranty and Guarantee	6.30
Hazard Communication Programs	6.22
Indemnification	6.12, 6.16, 6.31-6.33
Inspection of the Work	7.3, 13.4
Labor, Materials and Equipment	6.3-6.5
Laws and Regulations, Compliance by	6.14.1
Liability Insurance	5.4
Notice of Intent to Appeal	9.10, 10.4
obligation to perform and complete the Work	6.30
Patent Fees and Royalties, paid for by	6.12
Performance and Other Bonds	5.1
Permits, obtained and paid for by	6.13
Progress Schedule	2.6, 2.8, 2.9, 6.6, 6.29, 10.4, 15.2.1
Request for formal decision on disputes	9.11
Responsibilities—	
Changes in the Work	10.1
Concerning Subcontractors, Suppliers and Others	6.8, 6.11
Continuing the Work	6.29, 10.4
CONTRACTOR'S expense	6.7.1
CONTRACTOR'S General Warranty and Guarantee	6.30
CONTRACTOR'S review prior to the Shop Drawing or	
Sample submittal	6.25
Coordination of Work	6.9.2
Emergencies	6.23
ENGINEER'S evaluation, Substitutes	
Or "Or-Equal" Items	6.7.3
For Acts and Omissions of Others	6.9.1-6.9.2, 9.13
for deductible amounts, insurance	5.9
general	6, 7.2, 7.3, 8.9
Hazardous Communication Programs	6.22
Indemnification	6.31-6.33
Labor, Materials and Equipment	6.3-6.5
Laws and Regulations	6.14
Liability Insurance	5.4
Notice of variation from Contract Documents	6.27
Patent Fees and Royalties	6.12
Permits	6.13
Progress Schedule	6.6
Record Documents	6.19
related Work performed prior to ENGINEER'S	
approval of required submittals	6.28
safe structural loading	6.18
Safety and Protection	6.20, 7.2, 13.2
Safety Representative	6.21
Scheduling the Work	6.9.2
Shop Drawings and Samples	6.24
Shop Drawings and Samples Review	
by ENGINEER	6.26
Site Cleanliness	6.17
Submittal Procedures	6.25
Substitute Construction Methods and	
Procedures	6.7.2
Substitutes and "Or-Equal" Items	6.7.1
Superintendence	6.2
Supervision	6.1
Survival of Obligations	6.34
Taxes	6.15
Tests and Inspections	13.5
To Report	2.5
Use of Premises	6.16-6.18, 6.30.2.4
Review Prior to Shop Drawing or Sample Submittal	6.25
Right to adjustment for changes in the Work	10.2
Right to claim	4, 7.1, 9.4, 9.5, 9.11, 10.2, 11.2, 11.9, 12.1, 13.9, 14.8, 15.1, 15.5, 17.3
Safety and Protection	6.20-6.22, 7.2, 13.2
Safety Representative	6.21
Shop Drawings and Samples Submittals	6.24-6.28
Special Consultants	11.4.4
Substitute Construction Methods and Procedures	6.7
Substitutes and "Or-Equal" Items, Expense	6.7.1, 6.7.2
Subcontractors, Suppliers and Others	6.8-6.11
Supervision and Superintendence	6.1, 6.2, 6.21
Taxes, Payment by	6.15
Use of Premises	6.16-6.18
Warranties and guarantees	6.30, 6.5
Warranty of Title	14.3
Written Notice Required—	
CONTRACTOR stop Work or terminate	15.5
Reports of Differing Subsurface and Physical Conditions	4.2.3
Substantial Completion	14.8
CONTRACTORS—other	7
Contractual Liability Insurance	5.4.10
Contractual Time Limits	12.2
Coordination	

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
CONTRACTOR's responsibility	6.9.2
Copies of Documents	2.2
Correction Period	13.12
Correction, Removal or Acceptance of Defective Work in general	10.4.1, 13.10-13.14
Acceptance of Defective Work	13.13
Correction or Removal of Defective Work	6.30, 13.11
Correction Period	13.12
OWNER May Correct Defective Work	13.14
OWNER May Stop Work	13.10
Cost—	
of Tests and Inspections	13.4
Records	11.7
Cost of the Work—	
Bonds and insurance, additional	11.4.5.9
Cash Discounts	11.4.2
CONTRACTOR's Fee	11.6
Employee Expenses	11.4.5.1
Exclusions to	11.5
General	11.4-11.5
Home office and overhead expenses	11.5
Losses and damages	11.4.5.6
Materials and equipment	11.4.2
Minor expenses	11.4.5.8
Payroll costs on changes	11.4.1
performed by Subcontractors	11.4.3
Records	11.7
Rentals of construction equipment and machinery	11.4.5.3
Royalty payments, permits and license fees	11.4.5.5
Site office and temporary facilities	11.4.5.2
Special Consultants, CONTRACTOR's	11.4.4
Supplemental	11.4.5
Taxes related to the Work	11.4.5.4
Tests and Inspection	13.4
Trade Discounts	11.4.2
Utilities, fuel and sanitary facilities	11.4.5.7
Work after regular hours	11.4.1
Covering Work	13.6-13.7
Cumulative Remedies	17.4-17.5
Cutting, fitting and patching	7.2
Data, to be furnished by OWNER	8.3
Day—definition of	17.2.2
Decisions on Disputes	9.11, 9.12
defective—definition of	1.14
Defective Work—	
Acceptance of	10.4.1, 13.13
Correction or Removal of	10.4.1, 13.11
Correction Period	13.12
in general	13, 14.7, 14.11
Observation by ENGINEER	9.2
OWNER May Stop Work	13.10
Prompt Notice of Defects	13.1
Rejecting	9.6
Uncovering the Work	13.8
Definitions	1
Delays	4.1, 6.29, 12.3-12.4
Delivery of Bonds	2.1
Delivery of certificates of insurance	2.7
Determinations for Unit Prices	9.10
Differing Subsurface or Physical Conditions	
Notice of	4.2.3
ENGINEER's Review	4.2.4
Possible Contract Documents Change	4.2.5
Possible Price and Times Adjustments	4.2.6
Discrepancies—Reporting and Resolving	2.5, 3.3.2, 6.14.2
Dispute Resolution—	
Agreement	16.1-16.6
Arbitration	16.1-16.6
general	16
Mediation	16.6
Dispute Resolution Agreement	16.1-16.6
Disputes, Decisions by ENGINEER	9.11-9.12
Documents—	
Copies of	2.2
Record	6.19
Reuse of	3.7
Drawings—definition of	1.15
Easements	4.1
Effective date of Agreement—definition of	1.16
Emergencies	6.23
ENGINEER—	
as initial interpreter on disputes	9.11-9.12
definition of	1.17
Limitations on authority and responsibilities	9.13
Replacement of	8.2
Resident Project Representative	9.3
ENGINEER's Consultant—definition of	1.18
ENGINEER's—	
authority and responsibility, limitations on	9.13
Authority Variations in the Work	9.5
Change Orders, responsibility for	9.7, 10, 11, 12
Clarifications and Interpretations	3.6.3, 9.4
Decisions on Disputes	9.11-9.12
defective Work, notice of	13.1
Evaluation of Substitute Items	6.7.3
Liability	6.32, 9.12
Notice Work is Acceptable	14.13
Observations	6.30.2, 9.2
OWNER's Representative	9.1
Payments to the CONTRACT, Responsibility for	9.9, 14
Recommendation of Payment	14.4, 14.13
Responsibilities—	
Limitations on	9.11-9.13
Review of Reports on Differing Subsurface and Physical Conditions	4.2.4
Shop Drawings and Samples, review responsibility	6.26
Status During Construction—	
authorized variations in the work	9.5
Clarifications and Interpretations	9.4
Decisions on Disputes	9.11-9.12
Determinations on Unit Price	9.10
ENGINEER as Initial Interpreter	9.11-9.12
ENGINEER's Responsibilities	9.1-9.12

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Limitations on ENGINEER's Authority and Responsibilities	deductible amounts, CONTRACTOR's responsibility
OWNER's Representative	responsibility
Project Representative	Final Application for Payment
Rejecting Defective Work	Licensed Insurers
Shop Drawings, Change Orders and Payments	Notice requirements, material changes
Visits to Site	Option to Replace
Unit Price Determinations	other special insurances
Visits to Site	OWNER's as fiduciary for insureds
Written consent required	OWNER's Liability
Equipment, Labor, Materials and	OWNER's Responsibility
Equipment rental, Cost of the Work	Partial Utilization, Property Insurance
Equivalent Materials and Equipment	Property
Errors or omissions	Receipt and Application of Insurance Proceeds
Evidence of Financial Arrangements	Special Insurance
Explorations of physical conditions	Waiver of Rights
Fee, CONTRACTOR's—Costs-Plus	Intent of Contract Documents
Field Order—	Interpretations and Clarifications
definition of	Investigations of physical conditions
issued by ENGINEER	Labor, Materials and Equipment
Final Application for Payment	Lands—
Final Inspection	and Easements
Final Payment—	Availability of
and Acceptance	Reports & Tests
Prior to, for cash allowances	Laws and Regulations—Laws or Regulations—
General Provisions	Bonds
General Requirements—	Changes in the Work
definition of	Contract Documents
principal references to	CONTRACTOR's Responsibilities
Giving Notice	Correction Period, defective Work
Guarantee of Work—by	Cost of the Work, taxes
CONTRACTOR	definition of
Hazard Communication Programs	general
Hazardous Waste—	Indemnification
definition of	Insurance
general	Precedence
OWNER's responsibility for	Reference to
Indemnification	Safety and Protection
Initially Acceptable Schedules	Subcontractors, Suppliers and Others
Inspection—	Tests and Inspections
Certificates of	Use of Premises
Final	Visits to Site
Special, required by ENGINEER	Liability Insurance—
Tests and Approval	CONTRACTOR's
Insurance—	OWNER's
Acceptance of, by OWNER	Licensed Sureties and Insurers
Additional, required by changes	Liens—
in the Work	Application for Progress Payment
Before starting the Work	Contractor's Warranty of Title
Bonds and—in general	Final Application for Payment
Cancellation Provisions	definition of
Certificates of	Waiver of Claims
2.7, 5, 5.3, 5.4.11, 5.4.13, 5.6.5, 5.8, 5.14	Limitations on ENGINEER's authority and
9.13.4, 14.12	responsibilities
completed operations	Limited Reliance by CONTRACTOR Authorized
CONTRACTOR's Liability	Maintenance and Operating Manuals—
CONTRACTOR's objection to coverage	Final Application for Payment
Contractual Liability	Manuals (of others)—
	Precedence

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Reference to in Contract Documents	3.3.1
Materials and equipment—	
furnished by CONTRACTOR	6.3
not incorporated in Work	14.2
Materials or equipment—equivalent	6.7
Mediation (Optional)	16.7
Milestones—definition of	1.24
Miscellaneous—	
Computation of Times	17.2
Cumulative Remedies	17.4
Giving Notice	17.1
Notice of Claim	17.3
Professional Fees and Court Costs Included	17.5
Multi-prime contracts	7
Not Shown or Indicated	4.3.2
Notice of—	
Acceptability of Project	14.13
Award, definition of	1.25
Claim	17.3
Defects	13.1
Differing Subsurface or Physical Conditions	4.2.3
Giving	17.1
Tests and Inspections	13.3
Variation, Shop Drawing and Sample	6.27
Notice to Proceed—	
definition of	1.26
giving of	2.3
Notification to Surety	10.5
Observations, by ENGINEER	6.30, 9.2
Occupancy of the Work	5.15, 6.30.2.4, 14.10
Omissions or acts by CONTRACTOR	6.9, 9.13
“Open peril” policy form, Insurance	5.6.2
Option to Replace	5.14
“Or Equal” Items	6.7
Other work	7
Overtime Work—prohibition of	6.3
OWNER—	
Acceptance of defective Work	13.13
appoint an ENGINEER	8.2
as fiduciary	5.12-5.13
Availability of Lands, responsibility	4.1
definition of	1.27
data, furnish	8.3
May Correct Defective Work	13.14
May refuse to make payment	14.7
May Stop the Work	13.10
may suspend work terminate	8.8, 13.10, 15.1-15.4
Payment make prompt	8.3, 14.4, 14.13
performance of other Work	7.1
permits and licenses, requirements	6.13
purchased insurance requirements	5.6-5.10
OWNER’s—	
Acceptance of the Work	6.30.2.5
Change Orders, obligation to execute	8.6, 10.4
Communications	8.1
Coordination of the Work	7.4
Disputes, request for decision	9.11
Inspections, tests and approvals	8.7, 13.4
Liability Insurance	5.5
Notice of Defects	13.1
Representative—During Construction, ENGINEER’s Status	9.1
Responsibilities—	
Asbestos, PCB’s Petroleum, Hazardous Waste on Radioactive Material	8.10
Change Orders	8.6
Changes in the Work	10.1
communications	8.1
CONTRACTOR’s responsibilities	8.9
evidence of financial arrangements	8.11
inspections, tests and approvals	8.7
Insurance	8.5
lands and easements	8.4
prompt payment by	8.3
replacement of ENGINEER	8.2
reports and tests	8.4
stop or suspend Work	8.8, 13.10, 15.1
terminate CONTRACTOR’s services	8.8, 15.2
separate representative at site	9.3
independent testing	13.4
use or occupancy of the work	5.15, 14.10
written consent or approval required	9.1, 6.3, 11.4
written notice required	7.1, 9.4, 9.11, 11.2, 11.9, 14.7, 15.4
PCBs—	
definition of	1.29
general	4.5
OWNER’s responsibility for	8.10
Partial Utilization—	
definition of	1.28
general	6.30.2.4, 14.10
Property Insurance	5.15
Patent Fees and Royalties	6.12
Payment Bonds	5.1-5.2
Payments, Recommendation of	14.4-14.7, 14.13
Payments to CONTRACTOR and Completion—	
Application for Progress Payments	14.2
CONTRACTOR’s Warranty of Title	14.3
Final Application for Payment	14.12
Final Inspection	14.11
Final Payment and Acceptance	14.13-14.14
general	8.3, 14
Partial Utilization	14.10
Retainage	14.2
Review of Applications for Progress Payments	14.4-14.7
prompt payment	8.3
Schedule of Values	14.1
Substantial Completion	14.8-14.9
Waiver of Claims	14.15
when payments due	14.4, 14.13
withholding payment	14.7
Performance Bonds	5.1-5.2
Permits	6.13

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Petroleum—	Regulations, Laws and (or)6.14
definition of1.30	Rejecting Defective Work9.6
general4.5	Related Work—
OWNER's responsibility for8.10	at Site7.1-7.3
Physical Conditions—	Performed prior to Shop Drawings
Drawings of, in or relating to4.2.1.2	and Samples submittals review6.28
ENGINEER's review4.2.4	Remedies, cumulative17.4, 17.5
existing structures4.2.2	Removal or Correction of Defective Work
general4.2.1.2	rental agreements, OWNER approval required.....13.11
Subsurface and4.2	replacement of ENGINEER, by OWNER8.2
Underground Facilities4.3	Reporting and Resolving Discrepancies.....2.5, 3.3.2, 6.14.2
Possible Contract Documents Change4.2.5	Reports—
Possible Price and Times Adjustments4.2.6	and Drawings4.2.1
Reports and Drawings4.2.1	and Tests, OWNER's responsibility8.4
Notice of Differing Subsurface or4.2.3	Resident Project Representative—
Subsurface and4.2	definition of1.33
Subsurface Conditions4.2.1.1	provision for9.3
Technical Data, Limited Reliance by	Resident Superintendent, CONTRACTOR's6.2
CONTRACTOR Authorized4.2.2	Responsibilities—
Underground Facilities—	CONTRACTOR's-in general6
general4.3	ENGINEER's-in general9
Not Shown or Indicated4.3.2	Limitations on9.13
Protection of4.3, 6.20	OWNER's-in general8
Shown or Indicated4.3.1	Retainage14.2
Technical Data4.2.2	Reuse of Documents3.7
Pre-construction Conference2.8	Review by CONTRACTOR: Shop Drawings
Preliminary Matters2	and Samples Prior to Submittal6.25
Preliminary Schedules2.6	Review of Applications for Progress
Premises, Use of6.16-6.18	Payments14.4-14.7
Price, Change of Contract11	Right to an adjustment10.2
Price, Contract—definition of1.11	Rights of Way4.1
Progress Payment, Applications for14.2	Royalties, Patent Fees and6.12
Progress payment—retainage14.2	Safe Structural Loading6.18
Progress schedule, CONTRACTOR's2.6, 2.8, 2.9, 6.6, 6.9, 10.4, 15.2.1	Safety—
Project—definition of1.31	and Protection4.3.2, 6.16, 6.18, 6.20-6.21, 7.2, 13.2
Project Representative--	general6.20-6.23
ENGINEER's Status During Construction9.3	Representative, CONTRACTOR's6.21
Project Representative, Resident	Samples—
---definition of1.33	definition of1.34
prompt payment by OWNER8.3	general6.24-6.28
Property Insurance	Review by CONTRACTOR6.25
Additional5.7	Review by ENGINEER6.26, 6.27
general5.6-5.10	related Work6.28
Partial Utilization5.15, 14.10.2	submittal of6.24.2
receipt and application of proceeds5.12-5.13	submittal procedures6.25
Protection, Safety and6.20-6.21, 13.2	Schedule of progress2.6, 2.8-2.9, 6.6, 6.29, 10.4, 15.2.1
Punch list14.11	Schedule of Shop Drawing and Sample
Radioactive Material—	Submittals2.6, 2.8-2.9, 6.24-6.28
definition1.32	Schedule of Values2.6, 2.8-2.9, 14.1
general4.5	Schedules—
OWNER's responsibility for8.10	Adherence to15.2.1
Recommendation of Payment14.4, 14.5, 14.13	Adjusting6.6
Record Documents6.19, 14.12	Change of Contract Times10.4
Records, procedures for maintaining2.8	Initially Acceptable2.8-2.9
Reference Points4.4	Preliminary2.6
Reference to Standards and Specifications	Scope of Changes10.3-10.4
of Technical Societies3.3	Subsurface Conditions4.2.1.1

	<i>Article or Paragraph Number</i>		<i>Article or Paragraph Number</i>
Shop Drawings—		Substitute Items	6.7.1.2
and Samples, general	6.24-6.28	Subsurface and Physical Conditions—	
Change Orders & Applications for		Drawings of, in or relating to	4.2.1.2
Payments and	9.7-9.9	ENGINEER's Review	4.2.4
definition of	1.35	general	4.2
ENGINEER's approval of	3.6.2	Limited Reliance by CONTRACTOR	
ENGINEER's responsibility		Authorized	4.2.2
for review	9.7, 6.24-6.28	Notice of Differing Subsurface or	
related Work	6.28	Physical Conditions	4.2.3
review procedures	2.8, 6.24-6.28	Physical Conditions	4.2.1.2
submittal required	6.24.1	Possible Contract Documents Change	4.2.5
Submittal Procedures	6.25	Possible Price and Times Adjustments	4.2.6
use to approve substitutions	6.7.3	Reports and Drawings	4.2.1
Shown or Indicated	4.3.1	Subsurface and	4.2
Site Access	7.2, 13.2	Subsurface Conditions at the Site	4.2.1.1
Site Cleanliness	6.17	Technical Data	4.2.2
Site, Visits to—		Supervision—	
by ENGINEER	9.2, 13.2	CONTRACTOR's responsibility	6.1
by others	13.2	OWNER shall not supervise	8.9
"Special causes of loss" policy form, insurance	5.6.2	ENGINEER shall not supervise	9.2, 9.13.2
Specifications—		Superintendence	6.2
definition of	1.36	Superintendent, CONTRACTOR's resident	6.2
of Technical Societies, reference to	3.3.1	Supplemental costs	11.4.5
precedence	3.3.3	Supplementary Conditions—	
Standards and Specifications of Technical		definition of	1.39
Societies	3.3	principal reference to	1.10, 1.18, 2.2, 2.7, 4.2, 4.3, 5.1, 5.3, 5.4, 5.6-5.9, 5.11, 6.8, 6.13, 7.4, 8.11, 9.3, 9.10
Starting Construction, Before	2.5-2.8	Supplementing Contract Documents	3.6
Starting the Work	2.4	Supplier—	
Stop or Suspend Work—		definition of	1.40
by CONTRACTOR	15.5	principal references to	3.7, 6.5, 6.8-6.11 6.20, 6.24, 9.13, 14.12
by OWNER	8.8, 13.10, 15.1	Waiver of Rights	6.11
Storage of materials and equipment	4.1, 7.2	Surety—	
Structural Loading, Safety	6.18	consent to final payment	14.12, 14.14
Subcontractor—		ENGINEER has no duty to	9.13
Concerning	6.8-6.11	Notification of	10.1, 10.5, 15.2
definition of	1.37	qualification of	5.1-5.3
delays	12.3	Survival of Obligations	6.34
waiver of rights	6.11	Suspend Work, OWNER May	13.10, 15.1
Subcontractors—in general	6.8-6.11	Suspension of Work and Termination—	15
Subcontractors—required provisions	5.11, 6.11, 11.4.3	CONTRACTOR May Stop Work or	
Submittals—		Terminate	15.5
Applications for Payment	14.2	OWNER May Suspend Work	15.1
Maintenance and Operation Manuals	14.12	OWNER May Terminate	15.2-15.4
Procedures	6.25	Taxes—Payment by CONTRACTOR	6.15
Progress Schedules	2.6, 2.9	Technical Data—	
Samples	6.24-6.28	Limited Reliance by CONTRACTOR	4.2.2
Schedule of Values	2.6, 14.1	Possible Price and Times Adjustments	4.2.6
Schedule of Shop Drawings and		Reports of Differing Subsurface and	
Samples Submissions	2.6, 2.8-2.9	Physical Conditions	4.2.3
Shop Drawings	6.24-6.28	Temporary construction facilities	4.1
Substantial Completion—		Termination—	
certification of	6.30.2.3, 14.8-14.9	by CONTRACTOR	15.5
definition of	1.38	by OWNER	8.8, 15.1-15.4
Substitute Construction Methods or Procedures	6.7.2	of ENGINEER's employment	8.2
Substitutes and "Or Equal" Items	6.7	Suspension of Work-in-general	15
CONTRACTOR's Expense	6.7.1.3	Terms and Adjectives	3.4
ENGINEER's Evaluation	6.7.3	Tests and Inspection—	
"Or-Equal"	6.7.1		
Substitute Construction Methods of Procedures	6.7.2		

<i>Article or Paragraph Number</i>	<i>Article or Paragraph Number</i>
Access to the Work, by others	13.2
CONTRACTOR's responsibilities	13.5
cost of	13.4
covering Work prior to	13.6-13.7
Laws and Regulations (or)	13.5
Notice of Defects	13.1
OWNER May Stop Work	13.10
OWNER's independent testing	13.4
special, required by ENGINEER	9.6
timely notice required	13.4
Uncovering the Work, at ENGINEER's request	13.8-13.9
Times—	
Adjusting	6.6
Change of Contract	12
Adjusting	6.6
Computation of	17.2
Contract Times—definition of	1.12
day	17.72
Milestones	12
Requirements—	
appeals	16
clarifications, claims and disputes	9.11, 11.2, 12
commencement of contract times	2.3
pre-construction conference	2.8
schedules	2.6, 2.9, 6.6
starting the Work	2.4
Title, Warranty of	14.3
Uncovering Work	13.8-13.9
Underground Facilities, Physical Conditions—	
definition of	1.41
Not Shown or Indicated	4.3.2
protection of	4.3, 6.20
Shown or Indicated	4.3.1
Unit Price Work—	
claims	11.9.3
definition of	1.42
general	11.9, 14.1, 14.5
Unit Prices—	
general	11.3.1
Determination for	9.10
Use of Premises	6.16, 6.18, 6.30.2.4
Utility owners	6.13, 6.20, 7.1-7.3, 13.2
Utilization, Partial	1.28, 5.15, 6.30, 2.4, 14.10
Value of the Work	11.3
Values, Schedule of	2.6, 2.8-2.9, 14.1
Variations in Work—Minor	
Authorized	6.25, 6.27, 9.5
Visits of Site—by ENGINEER	9.2
Waiver of Claims-on Final Payment	14.15
Waiver of Rights by insured parties	5.11, 6.11
Warranty and Guarantee, General—by CONTRACTOR	6.30
Warranty of Title, CONTRACTOR's Work—	14.3
Access to	13.2
by others	7
Changes in the	10
Continuing the	6.29
CONTRACTOR May Stop Work or Terminate	15.5
Coordination of	7.4
Cost of the	11.4-11.5
definition of	1.43
neglected by CONTRACTOR	13.14
other Work	7
OWNER May Stop Work	13.10
OWNER May Suspend Work	13.10, 15.1
Related, Work at Site	7.1-7.3
Starting the	2.4
Stopping by CONTRACTOR	15.5
Stopping by OWNER	15.1-15.4
Variation and deviation authorized, minor	3.6
Work Change Directive—	
claims pursuant to	10.2
definition of	1.44
principal references to	3.5.3, 10.1-10.2
Written Amendment—	
definition of	1.45
principal references to	1.10, 3.5, 5.10, 5.12, 6.6.2, 6.8.2, 6.19, 10.1, 10.4, 11.2, 12.1, 13.12.2, 14.7.2
Written Clarifications and Interpretations	3.6.3, 9.4, 9.11
Written Notice Required—	
by CONTRACTOR	7.1, 9.10-9.11, 10.4, 11.2, 12.1
by OWNER	9.10-9.11, 10.4, 11.2, 13.14

<p>GENERAL CONDITIONS</p> <p>Article 1—DEFINITIONS (SEE SC-GC-1)</p> <p>Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:</p> <p>1.1 <i>Addenda</i>—Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.</p> <p>1.2 <i>Agreement</i>—The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.</p> <p>1.3 <i>Application for Payment</i>—The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.</p> <p>1.4 <i>Asbestos</i>—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.</p> <p>1.5 <i>Bid</i>—The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.</p> <p>1.6 <i>Bidding Documents</i>—The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).</p> <p>1.7 <i>Bidding Requirements</i>—The advertisement or invitation to Bid, instructions to bidders, and the Bid form.</p> <p>1.8 <i>Bonds</i>—Performance and Payment bonds and other instruments of security.</p> <p>1.9 <i>Change Order</i>—A document recommended by ENGINEER, 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.</p> <p>1.10 <i>Contract Documents</i>—The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change</p>	<p>Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1 and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.</p> <p>1.11 <i>Contract Price</i>—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 11.9.1 in the case of Unit Price Work).</p> <p>1.12 <i>Contract Times</i>—The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.</p> <p>1.13 <i>CONTRACTOR</i>—The person, firm or corporation with whom OWNER has entered into the Agreement.</p> <p>1.14 <i>defective</i>—An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).</p> <p>1.15 <i>Drawings</i>—The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.</p> <p>1.16 <i>Effective Date of the Agreement</i>—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.</p> <p>1.17 <i>ENGINEER</i>—The person, firm or corporation named as such in the Agreement.</p> <p>1.18 <i>ENGINEER's Consultant</i>—A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.</p> <p>1.19 <i>Field Order</i>—A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.</p>
---	---

<p>1.20. <i>General Requirements</i>—Sections of Division 1 of the Specifications.</p> <p>1.21. <i>Hazardous Waste</i>—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.</p> <p>1.22. <i>Laws and Regulations; Laws and Regulations</i>—Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.</p> <p>1.23. <i>Liens</i>—Liens, charges, security interests or encumbrances upon real property or personal property.</p> <p>1.24. <i>Milestone</i>—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.</p> <p>1.25. <i>Notice of Award</i>—The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.</p> <p>1.26. <i>Notice to Proceed</i>—A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.</p> <p>1.27. <i>OWNER</i>—The public body or authority, corporation, association, firm or person with whom CONTRACTOR as entered into the Agreement and for whom the Work is to be provided.</p> <p>1.28. <i>Partial Utilization</i>—Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.</p> <p>1.29. <i>PCBs</i>—Polychlorinated biphenyls.</p> <p>1.30. <i>Petroleum</i>—Petroleum, including crude oil or any action thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.</p> <p>1.31. <i>Project</i>—The total construction of which the Work to ___ provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.</p> <p>1.32. <i>Radioactive Material</i>—Source, special nuclear, or product material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.</p>	<p>1.33. <i>Resident Project Representative</i>—The authorized representative of ENGINEER who may be assigned to the site or any part thereof.</p> <p>1.34. <i>Samples</i>—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.</p> <p>1.35. <i>Shop Drawings</i>—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.</p> <p>1.36. <i>Specifications</i>—Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.</p> <p>1.37. <i>Subcontractor</i>—An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.</p> <p>1.38. <i>Substantial Completion</i>—The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended: or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.</p> <p>1.39. <i>Supplementary Conditions</i>—The part of the Contract Documents which amends or supplements these General Conditions.</p> <p>1.40. <i>Supplier</i>—A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.</p> <p>1.41. <i>Underground Facilities</i>—All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments and any encasements containing such facilities which have been installed underground to furnish and of the following services or materials; electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.</p> <p>1.42. <i>Unit Price Work</i>—Work to be paid for on the basis of unit prices.</p>
--	---

1.43. *Work*—The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. *Work Change Directive*—A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

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

ARTICLE 2—PRELIMINARY MATTERS

Delivery of Bonds:

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

Copies of Documents: (SEE SC-GC-2.2)

2.2. OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed: (SEE SC-GC-2.3)

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

Starting the Work:

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

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, 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 knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents:

2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal:

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. Before any Work at the site is started, 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 paragraph 5.4, 5.6 and 5.7.

Pre-construction Conference:

2.8. Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference

attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6. procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

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

ARTICLE 3—CONTRACT DOCUMENTS: INTENT.
AMENDING. REUSE

Intent: (SEE SC-GC-3.1)

3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. *Reference to Standards and Specifications of Technical Societies: Reporting and Resolving Discrepancies:*

3.3.1. Reference to standards, specifications, manuals or codes of any technical society organizations or association, or to the Laws of Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids) except as may be otherwise specifically stated in the Contract Documents.

3.3.2. If during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5. CONTRACTOR shall report it to ENGINEER in writing at once and CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6: provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

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

3.3.3.1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents): or

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

No provision of any such standard, specification, manual, Code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or

performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

(SEE SC-GC-3.4)

3.3 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1. a formal Written Amendment.
- 3.5.2. a Change Order (pursuant to paragraph 10.4). or
- 3.5.3. a Work Change Directive (pursuant to paragraph 10.11).

3.6. In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized in one or more of the following ways:

- 3.6.1. a Field Order (pursuant to paragraph 9.5).
- 3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraph 6.26 and 6.27). or
- 3.6.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7 CONTRACTOR and any subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any

of the Drawings. Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adoption by ENGINEER.

**ARTICLE 4—AVAILABILITY OF LANDS:
SUBSURFACE AND PHYSICAL
CONDITIONS: REFERENCE POINTS**

Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct 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 lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2. Subsurface and Physical Conditions:

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

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

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

<p>4.2.2. <i>Limited Reliance by CONTRACT Authorized:</i> <i>Technical Data:</i> CONTRACTOR may rely upon the general accuracy of the “technical data” contained in such reports and drawings but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data” CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER’s Consultants with respect to:</p> <p>4.2.2.1. 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</p> <p>4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or</p> <p>4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any “technical data” or any such data, interpretations, opinions or information.</p> <p>4.2.3. Notice of Differing Subsurface or Physical Conditions: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:</p> <p>4.2.3.1. is of such a nature as to establish that any “technical data” on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or</p> <p>4.2.3.2. is of such a nature as to require a change in the Contract Documents, or</p> <p>4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or</p> <p>4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents: then</p> <p>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 permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.</p> <p>4.2.4. ENGINEER’s Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER’s obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER’s findings and conclusions.</p> <p>4.2.5. <i>Possible Contract Documents Change:</i> If ENGINEER</p>	<p>concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3. a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.</p> <p>4.2.6. <i>Possible Price and Times Adjustments:</i> An equitable adjustment in the Contract Price or in the Contract Times, or both will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase of decrease in CONTRACTOR’s cost of or time required for performance of the Work: subject, however, to the following:</p> <p>4.2.6.1. such condition must meet any one or more of the categories described in paragraph 4.2.3.1 through 4.2.3.4. inclusive:</p> <p>4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;</p> <p>4.2.6.3. 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 9.10 and 9.11: and</p> <p>4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;</p> <p>4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or</p> <p>4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR’s making such final commitment; or</p> <p>4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.</p> <p>IF OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefore as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER’s Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.</p> <p>4.3. <i>Physical Conditions—Underground Facilities:</i></p> <p>4.3.1 <i>Shown or Indicated:</i> 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</p>
---	---

<p>Information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions;</p> <p>4.3.11. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and</p> <p>4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for; (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.</p> <p>4.3.2. <i>Not Shown or Indicated:</i> If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated 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 6.23) identify the owner of such Underground Facility and give written notice to that owner and to OWNER 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 of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that 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 the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.</p> <p><i>Reference Points:</i></p> <p>4.4. 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 project and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or</p>	<p>relocation of such reference points by professionally qualified personnel.</p> <p>4.5. Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:</p> <p>4.5.1. OWNER shall be responsible for any Asbestos, PCBs Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.</p> <p>4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefore as provided in Articles 11 and 12.</p> <p>4.5.3. If after receipt of such special 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 such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefore as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Articles 7.</p> <p>4.5.4. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER. ENGINEER's</p>
---	--

Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work, itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraph 4.2 and 4.3 are not intended to apply to Asbestos, PCB's, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5—BONDS AND INSURANCE

Performance, Payment and Other Bonds:
(SEE SC-GC-5.1)

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents, except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the Current list of "Companies Holding Certificates of Authority as acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a 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 5.1. CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by 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 coverage's so required.

Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured 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 in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance: (SEE SC-SG-5.4)

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

5.4.1. claims under workers' compensation, disability benefits and other similar employee benefit acts:

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees:

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees:

5.4.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason:

5.4.5. claims for damages other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom: and

5.4.6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership maintenance or use of any motor vehicle.

<p>The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:</p> <p>5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds and include coverage for the respective officers and employees of all such additional insureds:</p> <p>5.4.8. include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater:</p> <p>5.4.9. include completed operations insurance:</p> <p>5.4.10. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33:</p> <p>5.4.11. contain a provision or endorsement that the coverage afforded will not be cancelled materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificate of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide):</p> <p>5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing <i>defective</i> Work in accordance with paragraph 13.12: and</p> <p><i>OWNER's Liability Insurance:</i></p> <p>5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4 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.</p> <p><i>Property Insurance:</i></p> <p>5.6. 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:</p>	<p>5.6.1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured:</p> <p>5.6.2. be written on a Builder's Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;</p> <p>5.6.3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);</p> <p>5.6.4. 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; and</p> <p>5.6.5. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.</p> <p>5.7. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.</p> <p>5.8. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraph 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.</p>
--	--

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance 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, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.6 or 5.7. OWNER shall, if possible, include such insurance and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. 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.

5.11. *Waiver of Rights:*

5.11.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder, OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and 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.

5.11.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them. For;

5.11.2.1. 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 peril, whether or not insured by OWNER; and

5.11.2.2. loss or damage to the completed Project or part thereof caused by arising out of or resulting from fire or other

insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10. after substantial completion pursuant to paragraph 14.8. or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2. 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 any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. 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 or Written Amendment.

5.13. 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 fifteen 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 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.

Acceptance of Bonds and Insurance; Option to Replace;

5.14. If either party (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 ten days after receipt of the certificates for other evidence requested) required by paragraph 2.7. 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.

Partial Utilization—Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6—CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1. 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 contraction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

(SEE SC-GC-6.1.)

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or

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

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

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

Progress Schedule:

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

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

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

6.7. Substitutes and "Or-Equal" Items:

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

6.7.1.1. *“Or-Equal”*: 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 acceptance of proposed substitute items.

6.7.1.2. *Substitute Items*: If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an “or-equal” item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR’s achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to apyment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. *CONTRACTOR’s Expense*: All data to be provided by CONTRACTOR in support of any proposed “or-equal” or substitute item will be at CONTRACTOR’s expense.

6.7.2. *Substitute Construction Methods or Procedures*: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by

the Contract Documents. CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER, 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 procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

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

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER and ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions. OWNER’s or ENGINEER’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 person or organization so identified may be revoked on the basis of reasonable objection after due investigation in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such

substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor. Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject *defective* Work.

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

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

6.10. 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.

6.11. 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 an additional insured on the property insurance provided in paragraph 5.6 and 5.7 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. ENGINEER's Consultants and all other additional insured's for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier. CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. 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. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions. 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. CONTRACTOR shall pay all charges of utility owners for connections to the Work and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. 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 caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes: (SEE SC-GC-6.15)

6.15. 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

<p>the Project which are applicable during the performance of the Work.</p> <p><i>Use of Premises:</i></p> <p>6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work. 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, CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, 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. (SEE SC-GC-6.17)</p> <p>6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.</p> <p>6.18. 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.</p> <p><i>Record Documents:</i></p> <p>6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of</p>	<p>the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.</p> <p><i>Safety and Protection:</i> (SEE SC-GC-6.20)</p> <p>6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:</p> <p>6.20.1. all persons on the Work site or who may be affected by the Work;</p> <p>6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and</p> <p>6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.</p> <p>CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2. or 6.20.3. caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).</p> <p><i>Safety Representative:</i></p> <p>6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and</p>
--	---

Responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

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

Emergencies:

6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If ENGINEER 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 to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The 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 materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

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

6.25. Submittal Procedures:

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

6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements,

materials, catalog numbers and similar information with respect thereto.

6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.2. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have 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.

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

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

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. 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. 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. 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.

6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract

Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3. and ENGINEER has given a written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawings or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

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

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5. or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's *General Warranty and Guarantee*;

6.30.1. CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by;

6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, subcontractors or Supplies; or

6.30.1.2. normal wear and tear under normal usage.

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents;

6.30.2.1. observations by ENGINEER;

6.30.2.3. recommendation of any progress or final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER.

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

6.30.2.7. any inspection, test or approval by others; or

6.30.2.8. any correction of *defective* Work by OWNER.

Indemnification:

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

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under worker' compensation acts, disability benefit acts or other employee benefit acts.

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

Survival of Obligations:

6.34. All representations, indemnifications, warranties and guarantees made in required by or given in accordance with

the Contract Documents, as well as all continuing obligations indicated in the Contract Documents will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7—OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefore which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then; (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make claim therefore as provided in Article 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER 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 contractor to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. 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 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 so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

Coordination:

7.4. If OWNER contracts with others for the performance of

other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided.

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

ARTICLE 8—OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraph 14.4. and 14.13.

8.4. OWNER's duties in respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5. through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraph 13.10. and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9. 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 furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.10. OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

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

ARTICLE 9—ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

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

Visits to Site:

9.2. 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 will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections 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 on-site observations. ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against *defective* Work. ENGINEER's visits and on-site observations are subject to all the imitations on ENGINEER's authority and responsibility set forth in paragraph 9.13. and particularly, but without limitation, during or as a result of ENGINEER's on-site 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 furnishing or performance of the Work.

Project Representative:

9.3. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If 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 person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

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

Authorized Variations in Work:

9.5. 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 the Contract Times and the parties are unable to agree as to the amount or extent thereof OWNER or CONTRACTOR may make a written claim therefore as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or 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 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Article 10, 11 and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Price:

9.10. 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 upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A. "Dispute Resolution Agreement" entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant.

to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A. "Dispute Resolution Agreement" entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11. 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. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws and Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1. 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 duty owned by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.13.2. 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 furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

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

9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants. Resident Project Representative and assistants.

ARTICLE 10—CHANGES IN THE WORK

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

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1. (ii) required because of acceptance of *defective* Work under paragraph 13.13 or correcting *defective* Work under paragraph 13.14. or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

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

ARTICLE 11—CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will

be valid if not submitted in accordance with this paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3. inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2., on the basis of the Cost of the Work (determined as provided in paragraph 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. 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 include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of 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 at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof and Suppliers' field services required in connection therewith. All cash discounts shall accrue to 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.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished 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, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the 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 paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontractors shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER and the costs of transportation, loading, unloading, installation, dismantling and removal thereof—all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work and for which CONTRACTOR is liable imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable and royalty payments and fees for permits and licenses.

<p>11.4.5.6. 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 and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9) provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof. CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.</p> <p>11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.</p> <p>11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.</p> <p>11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.</p> <p>11.5. The term Cost of the Work shall not include any of the following:</p> <p>11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4—all of which are to be considered administrative costs covered by the CONTRACTOR's fee.</p> <p>11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.</p> <p>11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.</p> <p>11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).</p>	<p>11.5.5. Costs due in 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 <i>defective</i> Work, disposal of materials or equipment wrongly supplied and making good any damage to property.</p> <p>Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.</p> <p>11.6. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:</p> <p>11.6.1. a mutually acceptable fixed fee; or</p> <p>11.6.2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work;</p> <p>11.6.2.1. for costs incurred under paragraph 11.4.1 and 11.4.2. the CONTRACTOR's fee shall be fifteen percent;</p> <p>11.6.2.2. for costs incurred under paragraph 11.4.3. the CONTRACTOR's fee shall be five percent;</p> <p>11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2., 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraph 11.4.1 and 11.4.2 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.</p> <p>11.6.2.4. no fee shall be payable on the basis of costs itemized under paragraph 11.4.4., 11.4.5. and 11.5;</p> <p>11.6.2.5. 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</p> <p>11.6.2.5. 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 11.6.2.1 through 11.6.2.5. inclusive.</p> <p>11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5 CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.</p>
--	--

Cash Allowances:

11.8. 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 furnished and performed for such sums as may be acceptable to OWNER and ENGINEER, CONTRACTOR agrees that;

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes: and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment and 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.

11.9. Unit Price Work:

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

11.9.2. 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.

11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if;

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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

11.9.3.3. if 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.

ARTICLE 12—CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefore as provided in paragraph 12.1. 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. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both

parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

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

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

Access To Work:

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

Tests and Inspections: (SEE SC-GC-13.3 thru 13.7)

13.3. CONTRACTOR shall give ENGINEER 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.

13.4. 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;

13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body. CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish ENGINEER the required certificates of inspection or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required

for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must if requested by ENGINEER, be uncovered for observation.

13.7. Uncovering Work as provided in paragraph 13.6 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.

Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. 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. If it is found that such Work is *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including 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, and if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not found to be *defective*. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

OWNER May Stop the Work:

13.10. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents. OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to

exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work; (SEE SC-GC-13.12)

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

13.12. *Correction Period:*

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

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

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

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work. OWNER (and prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be

approved by ENGINEER as to reasonableness). 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, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. 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 13.11. or if CONTRACTOR fails to comply with any other provision of the Contract Documents. OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action. OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, 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 ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies 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, and if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14—PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and

will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

(SEE SC-GC-14.2)

14.2. At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER 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 and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

14.3. 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.

Review of Applications for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to 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. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site 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;

14.5.1. the Work has progressed to the point indicated.

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10. and to any other qualifications stated in the recommendation), and

14.5.3. the conditions precedent to 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.

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

14.6. ENGINEER's recommendation of any payment, including final payment shall not mean that ENGINEER is 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 furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. 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 referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the work is *defective*, or completed Work has been damaged requiring correction or replacement.

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order.

14.7.3. OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14.

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.2.1 through 15.2.4 inclusive.

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

14.7.5. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing or the Work.

14.7.6. 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.

14.7.7. there are other items entitling OWNER to a set-off against the amount recommended or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1. through 14.7.3. or paragraph 15.2.1 through 15.2.4. inclusive:

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

Substantial Completion: (SEE SC-GC-14.8)

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER 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. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete. ENGINEER will prepare and 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 fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing stating the reasons therefore. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete. ENGINEER will within said fourteen 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. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, 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.

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

Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which; (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER 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, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. 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. 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 therefore. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete. ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of

all particulars in which this inspection reveals that the Work is incomplete or *defective*. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

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

Final Payment and Acceptance:

14.13. 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 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 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability the amount recommended by

ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

14.14. 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 and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by 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 5.1. the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by 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.

Waiver of Claims:

14.15. The making and acceptance of final payment will constitute:

14.15.1. 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 14.11. 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

14.15.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15—SUSPENSION OF WORK AND
TERMINATION

OWNER May Suspend Work;

15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof a period of not more than ninety days by notice in writing to CONTRACTOR 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 allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12.

OWNER May Terminate;

15.2. Upon the occurrence of any one or more of the following events:

<p>15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);</p> <p>15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;</p> <p>15.2.2. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;</p> <p>OWNER may, after giving CONTRACTOR (and the surety, if any.) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR 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) 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 finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.</p> <p>15.3. 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.</p> <p>15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case CONTRACTOR shall be paid (without duplication of any item);</p> <p>15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;</p>	<p>15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;</p> <p>15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and</p> <p>15.4.4. for reasonable expenses directly attributable to termination.</p> <p>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.</p> <p><i>CONTRACTOR May Stop Work or Terminate:</i></p> <p>15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty 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 Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due. CONTRACTOR may upon seven day's written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.</p> <p>ARTICLE 16—DISPUTE RESOLUTION</p> <p>If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A. "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached and subject to the provisions of paragraph 9.10., 9.11. and 9.12. OWNER and CONTRACTOR may exercise</p>
--	---

such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17—MISCELLANEOUS

Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

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

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or

act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

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

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to all fees and charges of engineers, architects, attorneys and other professionals and all court arbitration or other dispute resolution costs.

17.6. Videotape

(The remainder of this page was left blank intentionally.)



SUPPLEMENTARY CONDITIONS

The Supplementary Conditions amend and supplement the General Conditions of the Construction Contract (No. 1910-8) and other provisions of the Contract Documents as indicated in these Supplementary Conditions. All provisions which are not so amended or supplemented remain in full force and effect.

Paragraph numbering of these Supplementary Conditions shall be prefixed by the letters "SC" which represent Supplementary Conditions. Reference to the General Conditions are made by the letters "GC" and the appropriate paragraph number.

SC-IB-3 Qualifications of Quotes

Add the following language at the end of Paragraph 3 of the Instructions to Quotes:

The Contractor shall submit with his bid the standard forms which are required by State statute:

SC-GC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 edition) have the meanings assigned to them in the General Conditions.

SC-GC-2.2 Copies of Documents

Amend the first sentence of paragraph 2.2 of the General Conditions to read as follows:

The Owner shall furnish to the selected Contractor up to five copies of the Contract Documents.

SC-GC-2.3 Commencement of Contract Time: Notice to Proceed

Delete paragraph 2.3 of the General Conditions in its entirety and insert the following in its place:

The Contract Time shall commence to run on the date indicated in the Notice to Proceed.

SC-GC-3.1 Intent

Add the following:

The Contract Documents will be construed in accordance with the law of the place of the Project. In resolving inconsistencies among two or more components of the Contract Documents, precedence shall be given in the following order:

- 3.1.1 Agreement
- 3.1.2 Contractor's Bid
- 3.1.3 Drawings
- 3.1.4 Supplementary Conditions
- 3.1.5 Specifications
- 3.1.6 General Conditions
- 3.1.7 Bonds

Written Amendments, Change Orders, Work Change Directives, Field Orders, Engineer's written interpretations and clarifications, Notice to Proceed and Addenda, in precedence listed, will take precedence over all other Contract Document components referenced therein. Figure dimensions on Drawings will take precedence over scale dimensions. Detailed Drawings will take precedence over general Drawings.

SC-GC-3.4 Terms

Add the following:

"Command" type language is used in the Contract Documents. This command language refers to and is directed to the Contractor.

Whenever in the Contract Documents the terms "furnish" or "install" or "provide" are used, they shall mean Contractor shall perform the following:

1. Furnish (materials or equipment): To supply and deliver to the Project ready for installation and in acceptable operable condition.
2. Install (services or labor): To place in final position, complete, anchored, connected, and in acceptable operable condition.
3. Provide: To furnish and install complete. When neither furnish, install, nor provide is stated, provide is implied.

All products, materials or equipment identified in the Contract Documents, and products and all Products incidental to the identified products, shall be provided by the Contractor unless specified otherwise.

Emphasis, such as italics or quotes, has been used throughout the Contract Documents. Use of emphasis shall not change the meaning of the term emphasized.

SC-GC-5.1 Performance and Other Bonds

The Contractor's specific attention is invited to the requirements of paragraph 5.1 of the General Conditions which require two separate bonds, one for Performance and one for Payment, each in the amount of 125% of the Contract Price.. Also required is a 3-year Maintenance Bond for 10% of the Contract Price.

SC-GC-6.1 Superintendent

The Contractor shall have a competent superintendent on the project at all times work is in progress. Before the start of construction, the Contractor shall submit the name and qualification of his superintendent to the Program Construction Manager for approval. The superintendent shall not be changed without written approval of the Program Construction Manager. Failure to provide a competent and full-time superintendent shall be cause of the Owner to order a stop in project construction until Contractor is in compliance with this requirement. A time extension will not be granted and liquidated damages will be assessed at the rate of \$400 per day if the contract work is not completed on time.

SC-GC-6.15 Taxes

Add the following language at the end of paragraph 6.15 of the General Conditions:

The Owner is exempt of local and state sales tax, and shall make this tax exemption available to the Contractor for this contract work. The Owner's tax exemption identification number will be furnished upon request.

SC-GC-6.17 Cleaning Public Roadways

The Contractor will be required to keep all public roadways that are used for hauling excavation or borrow material clean and free of any spillage of material. Said public roadways will be cleaned on a daily basis. The cost of removal of any spillage will be included in the cost of excavation or borrow material and no further compensation will be made. Failure to comply with this requirement will result in cleaning of the spillage by the Owner with a back charge to the Contractor of two hundred fifty (\$250) dollars per occurrence.

SC-GC-6.20 Safety and Protection

The Contractor shall provide barricades, lighting, fencing and any other devices he deems appropriate to protect the general public in and near the work area, unless otherwise stated in the specifications. Particular attention shall be given to protecting the areas where children and pedestrians might walk into the site. There shall be no separate payment for these incidental protective safety items.

The Contractor shall comply with the requirements of OSHA and all other State and Federal laws and regulations applicable during the conduct of this project.

IOSHA Regulations 29 C.F.R. 1926, Subpart P, for Trench Safety Systems are hereby incorporated into the contract by reference. The cost of the trench safety systems shall not be paid for separately; but shall rather be included in the prices bid for the work.

Entry into all facilities shall be in accordance with Local, State and Federal Confined Space Entry Laws and Regulations.

In the event that construction operations damage any gas lines or gas service, all construction activities shall cease. Contractor's Superintendent shall immediately contact the utility, advise the occupants of the facility that their gas service may have been damaged due to construction, and ask all personnel within the building to leave the building until utility officials have arrived and determined it is safe to re-enter the building.

SC-GC-13.3 thru 13.7 Tests and Inspections

The Contractor shall engage and pay a qualified testing laboratory to conduct all project sampling and testing. Provision of testing services by the Owner shall not relieve the Contractor of his responsibility to provide quality control of the materials and workmanship provided to the project work. All work must comply with Specification requirements to be accepted.

SC-GC-14.2 Retainages

Add the following:

- A. In conformity with I.C. 36-1-12-13(a), the contract must provide for the payment of Subcontractors, laborers, material suppliers and those performing services. The Owner may withhold from the contract price an amount sufficient to pay Subcontractors, laborers, material supplies and those furnishing services should non-payment by the Contractor become evident.
- B. In conformity with I.C. 35-1-12-14, the contract must provide the retainage of portions of payments by the Owner. The Owner shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the work is substantially completed. The Owner shall place this retainage in an escrow account with an escrow agent to be selected by a mutual agreement between the Owner and Contractor. The escrow agreement must contain the following provisions:
 1. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent.
 2. The escrow agent shall hold the escrowed principal and income until receipt of notice by the Owner and the Contractor, or the Contractor and the Subcontractor,

specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After the receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the same portion of the escrowed income to the person specified in the notice.

3. The escrow agent shall be compensated for his services. The parties may agree on a reasonable fee comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income.

The escrow agreement may also include other terms and conditions consistent with statutory requirements, including provisions authorizing the escrow agent to commingle the escrowed funds with funds held in other escrow accounts and limiting the liability of the escrow agent.

In any contracts between the Contractor and Subcontractors, such contracts shall include provisions for retainage of five percent of the dollar value of all work satisfactorily completed until all work is substantially completed and provisions for the payment of Subcontractors. It shall also include provisions for the escrow agreement between the Contractor and the Subcontractors, as required by I.C. 36-1-12-14.

SC-GC-14.8 Substantial Completion

Add the following:

Substantial completion shall be interpreted as demolition and grading operations have been completed.

SC-IB-15 Bids to Remain Open

All bids shall remain open for 60 days after the day of the bid opening; the Owner may, in his sole discretion, release any bid and return the bid security prior to that date.

SC-GC-17.6 Videotape

Add the following:

“Before starting demolition, the Contractor shall have the entire project area videotaped in color mini DVD format to clearly showing the site, adjacent buildings, structures, landscaping, street payment, curbing, city sidewalk, etc. The videotaped shall identify the location of the features being taken by stationing or some other unique identifier. This videotape shall be furnished for review by the Owner for accuracy prior to commencement of construction and the original and one copy will become the property of the Owner.”

SC-IB-16.5 Reservation of Rejection Rights

The Owner reserves the right to reject any or all bids or to accept a full or partial award of the bid or bids which, in its judgment, will be to the best interests of the City of Mishawaka.

SC-IB-19 Compliance with Applicable Laws and Regulations

The Contractor and Subcontractors shall comply with all applicable Local, State and Federal Laws and regulations applicable during the conduct of this project. This project does not involve Federal or State funding.

All open excavations and trenches shall be accomplished in conformance with all State and Federal regulations and laws.

MCPC #05-26

PROPOSED ORDINANCE NO. 2005-21ORDINANCE NO. 4939 As Amended

AN ORDINANCE ADDING TITLE 15, CHAPTER 162, OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, HENCEFORTH KNOWN AS "EROSION CONTROL ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, To provide for the health, safety, and general welfare of the public, and in response to the un-funded federal mandate, the City of Mishawaka finds it necessary to adopt standards concerning erosion control, and other provisions related to the regulation of earthmoving, excavation, and storm water discharge.

WHEREAS, This ordinance provides methods for controlling the introduction of pollutants into the *municipal separate storm sewer system* (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

WHEREAS, the City has found that soil erosion resulting from non-agricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers.

WHEREAS, The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported offsite to adjacent public or private lands. the diversity of established development types, character, and size contribute to the quality, flavor, and essence of the City.

WHEREAS, over time, the City has regulated certain tangible items to protect the public health, safety, and welfare.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, finds it necessary and recommends that an additional ordinance be created being henceforth known as the "Erosion Control Ordinance" Title 15, Chapter 162 of the Municipal Code of the City of Mishawaka as contained herein.

NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The "Erosion Control Ordinance," Title 15, Chapter 162 of the Municipal Code of the City of Mishawaka is hereby created as herein attached.

Attachment on file with the original ordinance in the City Clerk's Office

Section 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council, signature of the Mayor, attestation by the City Clerk and subsequent publication as required by law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this 6th Day June, 2005, at 8:45 o'clock, P.M.

Gregg A. Hixenbaugh /s/
Presiding Officer

ATTEST:

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

PRESENTED by me to the Mayor this 7th day of June, 2005, at 10:30 o'clock, A.M.

Deborah S. Block /s/
Deborah S. Block, CMC, City Clerk

APPROVED by me this 7th day of June, 2005, at 12:12 o'clock, P.M.

Jeffrey L. Rea /s/
Jeffrey L. Rea, Mayor

May 16, 2005

CHAPTER 162: EROSION CONTROL ORDINANCE

OUTLINE

162.01	PURPOSE
162.02	AUTHORITY
162.03	APPLICABILITY OF ORDINANCE
162.04	CALCULATION OF AREAS AND VOLUMES
162.05	CLASSIFICATION OF LAND DISTURBING ACTIVITIES
162.06	LIGHT LAND DISTURBING ACTIVITIES
162.07	MODERATE LAND DISTURBING ACTIVITIES
162.08	SIGNIFICANT LAND DISTURBING ACTIVITIES
162.09	DEFINITIONS
162.10	LAND DISTURBING ACTIVITY PERFORMANCE REQUIREMENTS
162.11	DESIGN CRITERIA, STANDARDS, AND SPECIFICATIONS FOR EROSION CONTROL MEASURES
162.12	RESPONSIBILITY
162.13	MAINTENANCE OF EROSION CONTROL MEASURES
162.14	PERMIT REQUIREMENTS
162.15	PENALTY FOR PROCEEDING WITHOUT PERMIT
162.16	BONDING REQUIREMENTS
162.17	DETERMINATION OF REQUIRED SURETY
162.18	EROSION CONTROL PLAN REQUIRED
162.19	CONTENT OF EROSION CONTROL PLAN – MODERATE LAND DISTURBING ACTIVITY
162.20	CONTENT OF EROSION CONTROL PLAN – SIGNIFICANT LAND DISTURBING ACTIVITY
162.21	REVIEW OF EROSION CONTROL PLAN
162.22	INSPECTION
162.23	RESPONSIBILITY OF THE DEPARTMENT OF ENGINEERING
162.24	ENFORCEMENT
162.25	PROJECT COMPLETION
162.26	CORRECTION OF NON-CONFORMING SITUATIONS
162.27	CORRECTION OF NON-CONFORMING SITUATIONS- GRAVEL DRIVES, PARKING AREAS, AND ALLEYS
162.28	NEW OR EXPANDED GRAVEL DRIVES, PARKING AREAS, AND ALLEYS PROHIBITED
162.29	MAINTENANCE OF PERMANENT MEASURES
162.30	FAILURE TO MAINTAIN PERMANENT MEASURES
162.31	APPEALS

162.01 PURPOSE

To provide for the health, safety, and general welfare of the public, and in response to the un-funded federal mandate, the City of Mishawaka finds it necessary to adopt standards concerning erosion control, and other provisions related to the regulation of earthmoving, excavation, and storm water discharge. This ordinance provides methods for controlling the introduction of pollutants into the *municipal separate storm sewer system* (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. Specifically, the City has found that soil erosion resulting from non-agricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported offsite to adjacent public or private lands. This ordinance applies to non-agricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal drainage ways, ponds, lakes, and other storm water receivers.
2. To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by storm water discharges by any user.
3. To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.

4. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

162.02 AUTHORITY

This ordinance is adopted under the authority granted by Indiana Code 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this ordinance for controlling soil erosion and other provisions related to the regulation of storm water in the City of Mishawaka. No Statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the City of Mishawaka. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

162.03 APPLICABILITY OF ORDINANCE

The ordinance applies to all non-agricultural land disturbing activities within the incorporated boundaries of the City of Mishawaka. Projects approved by the City of Mishawaka Board of Public Works and Safety funded in part by City tax dollars where performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 162.10.

162.04 CALCULATION OF AREAS AND VOLUMES

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this ordinance, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

162.05 CLASSIFICATION OF LAND DISTURBING ACTIVITIES

This ordinance recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity.

162.06 LIGHT LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities which disturb no more than 2000 square feet of land.
- c. Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- d. Public utility improvements or other public projects that require a performance bond to the City of Mishawaka relative to the satisfactory completion of land disturbing activities.

162.07 MODERATE LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, Institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal to 2000 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities which disturb more than 2000 square feet of land but less than or equal to one acre of land.

162.08 SIGNIFICANT LAND DISTURBING ACTIVITIES

Non-agricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- a. Activities involving the excavation, filling, or combination thereof of more than 2000 cubic yards of soil, sand, gravel, stone, or similar material.
- b. Activities that disturb more than one-acre of land.

162.09 DEFINITIONS

- (1) "Administering authority" means the Department of City Planning, as it relates to the issuance of improvement location permits. The Department of City Planning, the Department of Engineering, or any duly authorized representative of Mishawaka Utilities, as it relates to identifying violations and placing stop work orders.
- (2) "Agricultural land use" means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. Further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.
- (3) "Non-agricultural land use" means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduit, alleys, and streets, and other land uses not included under agricultural land use.
- (4) "Best Management Practices (BMPs)"- schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.
- (5) "City Planner" means the City Planner or their designated representative.
- (6) "Department of Engineering" means the City of Mishawaka Department of Engineering as the designated unit of government given the authority to review the performance specifications of this ordinance.
- (7) "Director of Engineering" means the Director of Engineering or their designated representative.
- (8) "Erosion" means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.
- (9) "Erosion control measure" means a practice or a combination of practices to control erosion and resulting sedimentation.
- (10) "Erosion control plan" means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this ordinance as submitted by the applicant for review and approval by the Department of City Planning.

- (11) "Exposed Land Uses" means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Open land uses shall include but shall not be limited to non-surfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other man-made activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this Ordinance, gravel shall not be considered a stable surface when used for vehicular traffic and parking.
- (12) "Land disturbing activity" means any man-made change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this ordinance, it includes only non-agricultural land disturbing activities.
- (13) "Land Users" means those entities, individually and collectively who are performing land-disturbing activities or have caused these activities to occur. These include but are not limited to owners, operators, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.
- (14) "Runoff" means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.
- (15) "Site" means the entire area included in the legal description of the land on which land-disturbing activity has been proposed in the permit application or is currently occurring.

162.10 NON-AGRICULTURAL LAND DISTURBING ACTIVITY PERFORMANCE REQUIREMENTS

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the City of Mishawaka. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best Management Practices shall be utilized to address the prevention, control, and reduction of storm water pollutants on a site-specific basis.

- (1) Site dewatering/Discharge
Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into existing storm sewer shall not be performed unless previously approved by the City of Mishawaka Department of Engineering, or applicable jurisdictional agency.
- (2) Waste and material disposal:
Wastes or unused building materials, including but not limited to garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) Roadway Protection:
Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the

parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.

(4) Property Protection:

Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.

(5) Drain inlet protection:

All storm drain inlets, within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets, located outside of land disturbing activity areas, which accepts storm water runoff from a land disturbing activity area, shall also be protected in an identical manner.

(6) Exposed Land Uses:

Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within the City of Mishawaka Zoning Ordinance. Any exposed land use, either permitted by right or conditional, shall require prior site plan approval pursuant to the requirements identified within Section 159.275 of the City of Mishawaka Zoning Ordinance.

(7) On-Site erosion control:

The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place.

- a. Storm water runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
- b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
- c. With disturbed areas of more than 10 acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. However, if erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
- d. With disturbed areas of less than or equal to 10 acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side slope and down slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. However, if these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
- e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in

existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

162.11 DESIGN CRITERIA, STANDARDS, AND SPECIFICATIONS FOR EROSION CONTROL MEASURES.

All erosion control measures including but not limited to those required to comply with this ordinance shall meet the design criteria, standards, and specifications for erosion control measures similar to or the same as those outlined in the *Indiana Stormwater Quality Manual*, or as adopted by the City of Mishawaka Board of Works and safety, as may be amended.

162.12 RESPONSIBILITY

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

162.13 MAINTENANCE OF EROSION CONTROL MEASURES

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this ordinance shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as, other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

162.14 PERMIT REQUIREMENTS

Where required, no land user shall begin a land disturbing activity subject to this ordinance without receiving prior approval of an Improvement Location Permit. Improvement Location Permits shall be issued in accordance with the requirements of the City of Mishawaka Zoning Ordinance as amended. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land-disturbing activity. An Improvement Location Permit shall be required as follows:

- (1) Light Land Disturbing Activity- No Permit Required
- (2) Moderate Land Disturbing Activity- Permit Required
- (3) Significant Land Disturbing Activity- Permit Required

162.15 PENALTY FOR PROCEEDING WITHOUT PERMIT

No land user shall begin a land disturbing activity subject to this ordinance without receiving prior approval of an Improvement Location Permit where required. The fee for Improvement Location Permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land user's notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by the City of Mishawaka Zoning Ordinance as amended.

162.16 BONDING REQUIREMENTS

No land user shall begin a land disturbing activity subject to this ordinance without receiving prior submission of a surety bond or an irrevocable letter of credit where required. Administration of surety bonds or letters of credit shall rest with the Department of Engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an Improvement Location Permit to the Department of Engineering. Surety shall be provided throughout the time of land disturbing activity operations. Surety bonds or an irrevocable letter of credit shall be required as follows:

- (1) Light Land Disturbing Activity- No Surety Required
- (2) Moderate Land Disturbing Activity- No Surety Required
- (3) Substantial Land Disturbing Activity- Surety Required

162.17 DETERMINATION OF REQUIRED SURETY

The required dollar amount of the surety bond or an irrevocable letter of credit where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) Area Calculation:
Up to 5 acres of disturbed land area- \$3,000.00 per acre, for each additional acre of disturbed land area- \$1,500.00 per acre.
- (2) Volume Calculation:
\$.50 per cubic yard of disturbed material including both cut and fill.

162.18 EROSION CONTROL PLAN REQUIRED

An erosion control plan as identified herein shall be required for all moderate and significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting an erosion control plan. Two copies of the erosion control plan shall be submitted prior to or concurrently with the Improvement Location Permit. Erosion control plans submitted and approved as part of the review of final development plans need not be re-submitted and can merely be referenced on the Improvement Location Permit Application. **Although subject to the performance requirements of section 162.10, projects approved by the City or the Soil and Water Conservation Service under Rule 5 prior to the establishment of this ordinance shall not be required to submit an erosion control plan as required herein.**

162.19 CONTENT OF EROSION CONTROL PLAN – MODERATE LAND DISTURBING ACTIVITY

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities,
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this ordinance;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this ordinance; and
- (3) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrants clarification identifying that the performance requirements of Section 162.10 (Non-agricultural Land Disturbing Activity Performance Requirements) are met.

162.20 CONTENT OF EROSION CONTROL PLAN – SUBSTANTIAL LAND DISTURBING ACTIVITY

All applications for an improvement location permit for substantial land disturbing activity shall include the following information:

- (1) Existing site map. A map of existing site conditions on a minimum scale of one inch equals 100 feet and adequate to show the site and adjacent areas, including:
- (2) Site boundaries and adjacent lands which accurately identify the site location;
- (3) Lakes, streams, wetlands, channels, ditches, and other water courses on and adjacent to the site;
- (4) One hundred year floodplains, floodway fringes, and floodways;

- (5) Location of predominant soil types, or soil testing report that identifies soil types as identified certified professional soil scientist or licensed engineer;
- (6) Vegetative cover types such as grass, weeds, and trees;
- (7) Location and dimensions of storm water drainage systems and natural drainage patterns on and immediately adjacent to the site;
- (8) Locations and dimension of utilities, structures, roads, highways, and paving;
- (9) Existing site topography at a contour interval not to exceed two feet.
- (10) Proposed site topography at a contour interval not to exceed two feet.
- (11) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities,
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the requirements of this ordinance;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this ordinance; and
 - e. Provisions for maintenance of the erosion control measures during construction.
- (12) Any additional information deemed necessary by the Department of Engineering where specific or unique site conditions warrants clarification identifying that the performance requirements of Section 162.10 (Non-agricultural Land Disturbing Activity Performance Requirements) are met.

162.21 REVIEW OF EROSION CONTROL PLAN.

Upon submission, the City Planner shall review the submission requirements of the erosion control plan only. The erosion control plan shall not be evaluated by the City Planner in regards to the performance requirements of this ordinance. The City Planner shall promptly forward complete erosion control plan submissions to the Department of Engineering for review of the performance requirements of this ordinance.

For moderate land disturbing activities, the City Planner may issue an improvement location permit prior to the review of the Department of Engineering. For substantial land disturbing activities, the City Planner may not issue an improvement location permit prior to the review of the Department of Engineering. When questions arise or specific unique site circumstances dictate it, the City Planner may also withhold the issuance of any Improvement Location Permit pending the review of the Department of Engineering.

The Department of Engineering shall promptly review erosion control plans. If the submission is deficient or held for the review of the Department of Engineering, the City Planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the City Planner shall again determine whether the plan meets the submission requirements of this ordinance. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City Planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.

In the case where the City Planner has issued an Improvement Location Permit prior to the review of the Department of Engineering, comments of the Department of Engineering received following the issuance

of an Improvement Location Permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the Department of Engineering, the City Planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the City Planner and/or the Department of Engineering shall not be construed as more than meeting the submission requirements of this ordinance. The review and approval of an erosion control plan by the City Planner and/or the Department of Engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this ordinance. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in Section 162.10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to insure compliance with performance requirements on a continual basis.

162.22 INSPECTION

To ensure compliance with the erosion control plan, the City of Mishawaka shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the Department of Planning, the Department of Engineering, or any other representative employed by or contracted with the City for said purpose. Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.

162.23 RESPONSIBILITY OF THE DEPARTMENT OF ENGINEERING

The administration of this ordinance as identified is the responsibility of the City Planner. However, based on the technical requirements of this ordinance, the Department of Engineering shall be responsible for the review and evaluation of a land disturbing activities compliance with the performance requirements of this ordinance. The City Planner may only pursue the administration of this ordinance relative to performance requirements when the lack of compliance has been documented in writing by the Department of Engineering.

162.24 ENFORCEMENT

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of non-compliance following the inspection and verification of the Department of Planning and/or Department of Engineering.

- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the City Planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The City Planner may also immediately post a stop-work order if-
 - a. Any land disturbing activity requiring an improvement location permit and/or bond under this ordinance is being undertaken without a permit and/or bond;
 - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
 - c. The land disturbing activity does not comply with the performance requirements of this ordinance and poses an imminent negative impact to the public health, safety, and welfare as determined by the Department of Engineering following an on-site inspection.
- (4) Upon correction of the violation(s), land users may appeal to the City of Mishawaka to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the City of Mishawaka may issue a notice of intent to the violator stating the intent of the City of Mishawaka to use draw upon the surety bond, where required, to perform work necessary to provide compliance with this ordinance. All expenses for work, administration, and legal fees associated with providing compliance with this ordinance which exceeds the amount of the surety bond may be billed to the land user. For all other disturbing activities where surety was not required, the City of Mishawaka may perform the work necessary to provide compliance with this ordinance. All expenses for work, administration, and legal fees associated with providing compliance with this ordinance may be billed to the land user.

162.25 PROJECT COMPLETION

Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing Activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other Department of Engineering approved means. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating completion and requesting the release of any surety bonds and/or letters of credit. Upon inspection and verification of land disturbing completion, any surety bonds and/or letters of credit shall be released by the Department of Engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.

162.26 CORRECTION OF NON-CONFORMING SITUATIONS

Land users who are currently in violation or are out of compliance with the performance standards identified within Section 162.10 (Non-agricultural land disturbing activity performance requirements) shall have 30 calendar days from the receipt of notice of violation identified under Section 162.23 (Enforcement) to apply for the applicable permits or bring the property into compliance with this chapter.

162.27 CORRECTION OF NON-CONFORMING SITUATIONS- GRAVEL DRIVES, PARKING AREAS, AND ALLEYS

Land users who are currently in violation or are out of compliance with the performance standards identified within Section 162.10 (Non-agricultural land disturbing activity performance requirements) due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this Chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under Section 162.23 (Enforcement) to apply for the applicable permits or bring the property into compliance with this chapter.